



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



In the matter of: )  
)  
) ISCR Case No. 17-00593  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2018  
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**Decision**  
\_\_\_\_\_

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 24, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.<sup>1</sup>

Applicant responded to the SOR on April 18, 2017, and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March

<sup>1</sup> I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

29, 2018, scheduling the hearing for April 18, 2018. I convened the hearing as scheduled.

The Government's exhibit list and discovery letter were appended to the record as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until May 16, 2018. He timely provided additional documentation, which I marked as AE F and G and admitted in evidence without objection. I appended to the record as HE III emails from Department Counsel indicating she did not have any objection to AE F and G. DOHA received the hearing transcript (Tr.) on May 8, 2018.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. He denied SOR ¶¶ 1.c through 1.g. He is 42 years old. He was born in Africa, he immigrated to the United States in 2000, and he became a naturalized U.S. citizen in 2009. He married in November 2006 and separated in July 2012. He filed for divorce in 2016, but it was not finalized as of the date of the hearing. He has four children. His two eldest children, ages 17 and 14, are from previous relationships. His two youngest children, ages 11 and 9, are from his marriage. Since 2015, his eldest child has lived with him in state A.<sup>2</sup>

Applicant graduated from high school in 1996 in Africa and obtained an auto mechanics certification in 2001 in the United States. He served in the U.S. military from 2004 until his honorable discharge in 2010. He was twice deployed. As of the hearing date, he was attending college and expected to earn a bachelor's degree in cyber security in 2019. Since June 2015, he has worked as a security guard for his current employer, a defense contractor. He was first granted a DOD security clearance when he was in the U.S. military. He has held an interim security clearance since 2015.<sup>3</sup>

The SOR alleges a May 2012 state tax lien of \$1,356 (SOR ¶ 1.f), two delinquent child support accounts totaling \$32,895 (SOR ¶¶ 1.a, 1.b), and four delinquent consumer debts for \$2,292 (SOR ¶¶ 1.c, 1.d, 1.e, 1.g). The SOR allegations are established by Applicant's admissions and credit reports from July 2015, April 2016, and January 2017. Applicant also listed some of his delinquent debts in his May 2015 security clearance application (SCA).<sup>4</sup>

Applicant attributes his delinquent debts to his limited income while he was in the U.S. military, as well as to periods of unemployment after his 2010 military discharge. He was unemployed in state B from October 2010 to April 2012. He was unemployed in

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<sup>2</sup> Response to the SOR; Tr. at. 7-11, 14, 25-58, 73-74; GE 1.

<sup>3</sup> Tr. at. 7-11, 14, 25-37; GE 1.

<sup>4</sup> GE 1-4.

state C from February through June 2013. He was unemployed in state A from October 2014 to October 2015. His wife's work as a massage therapist, and his receipt of unemployment benefits and money from the GI Bill while attending school, was insufficient to overcome their financial troubles. Marital strife followed.<sup>5</sup>

During his first period of unemployment, Applicant's wife elected to move with their two children from state B to state C, where her mother resided, in around 2011. He followed three to four months later. With state C's assistance for military veterans, he obtained a commercial driver's license in 2012 and worked as a tractor trailer driver. When he became unemployed again, he elected to move to state A in June 2013 so that he could alleviate his financial troubles by living with his sister. He obtained work briefly, but became unemployed for a third time.<sup>6</sup>

SOR ¶¶ 1.a and 1.b are for delinquent child support totaling \$32,265. SOR ¶ 1.a is for \$18,971 in delinquent child support to county 1 in state B for Applicant's second child. SOR ¶ 1.b is for \$13,924 in delinquent child support to county 2 in state B for his two youngest children. Applicant was first ordered to pay child support in 2004, in the amount of \$200 monthly for his eldest child. Due to his limited income, based on his rank in the U.S. military, the Defense Finance and Accounting Service (DFAS) garnished only \$120 monthly. He testified that he neither had any child-support obligation nor any child-support arrears for his eldest child, as the child had been living with him since 2015.<sup>7</sup>

In 2005, Applicant was ordered to pay a second child-support obligation of \$300 monthly, for his second child. DFAS garnished only \$150 monthly, for the reason previously discussed. In 2013, he was ordered to pay a third child-support obligation, of \$300 monthly for his two youngest children. From 2005 to 2015, Applicant's wages were only garnished for \$150 to \$270 monthly, when he was court-ordered to pay between \$500 and \$800 monthly in child support. He believed that DFAS would ultimately garnish the full court-ordered amount. He also understood that his tax refunds since 2007 were intercepted and applied towards his child-support obligation.<sup>8</sup>

Applicant did not learn that he was in arrears until after his 2010 military discharge, when he was told that state B placed a hold on his 2011 passport application due to an \$8,000 child-support arrearage. He had not previously received notices of any such arrears. Once he received notice, he entered into a payment plan of \$40 monthly for the arrearage in SOR ¶ 1.a. He continued this payment plan until 2015, when he stopped for a period because of his limited income. When he began working for his current company in June 2015, he earned more money. He requested an increase in the garnishment of his wages for his child-support obligation, from \$150 to \$300

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<sup>5</sup> Tr. at 30-58, 74-76; GE 1.

<sup>6</sup> Tr. at 30-58, 74-76; GE 1.

<sup>7</sup> Tr. at 35, 37-58, 69-70, 75-88; GE 4; AE A, G.

<sup>8</sup> Tr. at 35, 37-58, 69-70, 75-88; GE 4; AE A, G.

monthly. He understood that this amount was applied towards his monthly child-support obligation as well as his arrearages in SOR ¶¶ 1.a and 1.b.<sup>9</sup>

In March 2017, Applicant's wages were garnished for \$350 monthly, with a year-to-date total of \$2,452. He increased the amount from \$300 to \$350 monthly because he wanted to apply more money towards his arrearages. He provided three paystubs, one from June 2017 and two from November 2017, reflecting that he had two child support deductions in place. The first deduction was a continuation of the existing \$350 monthly, with a year-to-date total of \$8,407 as of November 24, 2017. The second deduction began in around May 2017, for \$262 monthly, with a year-to-date total of \$3,675 as of November 24, 2017.<sup>10</sup>

Since March 2017, Applicant made several attempts to telephone the individuals in charge of his child-support cases. He wanted to explore alternative arrangements to resolve his arrearages. He had not made any progress in that regard as of the date of the hearing. He hired a law firm in late 2017 for \$50 monthly to assist him with continuing to resolve SOR ¶¶ 1.a and 1.b.<sup>11</sup>

SOR ¶ 1.c is for an auto account that was \$294 past due. Applicant brought the account current in April 2017, and he paid it in full in January 2018. He no longer had any car payments as of the date of the hearing.<sup>12</sup>

SOR ¶ 1.d is for Applicant's wife's phone account in his name, in collection for \$985. She refused to pay it after they separated. Applicant made a payment in April 2017 payment for \$121, and the balance was \$863. He testified that he settled this debt in that same month for \$483, to be paid in four monthly installments of \$120. He testified that he made the installment payments as agreed and he paid this debt. He intended to provide documentation to corroborate his claim.<sup>13</sup>

SOR ¶ 1.e is for a \$681 charged-off debt to the federal government. Applicant was overpaid while he was in the military. He testified that he resolved this debt in 2017 through a garnishment of his disability pay.<sup>14</sup>

SOR ¶ 1.f is for a \$1,356 state tax lien from May 2012. Applicant's tax preparer prepared his 2011 federal and state income tax returns, and filed his 2011 federal returns but failed to file his 2011 state returns. He testified that he filed his 2011 state

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<sup>9</sup> Tr. at 35, 37-58, 69-70, 75-88; GE 4; AE A, G.

<sup>10</sup> Tr. at 35, 37-58, 69-70, 75-88; GE 4; AE A, G.

<sup>11</sup> Tr. at 35, 37-58, 69-70, 75-88; GE 4; AE A, G.

<sup>12</sup> Tr. at 58-59; AE B, E.

<sup>13</sup> Tr. at 59-61, 84-85; AE C.

<sup>14</sup> Tr. at 61-63; GE 4.

tax return. He satisfied the lien in January 2016, prior to the SOR. He testified that he was current on all his tax filings and he had no outstanding taxes.<sup>15</sup>

SOR ¶ 1.g is for an internet account in collection for \$332. Applicant testified that he initially disputed this debt on his credit reports. He then settled it for \$150 and paid it in April 2017. It was no longer reported on his most recent credit report from 2017.<sup>16</sup>

Applicant received financial counseling from the U.S. Department of Veterans Affairs (VA) as well as from the law firm that he hired in late 2017. He had a budget. He earned around \$3,000 monthly. As he has had a 50% to 60% disability rating from the VA since 2013, he also receives \$850 monthly in disability pay. He is able to pay his debts, and he had a monthly net remainder of between \$700 and \$800. The law firm was also assisting him with disputing certain debts on his credit report. He has the financial means to resolve the remaining delinquent debts in the SOR, and he intends to do so. He does not have additional delinquent debts.<sup>17</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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(a), 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."

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

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<sup>15</sup> Tr. at 63-66; AE D.

<sup>16</sup> Tr. at 67-68, 84; GE 4; AE F.

<sup>17</sup> Tr. at 10, 33-34, 68-72, 81-83, 85-88; AE A.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

#### **Guideline F, Financial Considerations**

The security concern 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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant was unable to pay his debts, to include his 2012 tax lien. The evidence is sufficient to raise AG ¶¶ 19(a), 19(b), and 19(f) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

Applicant's financial problems stemmed from his limited income while he was in the U.S. military and his three periods of unemployment after his 2010 military discharge. He has acted responsibly in addressing them. He paid SOR ¶¶ 1.c, 1.f, and 1.g. His payment of SOR ¶ 1.f occurred before the SOR. He testified that he paid SOR ¶¶ 1.d. and 1.e.

Applicant was in the process of resolving SOR ¶¶ 1.a and 1.b. He mistakenly believed that DFAS would ultimately garnish the full amount of his child-support obligations. His limited income, however, prevented DFAS from doing so beginning with his first child support order in 2004. Since 2007, his tax refunds were intercepted and applied towards his outstanding child-support obligation. Once he learned about his arrearage in 2011 and through 2015, he entered into a \$40 monthly payment plan. When he began earning more money in June 2015, he increased the garnishment of his wages for his child-support obligation and his arrearages from \$150 to the \$300 monthly. In March 2017, he again increased his wage garnishment, to \$350 monthly, so that more money could be applied towards his arrearages. As of November 2017, he had two child support deductions in place: one for \$350 monthly and one for \$262 monthly. Through such deductions, he paid a total of \$12,082 towards his outstanding child-support debts. He had been telephoning the individuals from the respective child support agencies since March 2017 to work on alternative arrangements to resolve the arrearages. He had also been working with the law firm since late 2017 to assist him with continuing to resolve SOR ¶¶ 1.a and 1.b.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-

02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has not incurred additional delinquent debts. While he has unresolved SOR debts remaining, he has demonstrated a good-faith effort and he has the means to continue to resolve them. They do not cast doubt on his current reliability, trustworthiness, and judgment AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are applicable.

### **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 relevant 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. I considered Applicant's honorable military service, to include his two deployments. He has taken responsible action to resolve his debts. While he has unresolved SOR debts remaining, he credibly testified at hearing and there is sufficient evidence to show that he is committed to resolving them.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.



### **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: FOR APPLICANT

Subparagraphs 1.a – 1.g: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge