



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



In the matter of: )  
)  
) ISCR Case No. 17-01874  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq.

09/06/2018

**Decision**

Curry, Marc E., Administrative Judge:

Applicant was unaware of his financial delinquencies when he completed his security clearance application. Consequently, when he did not include them on his security clearance application, he demonstrated no intent to falsify. There are no personal conduct security concerns. Applicant has either satisfied his delinquencies, or is satisfying them through payment plans. He has mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

On June 8, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national interest to continue his security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On July 20, 2017, Applicant admitted in part and denied in part subparagraphs 1.a, 1.b, 1.e, and 1.g through 1.h, and denied the remainder of the SOR allegations. He requested a hearing, whereupon the case was assigned to me on April 13, 2018. On June 4, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for June 28, 2018. The hearing was held as scheduled. I received eight Government exhibits (GE 1 – GE 8) and 24 Applicant's exhibits (AE A - AE X). At the close of the hearing, I left the record open until July 9, 2018, for Applicant's counsel to submit exhibits. Within the time allotted, he submitted two exhibits which I incorporated into the record as AE Y and AE Z. The transcript (Tr.) was received on July 9, 2018.

### **Findings of Fact**

Applicant is a 50-year-old man with two adult children and two stepchildren. He is a high school graduate who has earned three years of college credits. He has been married to his current wife since 2008. (Tr. 21) A previous marriage ended in divorce. He served in the U.S. Marine Corps from 1989 to 2003, then joined the Army, where he served through his honorable retirement in 2006. While in the Army, he served in a combat theater from January 2004 to December 2004. (Tr. 24) He was a team leader of a platoon whose duties included hunting for and destroying improvised explosive devices. (AE P at 7) After leaving the Army, Applicant worked for various defense contractors for six years, modifying and repairing Humvees. (Tr. 26) Since 2014, Applicant has been working for a defense contractor as a logistics analyst. His duties involve primarily contract procurement. He has held a security clearance since 2005. (AE Q at 4)

Applicant is highly respected on the job and in his community. (AE P) In May 2014, he won an award for outstanding customer service. (AE P at 11) His manager routinely delegates supervisory responsibilities to Applicant when he is out of the office, including a six-week period when he was out of the office on medical disability. During this time, Applicant "was instrumental in ensuring the continuity of operations" in three facilities across two states. (AE P at 12)

When Applicant was in the armed services, and later, when he worked in a civilian capacity repairing Humvees, he spent approximately 75 per cent of his time away from home. His wife managed the family finances. She struggled, falling behind on many debts. She either did not inform Applicant, or she would, on occasion, ask him for money to pay a joint debt, then use the money to pay a personal debt. (AE P at 1)

By December 2016, Applicant's wife, unbeknownst to him, had incurred approximately \$41,000 of delinquent debt, as alleged in the SOR. Applicant's current job has no travel demands, which has enabled him, by June 2017 to begin managing the family finances. Since then, he has been making "slow, but steady" progress in reducing his delinquent debts. (Tr. 27) As of the hearing date, he had caught up on payments owed on a car note, as alleged in subparagraph 1.a (AE A), and had satisfied SOR subparagraphs 1.c and 1.g through 1.i, collectively totaling \$1,416 (AEs E, X, K, L, M).

The remaining debt, as alleged in subparagraphs 1.b, 1.d, 1.e, and 1.f, totals approximately \$35,000. The debt alleged in subparagraph 1.b is the deficiency from a car that was repossessed in early 2017. (AE C) Applicant's wife told him this debt was delinquent in 2016. He gave her the money to cover the bill, but she used it without his knowledge to pay some personal debts, and did not tell him that the car was going to be repossessed. (AE P at 1)

Subparagraph 1.d is an allegedly delinquent car loan that Applicant used to finance the purchase of a car approximately ten years ago, totaling approximately \$3,500. The basis of Applicant's dispute is that he satisfied the loan in 2009 after the car was totaled, using a combination of reimbursement payments from his standard auto insurance company and his gap insurance policy. In support of his dispute, he provided copies of the reimbursement checks from both companies. (AE F at 1-2)

The debts alleged in subparagraphs 1.e and 1.f total approximately \$24,000. Applicant disputes them, contending that they are not his debts. He wrote each creditor comprehensive letters requesting any information establishing that he is the creditor, and informing them of his legal rights under the Fair Credit Reporting Act and the Fair Debt Collection Practices Act. (AE H; AE I)

Applicant completed a security clearance application on April 25, 2016. He did not include any of the debts alleged in the SOR in response to questions about his finances. Applicant contends that he was unaware of the delinquent debts when he completed the security clearance application because his wife, who then managed the finances, incurred them without his knowledge.

Applicant earns \$78,000 per year. He supplements his income with disability payments received from the Department of Veterans Affairs for an injury he incurred while serving in a combat theater between 2009 and 2010. He completed a credit counseling course. (AE Y)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>1</sup>

## **Analysis**

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

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 . . . . An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant’s history of financial problems generates security concerns under AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

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<sup>1</sup> The factors under AG ¶ 2(d) are as follows:

(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.

The following mitigating conditions are potentially applicable:

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;

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

AG ¶ 20(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.

For most of the period Applicant has been married, he has spent nearly all of his time away from home on various temporary duty assignments. Consequently, his wife handled the finances. When she began neglecting to pay bills timely, she did not tell him. In one instance when she shared a problem with an auto loan delinquency, she, asked for extra money to pay the bill, then used it to pay some of her personal bills, rather than to pay the car note.

Applicant's current job requires no travel responsibilities. This has enabled him to begin managing his finances. Since beginning the new job, he has satisfied four of the five debts that he acknowledged, and has been paying the fifth one through monthly payments. Applicant has also completed financial counseling classes. I conclude AG ¶¶ 20(b) through 20(d) apply.

Applicant has notified the creditor of each disputed debt in writing, with comprehensive dispute letters demanding to be provided copies of contractual agreements, and notifying them of his rights. With respect to the creditor alleged in subparagraph (d), he provided proof of the checks he received to pay the balance from his insurance companies after the car was totaled. AG ¶ 20(e) applies.

### **Guideline E: Personal Conduct**

Under this guideline, "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." Applicant's omission of relevant financial information from his security

clearance application raises the question of whether AG ¶ 16(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 national security eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

Given Applicant’s sterling character and history of exemplary military service, I conclude Applicant’s testimony that he was unaware that his wife was mismanaging the family finances while he was away from home working was credible. Applicant could certainly have communicated better with his wife about their finances during this period of his career. However, this error reflected carelessness, not deceit. Any security concern generated by his carelessness has been mitigated by the steps to rehabilitate his finances, as discussed in the financial considerations section, above. I conclude that AG ¶ 16(a) does not apply.

### **Whole-Person Concept**

Upon considering the cause of Applicant’s financial problems, and the presence of rehabilitation, I conclude that the likelihood of continuation or recurrence of the problem is minimal. Applicant has mitigated the 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.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge