



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01179

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro Se*

01/31/2018

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Guideline E, personal conduct concerns were not established. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 19, 2016. On May 4, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.<sup>1</sup>

Applicant answered the SOR on May 25, 2017. He denied most of the SOR allegations and admitted others with explanations. Applicant pointed out that SOR ¶ 1.j is a duplicate of the allegation in SOR ¶ 1.a for \$6,184 and SOR ¶ 1.p is a duplicate of SOR ¶ 1.d for \$578. He denied the alleged falsification in SOR ¶ 2.a. Applicant also requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 26, 2017. The case was assigned to me on July 27, 2017. On November 7, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 7, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 4 were admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A - K, which were admitted without objection. He also presented testimony from his wife. DOHA received the transcript (Tr.) on December 14, 2017.

### **Findings of Fact<sup>2</sup>**

Applicant is 47 years old. He obtained his GED in 1990. Applicant enlisted in the U.S. Army Reserve in 1994 but got an inter-service transfer after one year to the Navy. He served on active duty from 1995 to 1998 in the Navy and received a general discharge. (Tr. 56) He has been married three times: 2003-2005; 2010-2012; and presently since July 2014. He and his present wife have five children combined. Applicant and his wife are employed as long-range truck drivers. (Tr. 57) His employer requires him to have a security clearance. His pay dropped from \$171 per day to \$156 per day recently when his interim security clearance was revoked. (Tr. 88) Applicant had a series of low-paying jobs previously including state corrections officer from 2009 to 2012. (Tr. 62) He has always maintained health insurance since then. (Tr. 62)

The SOR alleges delinquent debts totaling approximately \$26,273, including \$4,725 in medical debts that he has successfully disputed at SOR ¶¶ 1.h, 1.n, 1.o, 1.q, 1.r, 1.u, 1.s, 1.v, 1.w, 1.x, and 1.y. (AE K, Tr. 34-36, 67-70) SOR ¶ 1.i was paid in full. (Answer, Tr. 37) These minor co-payments resulted from Applicant's four-day hospitalization in October 2010 when he was fully covered by health insurance. (Tr. 65) Applicant testified credibly that these bills were already paid by the state when he was a corrections officer. He sent letters of dispute to all three credit-rating bureaus, and these

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<sup>1</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

<sup>2</sup> Unless stated otherwise, the source of the information in this section is Applicant's February 19, 2016 security clearance application (SCA) and the summary of his security clearance interview on September 16, 2017.

medical debts no longer appear on his most recent credit bureau reports. (AE K, Tr. 64-68, 73) Presently, Applicant pays \$20 each month to Experian for credit monitoring services. (Tr. 44)

SOR ¶ 1.a, which is a duplicate of SOR 1.j for \$6,184, has been resolved as Applicant has been making payments of \$200 per month pursuant to a plan since May 2017. (Tr. 25) SOR ¶¶ 1.d and 1.p are duplicate debts and Applicant provided documentary evidence showing they have been paid in full. (AE A, Tr. 17) Applicant also provided documents showing he entered into a payment plan on SOR ¶1.b, and it has now been paid in full. (AE B, Tr. 19) He testified credibly that his second wife stopped contributing to the household budget, and stopped cooperating with paying their bills. (Tr. 21) The debt in SOR 1.z for \$33 has been paid in full. (AE C) Applicant provided evidence that his child-support payments are current and the amount of \$1,116 placed for collection in SOR ¶ 1.k was paid off in September 2014. (Tr. 21) Further, SOR ¶ 1.g was satisfied by an offer and compromise amount of \$125 paid in May 2017. (AE E, Tr. 23)

SOR ¶1.b is satisfied since Applicant provided evidence that he is making payments to the creditor pursuant to a plan, and he owes \$588 of the original \$1,960 amount. (Tr. 30, AE J) Similarly, SOR ¶ 1.c is now paid in full, as Applicant has been paying \$50 per month since June 2017. (Tr. 19, AE B) SOR 1.e was paid in full in May 2017 (AE H), and SOR 1.aa has also been paid in full. (AE G, Tr.27) SOR 1.f (for \$263) and placed for collections and has been paid in full. (AE I, Tr. 29) SOR ¶ 1.i alleges a charged-off debt for \$613 resulting from the repossession of his second wife's automobile in 2010. (Tr. 64) Applicant testified that he sent letters of dispute to the three credit-rating bureaus and they agreed to take it off his credit reports. (AE K) SOR ¶ 1.m was for another repossessed vehicle that he co-signed for in the amount of \$4,936. Applicant also successfully disputed this delinquent debt, since his ex-wife was required to pay it pursuant to the terms of their divorce. (AE K, Tr. 37) It has been removed from his recent credit reports.

SOR ¶ 1.n was disputed when Applicant sent letters to all three credit rating bureaus and they removed it from his credit reports. (Tr. 44, AE K) SOR ¶¶1.o, 1.r, 1.s, 1.v, 1.w, 1.x and 1.y are for delinquent medical debts that Applicant incurred in 2015 – 2016 when he had two knee surgeries for injuries sustained in Afghanistan. (Tr. 32) However, he could not get into the VA hospital. He is a 70% disabled veteran, and contends that these injuries should have been covered by the VA. In his post-hearing submissions, Applicant included a bank statement showing that the delinquent medical debts alleged in SOR ¶¶ 1.b to 1.e have all been paid in full. Further, he produced evidence that he has entered into a payment plan of \$100 per month in SOR 1.f, and he is making continuous payments on the plan. These debts are not reflected on his latest credit report. (AE A) SOR ¶ 1.t for \$165 is a delinquent cell phone bill for his ex-wife's cell phone. Applicant testified that he has contacted the creditor to dispute this delinquent debt. (Tr. 71)

Applicant credibly testified that his delinquent debt resulted from his two previous divorces and a series of low-paying jobs. (Tr. 88) He did not provide evidence of financial counseling or a budget but he now has his finances under control and he is paying to have his credit monitored. His recent credit reports reflect no new debts (AE K, Tr. 90) Applicant testified credibly that he hand-wrote his SF-86 SCA form and handed it in to the human resources person. (Tr. 77-79) She then typed it into the template on the computer and signed it on his behalf. It contained many mistakes. He was not aware of the omitted debts and did not intent to deceive or mislead anybody as alleged in SOR ¶12.a. He did not specifically intend to falsify this SCA. (Tr. 78)

## **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, 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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, Appendix A, ¶ 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. Under Directive ¶ E3.1.15, 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.

## **Analysis**

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

The security concern relating to 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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 alleged in the SOR are confirmed by his credit reports, clearance interview, and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain,

extenuate, or mitigate the facts.<sup>3</sup> Applicant has met that burden. Most of the delinquent debts have been resolved or disputed.

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 . . . , 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 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 suffered through two divorces, and periods of underemployment. Arguably, these conditions were beyond his control. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant has met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He has either paid off, disputed, or made consistent payments pursuant to a plan, on most of his delinquent debts. He produced extensive documentary evidence demonstrating his commendable efforts to resolve these delinquent debts. The mitigating conditions enumerated above apply.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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<sup>3</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes....

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Since Applicant denied any intent to provide false information as alleged at SOR ¶ 2.a, his intent is an issue. Under ¶ E3.1.14 of DOD Directive 5220.6, the Government is responsible for presenting witnesses and evidence on facts alleged in the SOR that have been controverted. Intent can be inferred or determined from the circumstances. Applicant relied on his human resources representative to in-put his hand-written information into the computer program. She signed it on Applicant's behalf. I conclude that he did not have the specific intent to deceive when he provided a negative response to the financial questions about delinquency involving routine accounts in section 26, and he did not deliberately falsify the SCA. AG ¶¶ 16(a) and (b) do not apply. SOR ¶ 2.a has been mitigated.

### **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, Appendix A, ¶ 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, Appendix A, ¶ 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 Guidelines E and F in my whole-person analysis. Some of the factors in AG, Appendix A, ¶ 2(d) were addressed under that guideline. Applicant testified credibly and persuasively that his finances are now under control. Most importantly, Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has met his burden of production.

Applicant's finances no longer remain a security concern. There is sufficient evidence to conclude that Applicant's financial problems are under control. He is gainfully employed and managing his financial affairs. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline F, financial considerations. Personal conduct concerns were not established.

### **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 through 1.aa:	For Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a	For Applicant
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### **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 a security clearance. Eligibility for access to classified information is granted.

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Robert J. Kilmartin  
Administrative Judge

