



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 17-00394  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

11/02/2017  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 30, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant Statements of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. On July 6, 2017, Applicant was issued amendments to the SOR. The actions were taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SORs on June 8, 2017 and July 24, 2017, respectively and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2017. I convened the hearing as scheduled on September 22, 2017. The Government offered exhibits (GE) 1 through 10. Applicant testified and offered Applicant Exhibits (AE) A through F. There were no objections to any exhibits offered and all were admitted into evidence. Hearing Exhibit (HE) I is a demonstrative exhibit. DOHA received the hearing transcript on October 3, 2017.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.b, 1.c, 1.d, 1.f, 1.g, 1.j, 1.k, 1.l, and 1.m. He denied the allegations in the SOR ¶¶ 1.a, 1.e, 1.h, and 1.i. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He served in the military from 1977 to 1979 and was honorably discharged. He earned an associate's degree in 1982. He married in 1980 and divorced in 1986. He remarried in 2001. He has no children.<sup>2</sup>

Applicant attributed his financial problems to periods of unemployment, underemployment, and costly moves to relocate for employment that occurred before he was hired by his present employer in December 2007. His finances deteriorated during this period. He used credit cards to pay for his moves. His wife worked, but was laid off in June 2008, and he was the sole wage earner. His income covered their living expenses. He continued to use credit cards and was using one card to pay another. In 2009, Applicant applied for a security clearance, which was denied because of his failure to timely respond to interrogatories about his financial situation.<sup>3</sup>

In 2011, Applicant's wife was diagnosed with cancer and was unable to work for a period. She has been in remission for six years. He testified that she has an opportunity to go back to work. She had a shoulder operation in August 2015, and another operation in April 2017. He has a knee issue. He is responsible for the deductible with his medical insurance.<sup>4</sup>

The debts alleged in the SOR are supported by Applicant's admissions, credit reports from March 2009, August 2011, June 2016, May 2017, and court records.<sup>5</sup> Applicant previously applied for a security clearance and received an SOR in April 2013. Some of the debts alleged on that SOR are alleged in the most recent SOR.

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<sup>2</sup> Tr. 19-22.

<sup>3</sup> Tr. 22-28; AE F.

<sup>4</sup> Tr. 56-61.

<sup>5</sup> GE 1, 2, 3, 4, 5, 6, 7, 8, 10.

SOR ¶ 1.a (\$1,064) is a state tax lien that was filed against Applicant in 2010. During his July 2016 background interview with a government investigator, he explained that when he moved to a new state he filed his state tax returns, but owed additional taxes. He was aware of the tax lien filed in April 2010 because he was receiving correspondence from the court. He did not pay it at the time because he was focusing on his wife's medical bills. He provided documents from the state of an installment agreement executed in June 2016 for delinquent state taxes for years 2009, 2010, 2011, and 2012 (\$2,089). In May 2017, the tax lien was satisfied.<sup>6</sup>

SOR ¶¶ 1.b and 1.c (\$807, \$1,375) are collection accounts. In September 2017, Applicant authorized the creditor to take automatic withdrawals from his account as part of a payment agreement with the creditor.<sup>7</sup> SOR ¶ 1.k (\$714) is a debt now held by the same collection agency. Applicant and the Government concurred that SOR ¶¶ 1.c and 1.k are duplicates. The debt in SOR ¶ 1.l is also with the same collection agency. Applicant's payment agreement does not include this debt. Documents provided by Applicant show that SOR ¶ 1.d (\$1,171) was with the same collection agency, but was later sold to a different collection agency. He does not have a payment agreement with the new collection agency for that debt, but he intended to contact the new creditor.<sup>8</sup>

SOR ¶ 1.e (\$58,883) is a student loan in collection. Applicant obtained this loan in 1980. He told the government investigator that after obtaining the loan, he forgot about the debt. About 10-15 years ago, he received a letter from the creditor about the loan being in default. He contacted the original creditor and was told the large balance was due to penalties and interest. He was going through a divorce at the time, and he could not afford to make payments. In 2015, he was again contacted by the creditor and was offered a payment plan. He did not agree to the plan. He wanted to negotiate a better plan, but has never followed through. He stated he made small payments over the past 30 years and should have paid more attention to it. He did not provide supporting documents to verify payments. He stated he is trying to manage other payment plans and will address the larger debts later.<sup>9</sup>

SOR ¶¶ 1.f and 1.g (\$398, \$444) are credit card debts. Applicant could not recall how old they are, but estimated about five to six years old. He acknowledged he is obligated to pay them, but does not have a plan at this time.<sup>10</sup>

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<sup>6</sup> Tr. 28-31; GE 1, 4, 5, 6, 7; AE C. Applicant's documents reflect that he failed to timely pay his state taxes for additional years that were not alleged in the SOR. I will not consider this information or any derogatory information that was not alleged in the SOR, except when making a credibility determination, in the application of mitigation, and when making a whole-person analysis.

<sup>7</sup> AE A, B. Applicant's payment plan with the collection agency includes other debts that are not alleged in the SOR. As previously stated this information will only be considered as noted above and not for disqualifying purposes.

<sup>8</sup> Tr. 31-39; GE 1, 2, 4, 5, 6.

<sup>9</sup> Tr. 39-43; GE 1, 2, 5, 6.

<sup>10</sup> Tr. 43-45; GE 1, 2, 4, 5.

SOR ¶ 1.h (\$1,061) is a cable bill. Applicant testified that this debt was under his wife's name, and he did not feel responsible for paying it. The evidence indicates that the account is an individual account in Applicant's name. During Applicant's background interview, he acknowledged that when he and his wife moved they had the debt, but he was unable to pay it because he was focusing on his wife's medical expenses. He has not contacted the creditor, but he intends to resolve the debt.<sup>11</sup>

SOR ¶ 1.i is a 2015 debt for ambulance service for Applicant's wife. During his background interview, he acknowledged the debt. He believed his medical insurer was required to pay this account. At that time, he intended to contact the insurance company and resolve the debt. At his hearing, he testified that he has not done anything to resolve the debt, and it remains unpaid.<sup>12</sup>

SOR ¶ 1.j (\$3,690) is a judgment. Applicant testified that when he moved in 2006 his car was repossessed. He has not addressed this judgment and had no explanation for why he failed to pay it.<sup>13</sup> It remain unpaid.

Applicant stated that his delinquent debts were not prioritized because he was trying to pay day to day expenses. He has three credit cards that are being paid timely. Two have balances less than a \$200 and the third has a balance of \$1,100. He made a budget a few days before his hearing. He provided a copy of medical claims for him and his wife from 2016 and 2017. He highlighted some claims that he thinks he may be responsible for and not covered by insurance. He has not participated in financial counseling, but intends to in the future.<sup>14</sup>

Applicant provided a letter from his employer verifying that he has worked for 10 years with the company and has excelled. He has received compliments for his professionalism and achievements in successfully completing the mission.<sup>15</sup> Applicant testified that he can obtain a loan from his employer to pay some of his smaller delinquent debts, but he wanted to do it on his own. He is reconsidering that option.<sup>16</sup>

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline,

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<sup>11</sup> Tr. 46-50; GE 2, 5.

<sup>12</sup> Tr. 50-52; GE 2, 5.

<sup>13</sup> Tr. 52-53; GE 8.

<sup>14</sup> Tr. 54-72; AE D, E.

<sup>15</sup> AE F.

<sup>16</sup> Tr. 45.

the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that have been unpaid or unresolved for many years. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts have been delinquent for many years. He has been aware that they are a security concern for many years because he previously applied for a security clearance and his delinquent debts were raised. Applicant recently made a payment plan for a couple of his debts, but many he has not addressed. His financial problems are recent and ongoing. The evidence is insufficient to conclude that his behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributes his financial problems to unemployment, underemployment, moving expenses, and medical bills. These issues were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant testified that his student loan is from 1980. He was contacted twice by the creditor, but has failed to take any action to resolve this debt, which has escalated over the years due to penalties and interest. He has a judgment for a repossessed vehicle from 2006 that remains unpaid. He has delinquent credit cards, but he has not contacted the creditors. Some of his debts predate his wife's illness. He has been employed steadily since December 2007. The evidence is lacking to find that he acted responsibly. AG ¶ 20(b) partially applies.

Applicant has a payment plan for two of the alleged debts. Included in that plan are other delinquent debts that were not alleged. He had a tax lien from 2010. The documents he provided showed he owed taxes for other years. He recently resolved his tax debts and lien. There is no evidence that he received financial counseling and that there are clear indications that his financial problems are under control. AG ¶ 20(c) does not apply.

Applicant recently paid his 2010 tax lien. AG ¶ 20(d) applies to this debt as he has completed the installment plan. Applicant recently arranged a payment plan for accounts that are in collection (SOR ¶¶ 1.b and 1.c). Because he only recently started this plan after these debts have been delinquent for years, it is too early to conclude that he is adhering to a good-faith effort to pay overdue creditors or resolve his debts. There is no evidence that he is paying any of the other debts alleged in the SOR. AG ¶ 20(d) does not apply.

Applicant denied some of the SOR debts, but failed to show why he is not responsible for them or that he has a legitimate dispute. AG ¶ 20(e) does not apply.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 58 years old and has a long history of failing to responsibly pay his debts. At different times, he might have had legitimate reasons for getting behind in paying his bills, but he failed to take any meaningful action when he was able. He has been employed since 2007. His wife's cancer has been in remission since 2011. I have considered that he was prioritizing paying his wife's medical bills, but some debts have remained unpaid for many years without being addressed. He has a student loan that he owes from 1980, a judgment that he has not paid because he did not see a reason to pay it, and other debts that have languished. Applicant has been aware over the years that his finances are a security concern, but has made minimal progress in paying his delinquent debts. He did not provide sufficient evidence in mitigation. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.



## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge