



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01835  
 )  
Applicant for Security Clearance )

**Appearances**

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

05/21/2018

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**Decision**

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Gregg A. Cervi, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 8, 2015, requesting a Department of Defense (DOD) security clearance. On June 13, 2017, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations). Applicant responded to the SOR on July 13, 2017, and requested a hearing before an administrative judge.<sup>1</sup>

The case was assigned to me on August 17, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 13, 2017, scheduling the hearing for November 14, 2017. The hearing was convened as scheduled. Government

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<sup>1</sup> The DOD CAF acted under Executive Order (Exec. Or.) 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and Applicant's Exhibits (AE) A through H were admitted into evidence without objection. In a post-hearing submission, Applicant submitted several documents marked as AE I that were admitted without objection.

### **Findings of Fact**

Applicant is a 73-year-old operations supervisor for a government contractor. He is a high school graduate and received electrician's training while enlisted in the U.S. Navy. He honorably served in the Navy from 1965 to 1989 as a cryptologic technician until he retired. He has worked in his current job since 1989, although the companies holding the contract have changed. He married in 1973 and has three adult children. He has held a security clearance continuously since 1966.

The SOR alleges eight delinquent debts totaling nearly \$40,000. Applicant generally denied the allegations, and provided explanations and documentation with his Answer to the SOR.

Applicant's spouse was injured in a fall and was hospitalized in 2009. She underwent multiple surgeries for a broken hip and wrist, was hospitalized for an extended period, and was unable to work. She then incurred an extended rehabilitation period. Since then, she requires the use of a wheelchair. Insurance paid some of the medical bills, but Applicant claimed that most were not covered. Applicant incurred out-of-pocket expenses and the loss of his spouse's income during that period.

Applicant suffered substantial financial strain and his home fell into foreclosure, but the lender self-imposed a moratorium on foreclosures after the discovery of company-wide mortgage irregularities. The mortgage issue was not alleged in the SOR. A civil proceeding brought by the creditor was dismissed. Applicant sought advice from an attorney, who advised him not to pay the mortgage during the moratorium period, but to save the money to pay in a lump sum when the moratorium was lifted. Beginning in 2013, Applicant began recovering financially, paid lump sums on his mortgage and reinstated his regular mortgage payments. He has been current on his mortgage for a number of years and pays on time.

SOR ¶ 1.a involves a charged-off debt for \$17,807 to a creditor for which Applicant is unaware. The joint account became delinquent in 2011. Applicant's spouse disputed the debt in 2014 with a letter to the creditor disputing the amount owed, notifying them of the expiration of the statute of limitations, and requesting that it be removed from their credit report. The creditor did not respond to the letter. The debt is currently listed in Applicant's credit report as charged off.

SOR ¶ 1.b involves a credit card debt that has been charged off for \$6,816. In 2011, the account became delinquent, and in 2012, Applicant received an IRS Form 1099-C notifying him of the cancelation of the debt. Applicant included the debt relief on his tax return.

SOR ¶ 1.c involves a collection account from a credit card account for \$5,743. The account became delinquent in 2011. In 2013, Applicant received a collection letter from an agency claiming to be collecting the debt. It indicated that if the debt was not disputed, it would be considered a valid debt. Applicant's spouse disputed the debt with the agency by letter and spoke to a representative on the phone. The collection agency did not respond to the dispute letter, but noted the disputed account in Applicant's credit report.

SOR ¶ 1.d involves a charged-off credit card account for \$5,338. In 2015, an IRS Form 1099-C was issued to Applicant, and he included the debt forgiveness on his income tax return.

SOR ¶ 1.e involves a charged-off credit card account for \$899. In 2014, an IRS Form 1099-C was issued to Applicant, and he included the debt relief on his income tax return.

SOR ¶ 1.f involves a charged-off gas card account for \$469. Applicant testified that he negotiated and paid a settlement in 2009, and the debt was removed from his credit report. However, when he reapplied for another credit card from the same creditor in 2015, the old debt reappeared on his credit report. Applicant's recent credit report shows the original debt was charged off and the account was closed.

SOR ¶ 1.g involves a department store credit card account in collection for \$569. Applicant's spouse disputed the debt with the collection agent in 2013. Applicant claimed that the agent did not respond to the dispute letter, but the account has been removed from his credit report.

SOR ¶ 1.h involves a department store credit card account in collection for \$2,307. Applicant noted that he is unaware of the basis for this account, and that it has been removed from his credit report.

Applicant's most recent credit report shows that he is current on all other credit accounts and his mortgage. His income has recently increased and he now earns approximately \$160,000 per year from various sources, including military retirement, Social Security, and former company retirement accounts, and is able to meet his monthly budget needs and provide financial assistance to his children and grandchildren. Applicant's spouse managed the household debts in the past, and initiated the debt disputes without consulting Applicant. He was unaware of many of the existing credit accounts until he was interviewed by a government investigator in March 2016.

Applicant now oversees his spouse's management of the household budget and payment of bills, and they are committed to ensure that they have no further financial difficulties. Applicant testified that he engaged a debt counselor in 2009, but all financial issues were not resolved. He again sought assistance from a non-profit credit counselor in 2017, but the counselor was unable to provide assistance because all of the delinquent accounts noted in the SOR were past the state statute of limitations. The counselor advised Applicant to take no further action on those accounts so as to not toll the statute and revive the claims.

## Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

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 list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "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 security concern 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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has had financial problems and incurred delinquent debts following a significant family medical event. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 attributed his financial problems to significant expenses resulting from his spouse's 2009 fall and subsequent surgeries and rehabilitation. This situation and the resulting loss of his spouse's income undoubtedly contributed to his financial delinquencies as was evidenced by his sudden mortgage and credit card delinquencies in the years following. Once he regained control of his finances in about 2014, he corrected his mortgage delinquencies and his spouse took significant effort to resolve the delinquent debts as necessary. Although Applicant was generally unaware of the credit card delinquencies until he was interviewed by an investigator in 2016, he provided evidence of actions taken in the prior years with regard to the SOR debts. Most of the debts have been resolved, and others are no longer in an active collection status as they are significantly dated and past the state statute of limitations period. These elderly debts no longer pose a security risk or raise financial considerations security concerns.

Applicant sought advice from an attorney and credit counselors over the years. He is current on his mortgage and has had no new delinquencies in the past several years. Applicant's SOR debts are dated, he and his spouse sought assistance when necessary, and followed legal means to address most of them. Others are no longer in an active collection status. He has shown financial responsibility through the past several years since recovering from the family medical emergency, and his finances are currently in good condition. Based on Applicant's most current credit report, significant income from various sources, and his involvement in the household finances, I believe his financial status is good and his credit management is under control. The likelihood of a recurrence of financial difficulty is low. Applicant's past financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), (c), and (e) are applicable.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

I considered Applicant's testimony, his honorable military service, his 52-year security clearance status, and documents provided after the hearing. Applicant has shown current financial responsibility and appears to have control of his finances with his spouse.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated the financial considerations security concerns.

### **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
Subparagraphs 1.a – 1.h:	For Applicant

### **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge