



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-01131

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

01/26/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On May 11, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs) implemented by DOD on September 1, 2006.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect when the SOR was issued would not affect my decision in this case.

Applicant responded to the SOR on June 1, 2017, and requested a hearing. The case was assigned to me on August 8, 2017, and scheduled for hearing on September 26, 2017. The Government's case consisted of five exhibits (GEs 1-5) Applicant relied on one witness (himself) and five exhibits. (AEs A-E) The transcript was received on October 4, 2017.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented payments to the creditor covered by SOR ¶ 1.d. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Applicant did not supplement the record.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 19 delinquent debts exceeding \$45,000. Allegedly, these debts remain outstanding and unresolved.

In his response to the SOR, Applicant admitted the allegations covered by SOR ¶¶ 1.c, 1.e-1.h, 1.j, and 1.m. He denied the allegations covered by SOR ¶¶ 1.a-1.b, 1.d, 1.i, 1.k-1.l, and 1.n-1.s. He claimed he paid off SOR debts ¶¶ 1.a and 1.p and disputes SOR debts ¶¶ 1.b, 1.d, 1.i, 1.k-1.l, and 1.n-1.s.

### **Findings of Fact**

Applicant is a 33-year-old security officer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in June 2013 and has two stepchildren from this marriage. (GE 1) Applicant attended college classes in between September 2007 and December 2008, and between January 2015 and May 2015, but earned no degree or diploma. (GEs 1-2) He reported no military service. (GE 1-2)

Applicant has worked for his current contractor since February 2016. (GEs 1-2) Contemporaneously with work for his current employer, he worked as a multiple site officer for another security firm. (GEs 1-2) Applicant reported unemployment between January 2015 and July 2015 and work as a security supervisor for a retail chain between April 2010 and January 2015. (GEs 1-2)

### **Applicant's finances**

Credit reports reveal that Applicant accumulated 19 delinquent debts exceeding \$45,000 between 2010 and 2012. (GEs 2-5) His delinquent debts are comprised of the following: two judgments covered by SOR ¶¶ 1.a (for \$4,124, entered in August 2014) and 1.b (for \$4,284 entered in November 2015) and 17 delinquent medical, consumer, and student loan debts exceeding \$36,000 in aggregate debts owed. Applicant's non-judgment debts consist of the following: ¶¶ 1.c (a consumer debt for \$5,762); 1.d (a utility debt for \$2,578); 1.e (a utility debt for \$1,693); 1.f (a student loan debt for \$1,533); 1.g (a utility debt for \$1,313); 1.h (a utility debt for \$1,186); 1.i (a consumer debt for \$774); 1.j (a utility debt for \$482); 1.k (a deficiency balance on a repossessed vehicle for \$18,873); 1.l (a medical debt for \$1,124); 1.m (a lease real estate debt owed to a housing authority for \$1,112); 1.n (a medical debt for \$1,065); 1.o (a medical debt for \$931); 1.p (a medical debt for \$741); 1.q (a medical debt for \$528); 1.r (a consumer debt for \$193); and 1.s (a consumer debt for \$139)

Applicant attributed his delinquent debts to medical issues he encountered between 2012 and 2015 that required he take intermittent work leave to address his health conditions. (AE B; Tr. 32-33, 41) During this time period, he suffered from an appendix infection, compounded by liver and gall bladder complications. (Tr. 41-42) Altogether, he incurred medical debts in excess of \$8,000 that were not covered by his medical insurance. (Tr. 40) And since he had no disability or workman compensation benefits, he could not avoid using his own savings to supplement his insurance coverage of his medical outlays. (Tr. 42-43)

Several of Applicant's listed SOR debts were disputed and have since been removed from his credit reports. (AEs D-E) These removed accounts include SOR ¶¶ 1.a, 1.d, 1.i, 1.k, 1.l, and 1.n-1.s. SOR ¶¶ 1.l and 1.n-1.p debts are duplicates of the judgment debt covered by SOR ¶ 1.a and are resolved favorably to Applicant. (GEs 3-5; Tr. 39-40) Less is known about the status of Applicant's two judgment debts covered by SOR ¶¶ 1.a and 1.b. Applicant claims that he satisfied the medical judgment covered by SOR ¶ 1.a through garnishment by the judgment creditor. (Tr. 34-35) However, he provided no documented evidence to corroborate his claims. That the SOR judgment debt no longer appears on his most recent credit reports (AEs D-E) is not dispositive of its being resolved by garnishment. Further, enforcement of a judgment by garnishment is not probative of any voluntary good-faith efforts by Applicant to satisfy the judgment.

Addressing four other disputed debts (SOR debts ¶¶ 1.i and 1.q-1.s), Applicant claims that these four debts are not his debts and have since been removed from his most recent credit reports following his challenges with the creditors. (GEs 3-5 and AEs

D-E; Tr. 39-41) Applicant did not supply any corroborative evidence of his disputes with the creditors about the listed utility bills or other documented evidence of his disputes of these four debts. Passage of time conceivably could account for the removal of these debts from his credit reports. But passage of time alone is not enough to resolve any of these disputed debts that no longer appear on his most recent credit reports. (AEs D-E)

Other debts disputed by Applicant but not sufficiently corroborated to draw inferences of favorable resolution of Applicant's claims are the consumer debts covered by SOR ¶¶ 1.d and 1.k. SOR debt ¶ 1.d is a utility debt that Applicant claims is listed in his credit reports in error. Claiming he never had a creditor ¶ 1.d utility account, he assured he persuaded the creditor to remove the account from his most recent credit reports. (AEs D-E; Tr. 50-51) The creditor 1.d utility account appears in his past credit reports as an account opened in December 2014 with a high credit of \$2,578, a reported last activity in May 2015, and a reported delinquent balance of \$2,578 in April 2016. (GEs 3-5). Afforded an opportunity to provide documentary proof of mistaken reporting, he provided no additional information pertinent to his dispute of SOR debt ¶ 1.d.

Besides SOR debt ¶ 1.d, Applicant disclaimed any ownership of SOR debt ¶ 1.k. He cites to GEs 3-5 that reveal an account with the same named lender to be closed. Both of these reported accounts report a joint auto loan account opened in 2006 with a \$28,290 high credit, last activity in 2008, and closure of the account in 2008 with credited full payment of the loan.

By contrast, reported SOR debt ¶ 1.k in Applicant's May 2016 credit report (GE 3) lists an additional account with creditor 1.k that reveals last activity of November 2009, an assigned delinquency in September 2010, and a collection balance of \$18,873 in May 2016 without any reference to the auto loan cited in the other loan account with the same SOR creditor. (GE 3) Moreover, the account number in the two loan accounts associated with SOR creditor 1.k are completely different. Conceivably, the two accounts are mistakenly conflated with the same auto loan that was previously repaid by Applicant. But without more clarifying documentation from Applicant, they cannot be favorably resolved without a good deal of guesswork. Where the two reported accounts cannot be reconciled as one resolved debt, enough doubts remain as to the present status of SOR debt ¶ 1.k to preclude the drawing of favorable inferences in Applicant's behalf.

Also disputed by Applicant without any corroborating evidence is SOR debt ¶ 1.m. Asked about the status of this rental housing debt, Applicant claimed he complained to his landlord about a neighbor creating unsafe conditions in his apartment building. (Tr. 52-53) And, when the landlord failed to respond to his complaints, he ceased making rental payments and vacated his rental unit. (Tr. 52) Applicant never addressed his landlord's rent demands, did not provide any corroborative evidence of follow-up with the landlord about his rent dispute, and expressed disinclination to pay the landlord. (Tr. 52-53) This SOR debt ¶ 1.m remains unresolved and is still outstanding.

A number of the listed SOR debts are fully acknowledged with explanations by Applicant and have not been addressed with any corroborating evidence. In this group

are SOR debts ¶¶ 1.b-1.c, 1.e, and 1.g-1.j. (GEs 3-5; Tr. 37-51) These debts remain unresolved and outstanding.

Resolved in Applicant's favor is his student loan debt covered by SOR ¶ 1.f. Applicant documented his payment plan with this creditor that he arranged in September 2017 to cover the \$1,444 current balance owing on this loan. (AE C; Tr. 35, 49) Applicant assures that he is in compliance with the payment terms of his payment plan, and he corroborated his claims with a documented loan summary from the lender. (AE C)

Applicant provided no evidence of budgeting or financial counseling. Nor did he furnish any character references, performance evaluations, or evidence of community involvement.

### **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* Failure or inability 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations

should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## **Analysis**

Applicant brings to these proceeding a considerable history of delinquent debts that for the most part he has failed to satisfactorily resolve. His accumulation of delinquent debts present continuing security concerns about his finances that affect his eligibility to hold a security clearance.

### **Financial Concerns**

Security concerns over the state of Applicant’s finances warrant the application of three of the disqualifying conditions (DC) of the financial considerations guideline: DC ¶¶ 19(a), “inability to satisfy debts”; 19(b), “unwillingness to satisfy debts regardless of the ability to do so”; and 19(c), “a history of not meeting financial obligations.” His accumulation of delinquent debts over a number of years raises concerns about his trustworthiness, reliability, and judgment required to meet the eligibility requirements for holding a security clearance.

Applicant’s pleading admissions with respect to some of his accumulation of delinquent student loan, medical, and consumer debts negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s delinquent consumer debts are fully documented in his credit reports and create some judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in persons cleared to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Extenuating circumstances (i.e., unemployment and business-related issues involving a disputed judgment) are attributable to some of Applicant’s financial problems. MC ¶ 20(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances,” has some partial application to Applicant’s situation.

To his credit, Applicant provided some evidence of good-faith efforts to resolve his debts (such as his student loan deficiency covered by SOR debt ¶ 1.f). But on the whole, he did not devote enough efforts with the remainder of his debts to demonstrate he acted responsibly under the circumstances after he recovered from his medical complications.

While many of Applicant's disputed debts no longer appear on his most recent credit reports, this factor alone does not extenuate or mitigate applicant's overall history of financial difficulties or constitute dispositive evidence of financial reform or rehabilitation. See ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017); ISCR case No. 03-05197 at 3 (App. Bd. Oct. 14, 2004) To be sure, there can be more than one plausible explanation for the absence of listed debts in a credit report: Examples include the passage of time and favorable resolutions of investigated credit card fraud. In applicant's case, the passage of time of some of Applicant's removed debts may or may not explain their removal. More documented information from Applicant is needed to resolve the issues of his removed debts before reasoned conclusions can be reached about the status of these debts. Based on the evidence provided to date, none of the remaining mitigating conditions pertaining to evidenced good-faith payment initiatives, financial counseling, or (save for the duplicated debts covered by SOR ¶¶ 1.l and 1.n-1.p) reasonable basis to dispute a past-due debt apply to Applicant's situation.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). In Applicant's case, his lack of demonstrated sufficient responsible efforts in addressing his SOR-listed medical and consumer obligations preclude favorable findings and conclusions with respect to his security clearance application. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

### **Whole Person Assessment**

Whole-person assessment is unfavorable to Applicant. He has not shown sufficient progress to date in addressing his delinquent medical and consumer debts covered in the SOR. His actions to date reflect a lack of essential financial responsibility and judgment and raise unresolved questions about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. More documented information about his addressing his admitted and disputed medical and consumer debts are necessary to demonstrate the level of financial progress necessary to mitigate financial concerns under the financial guideline and consideration of the whole person to mitigate security concerns.

Taking into account all of the documented facts and circumstances surrounding Applicant's medical and consumer debt accruals that he has failed to pay or resolve to date, Applicant has failed to demonstrate enough probative efforts to mitigate financial concerns. Conclusions are warranted that his finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance.

Unfavorable conclusions are entered with respect to the allegations covered by ¶¶ subparagraphs 1.a through 1.e, 1.g through 1.k, 1.m, and 1.q through 1.s of the SOR. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.f, 1.l, and 1.n through 1.p. Eligibility to hold a security clearance under the facts and circumstances of this case is not consistent with the national interest.



## **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraphs 1.a-1.e, 1.g-1.k, 1.m, and 1.q-1.s:	Against Applicant
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Subparagraphs 1.f, 1.l, and 1.n-1.p:	For Applicant
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## **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge



