



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



In the matter of:

ISCR Case No. 17-01372

Applicant for Security Clearance

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

07/19/2018

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant mitigated the Guideline F, Financial Considerations, security concerns arising from his delinquent debts. National security eligibility for access to classified information is granted.

**History of Case**

On January 8, 2016, Applicant submitted a security clearance application (SF 86). On May 17, 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 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 for Determining Eligibility for Access to Classified Information* (AG), effective

within the DOD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

Applicant answered the SOR in writing on June 5, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 21, 2018. DOHA issued a Notice of Hearing on March 13, 2018, setting the hearing for April 17, 2018. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) A through M into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 3, 2018. The record remained open until June 4, 2018, to permit submission of additional evidence. Applicant timely submitted a revised AE A-1 and B-1. He submitted another document that he marked as AE M. In order to avoid confusion with the previously admitted AE M, I marked that exhibit as AE M-1. He also submitted AE N through W. All post-hearing exhibits are admitted without objection.

### **Findings of Fact**

Applicant is 55 years old and divorced from his third wife. He has an 18-year-old daughter from his second marriage. He enlisted into the Navy after high school but received a medical honorable discharge during boot camp. He works in the field of heating, ventilation, and air conditioning (HVAC). He started his current position with a federal contractor in October 2015. He was unemployed for six months prior to that. (Tr. 29-32; GE 1)

Applicant attributed his financial problems to four factors: (1) In November 2013, Applicant was diagnosed with a cardiac problem. Subsequently, he was hospitalized for periods of time, including three week in January 2014, and then later. He lost his medical insurance at some point and was unable to pay for his medication. (2) Around the same time his father was sick, and Applicant cared for him until he died and then paid the funeral expenses. (3) In April 2014, Applicant's employer died, and the business was sold. Subsequently the new owner went through a divorce, which affected the business and Applicant's income. (4) In May 2014, Applicant's girlfriend moved out of their apartment and took all of the household furnishings, unbeknownst to him, and left him with the bills. (Tr. 33-38; Answer)

Applicant's sister and brother-in-law helped him during this difficult two years and loaned him money to pay his car loan. Applicant said that since obtaining a full-time position in October 2015, he has been paying delinquent debts and improving his financial situation. (Tr. 38-40; AE A)

In October 2017, Applicant was diagnosed with a tumor in his jaw. He has dental insurance, but it did not cover many of the costs associated with extractions and

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<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 under either set of guidelines.

surgeries. He has paid about \$8,000 for those services. He used his federal and state tax refunds from 2017 to pay some of the dental bills. He said he works overtime when available to earn more money. (Tr. 40-41, 66)

Based on credit bureau reports (CBR) from February 2016, April 2017, and July 2017, the SOR alleged 34 delinquent debts that accumulated between 2013 and 2015, and totaled over \$35,000. They included 13 medical debts, unpaid child support, credit card debts, and miscellaneous debts. All of the debts have been resolved or are being resolved, except the \$171 debt listed in SOR ¶ 1.ee, which Applicant is unable to locate the creditor. (Tr. 39; GE 3, 4, 5; AE A-1)

The following 25 SOR alleged debts are paid: 1.b for \$1,148; 1.c for \$1,111; 1.d for \$848; 1.e for \$749; 1.f for \$744; 1.g for \$663; 1.h for \$525; 1.i for \$513; 1.j for \$511; 1.k for \$509<sup>2</sup>; 1.l for \$163; 1.m for \$6,100<sup>3</sup>; 1.o for \$945; 1.p for \$845; 1.q for \$834; 1.r for \$777; 1.s for \$522; 1.t for \$513; 1.u for \$509; 1.y for \$652; 1.bb for \$275; 1.cc for \$225; 1.dd for \$204; 1.gg for \$126; and 1.hh for \$111. These debts total \$20,122 and were paid between March 2017 and May 2018, as noted on AE A-1, which references attached supporting documents. (AE A-1)

The following eight SOR alleged debts are being resolved through payment plans which Applicant recently established: 1.a for \$3,636; 1.n for \$2,345; 1.v for \$5,388; 1.w for \$1,920; 1.x for \$990 (now \$4,700); 1.z for \$421; 1.aa for \$352; and 1.ff for \$149. These debts total \$14,211. As of May 2018, Applicant paid \$1,531 on the plans, as noted on AE A-1, which references attached supporting documents. (AE-1)

Applicant submitted a budget. His net monthly income is \$3,605. After paying expenses, he has about \$740 remaining for his repayment plans and other expenses. (AE M)

Applicant's sister testified. She is aware of the circumstances surrounding her brother's delinquent debts. She said he works 10 to 12 hour days, six days a week, trying to recover from his financial difficulties and delinquent debts. She believed that he has shown great progress toward that issue and managing his health problems. (Tr. 73-74)

Applicant's supervisor submitted a letter of recommendation. He has known Applicant for over two years. He stated that Applicant is highly qualified for his position, holding certifications that other employees do not have. He considers Applicant to be a trustworthy and valued member of his team. (AE W)

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<sup>2</sup> SOR ¶ 1.k and ¶ 1.u are duplicate debts. (Tr. 59)

<sup>3</sup> This debt was for unpaid child support. (Tr. 43)

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the 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 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. Directive ¶ E3.1.15 states that 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 *a/so* 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 conditions that could raise security concerns. Three may be disqualifying in this case:

- (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 numerous delinquent debts began arising in 2013 and continued into 2015, as documented by his admissions and the CBRs. He has been unable or unwilling to satisfy or resolve those debts until early 2017. These facts established prima facie evidence for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following may potentially apply:

- (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; and

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

The series of circumstances that occurred between 2013 and 2015 and resulted in Applicant's financial problems were beyond his control, and included serious and unexpected medical problems, employment issues, a family illness and death, and a personal relationship termination. When Applicant began working full-time and was no longer sick, he started addressing his debts and documenting that he acted responsibly under the circumstances. The evidence establishes mitigation under AG ¶ 20(b). Applicant did not provide evidence that he participated in credit or financial counseling; however, he presented evidence that he has resolved or is resolving 33 of the 34 alleged delinquent debts and they are coming under control. He established mitigation under AG ¶ 20(c), and also under AG ¶ 20(d) as he made good-faith efforts to resolve his debts.

### **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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature individual who encountered serious personal issues that resulted in financial difficulties for a couple years. Subsequent to finding full employment in late 2015 and regaining his health, he slowly began addressing some debts in March 2017, which was prior to the issuance of the SOR. Since then, he has satisfactorily

resolved or is resolving all of the alleged delinquent debts, except one small one because he cannot locate the creditor.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has '. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>4</sup>

According to his budget, Applicant has sufficient money to continue making payments on repayment plans he established with eight creditors. He has paid and resolved 25 debts. During the hearing, he displayed candor and a commitment to financial stability. The likelihood that similar financial problems will recur or Applicant will stop making payments on the plans he initiated is minimal based on his efforts to-date and knowledge that similar problems could jeopardize his employment. Overall, the record evidence leaves me without doubt as to Applicant's reliability, trustworthiness, good judgment, eligibility and suitability for a security clearance. He 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.hh: For Applicant

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<sup>4</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## **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 access to classified information. National security eligibility is granted.

SHARI DAM  
Administrative Judge