



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



In the matter of:

ISCR Case No. 17-01142

Applicant for Security Clearance

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: Tracy Marion, Esq.

01/03/2018

---

**Decision**

---

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 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was 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 SOR on May 25, 2017, and requested a hearing before an administrative judge. The case was assigned to me on October 4, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 20, 2017. I convened the hearing as scheduled on November 16, 2017. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through I. There were no objections to any exhibits offered and all were admitted into evidence.<sup>2</sup> DOHA received the hearing transcript on November 27, 2017.

### **Procedural Issues**

SOR ¶ 1.e was amended to reflect the correct amount of \$180.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.d, and 1.g. He denied the allegations in SOR ¶¶ 1.e, 1.f, and 1.h. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He graduated from college in 1996. He never married and has no children. He was on active duty in the military from 1996 until his honorable discharge in February 2007. He has worked for federal contractors since February 2007, with a period of unemployment from April 2009 to August 2009. He has worked for his present employer since March 2015.<sup>3</sup>

Applicant had financial difficulties while in the military when he failed to make arrangements to pay his bills while he was on a deployment from June 2000 to December 2000. He admitted that he did not pay his utilities or credit cards during this time. He participated in financial counseling in 2002. He deployed again from March 2003 to September 2003. He admitted he may have had some financial problems in 2003, but could not recall. A 2005 credit report reflects over 30 accounts that were charged-off, in collection, past-due, or in default and an account where a claim was filed against the guarantor. Applicant received approximately \$50,000 separation pay when he was discharged from the military in 2007. He used the money to resolve delinquent debts; help his mother pay her car loan; pay his moving expenses; and purchase home furnishings.<sup>4</sup>

Applicant moved from State A in 2012 to state B because his mother was sick. He purchased a house in State B in December 2012. He testified he received a letter from State A that he owed tax for the income he earned there. He stated the tax assessment

---

<sup>2</sup> Hearing Exhibit I is the Government's discovery letter.

<sup>3</sup> Tr. 20-24, 29-30; GE 1.

<sup>4</sup> Tr. 43-45, 64-71; GE 5. The separation pay was recouped by the Department of Veteran's Affairs (VA) over a four-year period after it authorized disability pay.

he received showed he owed two amounts of \$800 and \$746. He stated he has future scheduled payments to resolve this debt.<sup>5</sup>

Applicant testified that he owed federal income tax for 2013 because he forgot to include a Form 1099 when he filed his taxes. His 2016 federal income tax refund was applied to the amount he owed for that year. He testified that he owes \$2,100 for his 2015 federal income taxes. He explained he did not pay the taxes timely because he had moved and his income was reduced, and he did not have enough money. The Internal Revenue Service contacted him and he filed an amended return in July 2017. Due to Applicant's recent VA disability reassessment, there are likely tax consequences that may impact what, if any, amount is owed to the IRS.<sup>6</sup>

When Applicant moved in 2012, his mother had her own home, which needed repairs. He testified that he contributed about \$7,000 toward the repairs and charged them to a credit card. His mother moved in with him in October 2013. She had limited income and used it for her Hospice care. He paid her house payments and his house payments, which caused him to get behind in paying his bills. She passed away in February 2014. Her house was foreclosed in October 2014. Applicant was not responsible for the mortgage. He never recouped the \$7,000 he spent on her home.<sup>7</sup>

In October 2014, Applicant sold his mother's vehicle. He used the money to purchase a used boat for \$3,500. The slip fee for his boat is \$115 monthly. He intends to sell the boat.<sup>8</sup>

Applicant's father and his girlfriend broke up and his father needed a place to live. He moved in with Applicant in August 2015. His father had his own income. His father remarried and now lives with his wife. Applicant's younger half-sister was a college student and lived with him because her mother passed away in December 2016. Applicant is not financially responsible for her.<sup>9</sup>

The debt in SOR ¶ 1.a (\$255,375) is Applicant's mortgage. In his February 2016 security clearance application (SCA), he disclosed that due to being on short-term disability for two months beginning in January 2015, he requested his mortgage company defer his payments. He indicated that he received a loan modification and the account was current as of October 2015. During his October 2016 background interview, he told the government investigator that he stopped paying his mortgage on the advice of a

---

<sup>5</sup> Tr. 24, 45-46, 61; AE E.

<sup>6</sup> Tr. 52-60. Any derogatory information or delinquent debts not alleged will not be considered for disqualifying purposes. They may be considered when making a credibility determination, in the application of mitigating conditions, and when analyzing the whole person.

<sup>7</sup> Tr. 25-27; GE 2.

<sup>8</sup> Tr. 47-50; AE E.

<sup>9</sup> Tr. 27-29.

company representative. He did not make mortgage payments in 2015 for six or seven months. He used the mortgage money for repairs to his vehicle and could not recall what else he used the money for. Applicant testified that his mortgage is current. Applicant provided copies of all three credit bureau reports dated November 2017, which show as of September 2017, the mortgage was past due 60 days in the amount of \$3,135. He testified that the delinquent amount on the mortgage was for penalties and interest, and was going to be added to the end of his loan. He testified he intended to pay the amount owed. There is no documentary evidence to substantiate his claim. Insufficient evidence was provided to conclude this debt is resolved.<sup>10</sup>

The debt in SOR ¶ 1.b (\$24,815) is a charged-off credit account. Applicant opened the account in October 2012 and his last payment was in July 2015. A letter provided from the creditor offers to settle the debt with Applicant and provides different payment options. The monthly payment option requires him to pay a minimum of \$255 a month. Applicant testified that he made a payment arrangement with the creditor to pay \$200 monthly. He did not provide evidence that the creditor accepted this agreement, but provided a letter from the creditor showing it received \$200 that was applied to the debt. He testified that this payment was made in July 2017, and he was planning to have the amount paid automatically each month. It did not happen. He testified that he intends to reestablish the payment plan at the end of November 2017. No explanation was provided as to why he failed to follow up to ensure the payments were made timely. This debt is not resolved.<sup>11</sup>

The debt in SOR ¶ 1.c (\$400) is a charged-off credit card that became delinquent in approximately November 2014. In approximately July 2017, Applicant settled the account for less than the owed amount.<sup>12</sup> It is resolved.

The collection accounts alleged in SOR ¶¶ 1.d (\$361-medical) was paid in July 2017; 1.e (\$180-medical) was paid in August 2016; 1.f (\$185-medical) was paid in August 2016; 1.g (\$150-medical) was paid in May 2017; and 1.h (\$35-medical) was paid in August 2016.<sup>13</sup> These debts are resolved.

Applicant provided a letter from the Department of Veterans Affairs that indicated he will receive \$1,338 beginning in October 2017. He provided a copy of a budget. He testified that although he is not required to pay delinquent amounts on his mortgage because the amounts were added to the end of it, he intended to use this money to pay the amount owed by spring 2018. Applicant also has student loans that he is paying and intends to increase his payments. He intends to pay his delinquent credit card (SOR ¶

---

<sup>10</sup> Tr. 30-32, 48-50, 62-64; AE G.

<sup>11</sup> Tr. 32-35; GE 2, 3, 4; AE A, E, G.

<sup>12</sup> Tr. 35-36; AE G.

<sup>13</sup> Tr. 36-40; AE B, C, D, H, I.

1.b) with a lump sum payment in the future. He testified that he has about \$700 in savings.<sup>14</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, 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

---

<sup>14</sup> Tr. 40-52, 71-72; AE E, F.

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’s delinquent debts began accumulating between 2014 and 2015 and are unresolved. 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 did not pay some of the alleged SOR debts until they were transferred to collection companies. His consistent inattention to timely paying his bills and obligations is a security concern. He stated he had an agreement with the creditor in SOR ¶ 1.b to make monthly payments of \$200. He made one payment in July 2017 and failed to ensure other payments were made. Based on his extensive past financial history, I am unable to conclude that future financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to moving and caring for his mother, while helping her pay her mortgage; a reduction in income when he was receiving disability payments for two months; and a reduction in income when he changed jobs due to a government contract. He also testified that other family members lived with him. Although they supported themselves, he likely incurred some additional expenses. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant moved from State A in 2012 and failed to resolve state income taxes he owed. His mother passed away in February 2014. He subsequently purchased a \$3,500 boat in October 2014 with money he received after he sold his mother's car. He has a significant credit card debt. He made one \$200 payment on it in July 2017 and then failed to make other payments. He had small medical debts that were not resolved until they went to collection. He owes federal income taxes for tax year 2015. I cannot find Applicant has handled his finances responsibly. I find AG ¶ 20(b) partially applies.

Applicant has not participated in financial counseling since 2002. I find this does not apply under AG ¶ 20(c) because it is not recent. Due to his unreliable financial record I cannot conclude that his financial problems are under control. AG ¶ 20(c) does not apply.

Applicant settled or paid some debts that were charged off or in collection accounts. AG ¶ 20(d) applies to those debts. It does not apply to the charged-off credit card account in SOR ¶ 1.b. Applicant made one payment in July 2017. There is no evidence that the creditor agreed to his payment plan, but it did accept the payment. Applicant failed to adhere to his own proposed payment plan. Applicant stated that his mortgage was current and the creditor agreed the delinquent amount could be added on to the life of the loan. The evidence is insufficient to support this position as the credit reports still report a delinquent amount. AG ¶¶ 20(d) and 20(e) do 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 44 years old. He is single and has no children. He has helped his family in the past, specifically when his mother was sick and his father and half-sister needed a place to live. However, he has a long history dating back to 2000 of being financially irresponsible. He deployed and did not make arrangements to pay his bills. He moved in 2012 and neglected to take care of his state income taxes. He failed to file a federal form for his federal income taxes creating a tax liability. He stated he made a payment plan with the creditor in SOR ¶ 1.b, but only made one payment and failed to make certain it was being paid timely. Despite being under financial strain after caring for his mother, he purchased a boat. Some of his financial decisions raise questions about his ability to manage his finances. Although there is some mitigation, it is insufficient to overcome the security concerns raised by his finances. He does not have a reliable financial track record. 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.h:	For Applicant

### **Conclusion**

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

---

Carol G. Ricciardello  
Administrative Judge