



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



In the matter of:

ISCR Case No. 17-01144

Applicant for Security Clearance

**Appearances**

For Government: Caroline Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

08/09/2018

**Decision**

WHITE, David M., Administrative Judge:

Applicant suffered several financial setbacks due to circumstances beyond his control. He acted responsibly, resolved all former concerns, and restored his financial solvency. Resulting security concerns were mitigated. Based upon evaluation of the testimony, pleadings and exhibits, national security eligibility is granted.

**History of Case**

On February 4, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 3, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on June 1, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 29, 2017. DOHA issued a Notice of Hearing on July 11, 2017, setting the hearing for July 28, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) A through D into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until August 28, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on August 8, 2017. Applicant timely submitted additional evidence, which I marked AE E and AE F, and admitted without objection. The record closed as scheduled.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

### **Findings of Fact**

Applicant has been employed by a Federal contractor since April 2009, and applied for the periodic review and renewal of his security clearance in connection with that work. The SOR contained three allegations concerning Applicant's former financial issues, involving two charged-off credit accounts totaling \$41,929 and his failure to file his 2015 Federal income tax return on time. Applicant admitted all of the allegations, with explanations. (GE 1; Answer.)

Applicant is 44 years old and divorced, with a 10-year-old daughter. He is a high school graduate and is nearing eligibility for a bachelor's degree. He honorably retired from the Army National Guard as a chief warrant officer (CW2) in December 2011, after 20 years of active and reserve service that included a yearlong deployment to Operation Enduring Freedom combat zones in 2005 and 2006. He has successfully held a security clearance for more than 20 years in connection with his military service and employment in the defense industry. (Answer; GE 1; GE 2; Tr. 6-9, 71.)

Applicant and his wife bought a home in June 2007 at the height of the real estate market. They put down 10% of the purchase price, and financed the remainder through an 80% first mortgage and a separate 10% home equity line of credit (HELOC). His wife earned a little more than half of the family's income at the time. During the subsequent real estate crash and severe economic recession, her company suffered

business losses and she was among many employees who were reduced to part-time work to avoid layoffs. Even with Applicant's full-time job and part-time National Guard income, the family finances and their marriage were badly strained. In March 2012 they separated, pending divorce, and Applicant continued to live in their house. His wife made no contributions toward their joint debts. After July 2012 Applicant could not afford to make the payments toward their first mortgage loan while paying his other bills, and that loan became delinquent. (Answer; GE 1; GE 2; GE 5; AE B; Tr. 45-50, 59-60.)

Applicant's final divorce decree, issued in February 2013, ordered that each spouse assume and pay half of their two mortgage debts. Applicant had continued making the full payments toward the HELOC during their separation, then began making just his half of those payments after the divorce decree was issued. However, his ex-wife did not make payments, and that loan became delinquent. The lender would not renegotiate the terms of the HELOC, and also canceled the credit card it had issued to Applicant. Applicant made his last payment toward the HELOC in December 2013, and the lender charged off that loan in February 2014 with an outstanding balance of \$28,778 as alleged in SOR ¶ 1.a. The lender issued Applicant an IRS Form 1099-C on December 31, 2014, reporting that amount as earned income to him (Answer; GE 1; GE 2; GE 5; AE B; AE C; Tr. 45-50, 59-60.)

Applicant unsuccessfully tried to short-sell his house for more than a year, in coordination with his mortgage holders, but they initiated foreclosure proceedings and eventually sold it at auction in March 2015. The first mortgage holder cancelled and discharged Applicant's remaining \$65,071 liability for that loan, and issued him an IRS Form 1099-C dated March 12, 2015. The creditor reported this mortgage loan to have been fully resolved through the foreclosure process, and it was not alleged to be a source of security concerns in the SOR. (GE 2; GE 3; GE 5; AE D; Tr. 50, 53-54.)

Applicant had to rent and move into an apartment after the foreclosure. This further strained his budget, and he attempted to negotiate an affordable arrangement with the bank to continue repaying the credit card account it had canceled when the HELOC became delinquent. The bank would not agree to new terms he could afford, so he stopped making payments toward this debt after March 2015. As alleged in SOR ¶ 1.b, the bank placed the account for collection with a balance due of \$13,151. He entered into a settlement agreement with the collection agency holding this debt in July 2017, and he finished making the agreed payments to fully resolve this debt on August 7, 2017. (GE 2; AE C; AE E; Tr. 51-52.)

During his October 31, 2016 OPM security interview, Applicant volunteered that he had not yet filed his 2015 Federal income tax return despite having obtained a filing extension until October 15, 2016. He explained that his ex-wife had filed bankruptcy proceedings that included the HELOC loan secured by their former home, and he needed to obtain more information and documentation to obtain legal/tax advice before completing his return. He later learned that his ex-wife's bankruptcy offered no help to him, but several additional issues delayed his filing of this tax return. First, he misplaced his 1099-C documents during the move from his house into the rental apartment after

the foreclosure. Then, while in a distant state on a work assignment during the spring and summer of 2015, he discovered a lump in his throat that was diagnosed as thyroid cancer, for which he had to undergo operations and begin lifelong treatments. He also suffered severe injuries in a bicycle accident during August 2015, although he did not attribute his income tax filing delay to that incident. (Answer; GE 2; Tr. 52-56, 60-67.)

During early 2017, Applicant found his 1099-C documentation and retained a certified public accountant (CPA) to help him calculate and file his 2015 and 2016 taxes (for which he also obtained a filing extension). These returns were accurately prepared by the CPA, and filed on June 13, 2017.<sup>1</sup> For tax year 2015, with proper inclusion of the \$65,071 in cancelled debt from the first mortgage lender's March 2015 IRS Form 1099-C, Applicant's total Federal tax due was \$3,733. He had \$7,447 in payroll withholding for that year, so he received a refund of \$3,714. For tax year 2016, he received a \$1,987 refund. He was not assessed any interest or penalties for the delayed filing of his income tax return. (Answer; AE D; Tr. 52-56, 60-62.)

Applicant managed to resolve all of his other debts throughout this turbulent period in his life, and presently has no delinquent debt. He has about \$6,000 to \$7,000 in a savings account and about \$50,000 in a 401(k) retirement plan. He has undergone several financial counseling sessions, closely tracks his income and expenses to remain current on his bills, and lives frugally. (GE 3; GE 4; GE 5; AE B; AE E; AE F; Tr. 58-59.)

A DoD employee and clearance holder who served on active duty with Applicant, and has been a close friend of his for more than 20 years, wrote a letter praising his trustworthiness, loyalty, dedication, and integrity. (AE E.) Applicant's bearing and demeanor throughout his hearing evinced candor, openness, and sound understanding of his financial responsibilities.

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number

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<sup>1</sup> Although Applicant had not realized it due to all of the turmoil in his life during the Spring of 2015, his CPA discovered that he had also failed to file his 2014 Federal income tax return. He freely disclosed and discussed this fact during the hearing. The 2014 return, including the December 1099-C related to cancellation of the \$28,778 HELOC balance, was filed together with his 2015 and 2016 returns. He had already paid all applicable taxes through withholding, and received a \$481 refund for 2014. (Tr. 60-61.)

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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Pursuant to Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant encountered financial difficulties caused by his wife's unanticipated loss of income after they purchased a home, which worsened during their subsequent separation and divorce. He defaulted on their mortgage loans after she stopped paying her court-ordered half of those debts, and his HELOC lender cancelled his credit card account when that loan went into default. This turmoil was compounded by his diagnosis and aggressive treatment for thyroid cancer and move into an apartment while traveling for work. As a result, his 2015 Federal income tax return was not filed on time despite the fact that he was due a refund of almost half of the income tax withholding he had already paid toward that year's taxes. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's relatively short period of financial troubles arose from the unique but nearly simultaneous circumstances involving the severe economic downturn, the dissolution of his marriage, and his onset of cancer. Despite his best attempts to repay all of his debts through frugal living and to short-sell his house, he was ultimately unable to meet his mortgage payments using his income alone. After foreclosure proceedings resolved his first mortgage debt, his remaining HELOC balance was cancelled and all resulting income taxes were properly paid. That lender also cancelled his credit card account with a substantial outstanding balance that had been regularly paid on time. Applicant fully resolved and paid that account to the assigned collection agent. These actions establish mitigation of security concerns raised by his two formerly delinquent debts under AG ¶¶ 20(a), (b), (c), and (d).

Applicant hired a CPA who helped him to calculate and file his tardy income tax return for 2015; which had been complicated and delayed by the unique events that were beyond his control. He had already paid almost double the amount of tax he owed for 2015 through withholding, had obtained a filing extension which he could not meet, and was not assessed any interest or penalties as a result of the late filing. These facts mitigate concerns over his failure to file the 2015 taxes in a timely manner under AG ¶¶ 20(a), (b), (c), and (g).

Applicant obtained financial counseling to help him better manage his budget and carefully track his income and expenses, which helped him establish a solvent and responsible financial situation with sufficient income to avoid future delinquencies. He demonstrated complete mitigation of financial security concerns under these five mitigating conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

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

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who has demonstrated accountability for resolving the debts he was formerly unable to repay. He has now resolved his formerly delinquent debt and filed all income tax returns, which resulted in substantial refunds. He demonstrated strong character and has devoted most of his adult life to successful support of national security objectives. Applicant provided persuasive evidence of rehabilitation and sufficient income security to ensure solvency in the future. The potential for pressure, exploitation, or duress is minimal. Overall, the evidence has eliminated the formerly legitimate doubt as to Applicant's eligibility and suitability for a security clearance. He successfully met his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

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

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

For Applicant

### **Conclusion**

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

DAVID M. WHITE  
Administrative Judge