



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



In the matter of:	)	
	)	
	)	ISCR Case No. 17-01371
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

09/28/2018

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant presented insufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 2, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a review based on the written record in lieu of a hearing. (Answer.) The case was originally assigned to another administrative judge in July 2018, but was assigned to me on September 12, 2018. Department Counsel submitted a File of Relevant Material (FORM), dated May 30, 2018. The Government submitted seven Items for the record. Applicant timely responded to the FORM with a packet of documentation, which was marked as AX A, and entered into the record without objection.

## **Findings of Fact**

Applicant, age 35, is divorced and has two children. He graduated from high school in 2001 and attended college classes for several years. He obtained an associate's degree in 2013. He served in the U.S. Navy from 2001 to 2006, and in the U.S. Marine Corps from 2006 to 2010. Applicant completed a security clearance application on March 5, 2016. He held a security clearance while in the military. (Item 3) He is currently sponsored by a federal contractor.

The SOR alleges that Applicant has delinquent debt in the amount of \$83,484 of which \$68,034 is attributable to child support arrears. Applicant admits four of the alleged debts (SOR paragraphs 1. a through d) and denies the remaining five (SOR paragraphs 1.e through 1.i). The debts alleged on the SOR are supported by Applicant's credit reports. (Items 5,6,7)

Applicant was deployed in Afghanistan at the time of the SOR. He provided explanations and documentation for the child support arrears. In addition, he provided a letter showing recent misdirection of his child support payments and a returned check in the amount of \$375. (Attachment to Answer) Applicant has two child support accounts. He stated that the arrearages are high because after he left the military, he could not find civilian work that would allow him to obtain legal representation to apply for a court modification. He states that he is paying a monthly amount of \$1,074.61, and the amount is withheld from his paycheck. However, he did not provide a pay slip verifying his claim. For SOR 1.a, he states that the past-due amount is \$20,173. Applicant provided two financial activity report sheets from 2017 and 2018 as proof of his payment history. (AX A) It is unclear from the payment history to determine what actual payments Applicant made.

As to SOR 1.b, Applicant states that he is paying \$750 a month for the child support arrearage, which is also taken directly from his pay. There is only one case number; so it appears that the two accounts have merged into one account. The report shows that payments have been applied to the arrearages and balances. (AX A) He also stated that the child support account listed in SOR 1.g for \$8,589 is not valid because it is not on his credit report and it should have been absorbed into the other child support accounts. There is no documentation to support this claim.

Applicant provided a settlement letter for the debt in SOR 1.c. The past-due amount was \$14,924.60, but he received a settlement offer for \$5,900. The monthly payment of \$1,000 was to start in May 2018. There is no evidence of acceptance or any payments made.

As to SOR accounts, SOR 1.d for \$1,162, Applicant stated that he called the collection agency and has made payment arrangements of \$160 per month. However, he did not submit any evidence of this plan.

As to SOR 1. e and SOR 1.f for \$78.86 (appear to be duplicates), Applicant submitted documentation that the account has been paid in full. (AX A)

As to the debt in SOR 1.h, Applicant submitted a letter verifying that the account has been settled and the balance is zero.

Applicant denied the SOR 1.i account and stated that he was unaware of the debt before the clearance process. He called the creditor and was told that the debt no longer exists, has been resolved, and has a zero balance. (Answer to SOR)

Applicant noted that he has been a faithful servant to his country for the majority of his adult life. He admits mistakes in the past, but since acquiring his current job he has the financial resources to address his debts. He was current with child support while in the military, but he told the investigator in 2016 that he made payments outside of the court system when he left the military and he estimates that for the approximate \$8,000 in payment, he never received credit. (Item 4) He did not provide any proof of payments.

Applicant reported no debt counseling, but is working with a financial advisor. He now reviews his credit reports and has a secure credit card. (AX A) There is no information in the record concerning Applicant's current salary or whether he will be working abroad.

### **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 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 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, "Any 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 EO 10865, “Any 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F (Financial Considerations)**

The concern under this guideline 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following

potentially applicable factors:

AG ¶ 20(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;

AG ¶ 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are the result of delinquent or past-due child support payments that were not consistently made after he left the military in 2010, which resulted in arrearages that accumulated. He had employment in the civilian world, which apparently was not sufficient to pay the child support and there were some problems with the agency when he was deployed. He noted that some of the other accounts were unknown to him. The record does not provide detailed information.

Applicant presented recent information about his payment history to the child support agency and the mix up that occurred when he was deployed concerning where the amounts were sent. He is making payments to the accounts. He has settled or paid two accounts. He obtained a settlement offer for another account, but he has not produced evidence of any payments. AG ¶ 20(a) is not fully applicable due to lack of clarifying information.

AG ¶ 20(b) is not fully established. It is not clear from the record the degree to which the financial situation with the child support arrearages was beyond Applicant's ability to arrange and control. His inability to maintain the child support payments from 2010 to 2017, while he was employed, leave me with doubts as to his actions being responsible under the circumstances. The arrearages are substantial, and he presented information of payments from 2017, ten years after leaving the military.

AG ¶ 20(c) is partially established. He is working with a financial counselor. AG 20(d) is partially established. Applicant is adhering to good-faith efforts now to address child support and other accounts. He did not produce sufficient documentation to fully support this mitigating condition. Applicant has not met his burden to mitigate the financial concerns set out in the SOR.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his many years of military service, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraph 1.a-i:                      Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch  
Administrative Judge

