



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



In the matter of: )  
)  
) ISCR Case No. 17-01050  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2018  
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**Decision**  
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LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On May 19, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on July 11, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on September 12, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 8, 2017, scheduling the hearing for December 7, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through U, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE V through BB, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 18, 2017.

## Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He retired in 2015 after 22 years in the U.S. Navy and Navy Reserve. He is a high school graduate with courses and certificates attained through the Navy. He is divorced with no children, but he treats his ex-wife's children like they were his own children.<sup>1</sup>

Applicant has a history of financial problems. He filed a Chapter 13 bankruptcy case in 2001. He completed the payments to the trustee, and any remaining dischargeable debts were discharged in 2006. He had a side business that was adversely affected by an environmental disaster in 2010. Thereafter, he lost his full-time job and went through a divorce. He was unable to pay all his bills and a number of debts became delinquent.<sup>2</sup>

The SOR alleges the 2001 through 2006 Chapter 13 bankruptcy case and eight delinquent debts totaling about \$62,000. Applicant admitted owing all the debts with the exception of the \$47 unidentified medical debt alleged in SOR 1.h, which he paid.

Applicant filed a claim with the corporation that caused the environmental disaster. He expected to use the proceeds from the claim to pay his debts. The claim was denied in February 2017. He then obtained credit counseling to assist him in resolving his financial problems. He was advised that bankruptcy was his best remaining option.<sup>3</sup>

Applicant filed a Chapter 7 bankruptcy case in February 2016. His dischargeable debts were discharged in November 2017. He stated that his finances are currently stable. He uses what he learned through financial counseling. He is paying his student loans, which were not discharged in his bankruptcy.<sup>4</sup>

Applicant submitted documents and letters attesting to his excellent job performance. He is praised for his responsibility, honesty, trustworthiness, work ethic, patriotism, reliability, high morals and ethics, loyalty, leadership, dedication, and integrity.<sup>5</sup>

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<sup>1</sup> Tr. at 24-26, 29-30; GE 1, 2; AE C, K, R.

<sup>2</sup> Tr. at 26-27, 32-40; Applicant's response to SOR; GE 2; AE D, O, P, S.

<sup>3</sup> Tr. at 27-28, 50-54; Applicant's response to SOR; GE 2; AE E, T, U.

<sup>4</sup> Tr. at 27-30, 58-60, 85-86; AE F-I, L-N, V-BB. Applicant provided a copy of his federal income tax returns from 2014 and 2015. He claimed his ex-wife's daughter as a dependent and listed her as his "Daughter." He also claimed a child tax credit for her. She lived with him and he supported her, so he may have been able to claim her as a non-relative dependent, but he could not claim the child tax credit. See <https://www.irs.gov/pub/irs-pdf/p972.pdf>. His returns were prepared by a tax professional. I am convinced Applicant was unaware that he was filing an incorrect return. I further believe the tax preparer was incompetent, dishonest, or both.

<sup>5</sup> AE I, J.

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(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."

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.

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 EO 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* EO 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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems. The evidence is sufficient to raise the above 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 had a side business that was adversely affected by an environmental disaster in 2010. Thereafter, he lost his full-time job and went through a divorce. He expected to pay his debts from the claim with the corporation that caused the environmental disaster. When the claim was denied, he followed the advice of his financial experts and resolved his dischargeable debts through bankruptcy. His finances are currently stable, and he is paying his student loans, which were not discharged in his bankruptcy.

I find that Applicant's financial difficulties were the result of conditions that were beyond his control, and that he acted responsibly under the circumstances. They do not cast doubt on his current reliability, trustworthiness, and good judgment. His resolution of his debts through Chapter 7 bankruptcy does not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable. However, the bankruptcy provides a clear indication that the problem has been resolved and is under control. AG ¶¶ 20(a), 20(b), and 20(c) 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 also considered Applicant's favorable character evidence and 22 years of honorable military service.

Overall, the record evidence leaves me without questions or doubts about 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
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Subparagraphs 1.a-1.i:	For Applicant
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### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge