



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



In the matter of: )  
 )  
 1 ) ISCR Case No. 17-02200  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

12/07/2018  
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**Decision**  
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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 7, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 28, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2017, scheduling the hearing for February 1, 2018. The hearing was continued at Applicant's request. The hearing convened as rescheduled on July 9, 2018. Government Exhibits (GE) 1 and 4 through 11 were admitted in evidence without objection. The objections to GE 2 and 3 were sustained. Applicant testified and submitted Applicant's Exhibits (AE)

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<sup>1</sup> The Statement of Reasons was amended to reflect Applicant's correct last name.

A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE D, which was admitted without objection.

### **Findings of Fact**

Applicant is a 58-year-old employee of a defense contractor. He has worked for his current employer since 2008. He served in the U.S. military from 1979 until he was honorably discharged in 1983. He has a master's degree. He married in 1991 and divorced in 2015. He has an adult child.<sup>2</sup>

Applicant has a history of financial problems, which he attributed to the failure of his business, which he dissolved in 2008; his 2013 separation and 2015 divorce; and his employer making him a part-time employee and cutting his hours in half in June 2016.<sup>3</sup>

Applicant moved out of his house when he and his ex-wife separated in December 2013. He stopped paying the mortgage loan. He was awarded the house and the mortgage obligation in the divorce, but his ex-wife was permitted to remain in the house until November 2014. The October 2014 property distribution order indicated that the mortgage loan at that time was "approximately \$214,000, plus all interest, late charges, and fees." The order stated that Applicant's ex-wife would receive \$1,000 in alimony per month from October 2014 through October 2022.<sup>4</sup>

Applicant did not maintain the mortgage payments on the house. In order to avoid foreclosure, he filed a Chapter 13 bankruptcy case in September 2015. The bankruptcy petition listed the mortgage loan as \$251,202, with the value of the property reported as \$254,734. The petition also reported three liens against the property for \$7,323 (SOR ¶ 1.c); \$4,196; and \$2,361. The petition listed debts totaling \$22,360 under Schedule F, Creditors Holding Unsecured Nonpriority Claims, which included the \$717 debt alleged in SOR ¶ 1.e and apparently the \$302 medical debt alleged in SOR ¶ 1.f.<sup>5</sup>

Applicant reached an agreement to modify the mortgage loan, and the Chapter 13 bankruptcy case was dismissed in April 2016. He had paid \$3,400 to the trustee, of which \$3,025 was paid to his attorney and \$375 was paid to the trustee. No payments were made to his creditors. The trustee reported that \$52,816 in mortgage arrearages had been claimed by the mortgage company. The November 2016 credit report noted

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<sup>2</sup> Tr. at 19, 23, 34-35, 53-54; GE 1.

<sup>3</sup> Tr. at 18-22, 54; Applicant's response to SOR; AE B, C.

<sup>4</sup> Tr. at 21, 44-45; GE 6-8; AE C.

<sup>5</sup> Tr. at 22, 28, 39; Applicant's response to SOR; GE 9.

the mortgage loan as \$56,770 past due, with a balance of \$251,759. It also annotated that “arrangements [were] made with credit grantor to make partial payments.”<sup>6</sup>

Applicant was unable to maintain the modified mortgage loan payments. Subsequent credit reports show the mortgage loan as \$4,046 past due with a \$261,273 balance (October 2017); and \$17,289 past due with a \$284,424 balance (July 2018). Applicant has been making partial payments. A June 2018 mortgage statement appears to indicate that he had paid \$9,495 year-to-date, which is consistent with Applicant’s testimony. It indicated that a payment of \$20,829 was required to bring the loan current.<sup>7</sup>

The SOR alleges the dismissed Chapter 13 bankruptcy case; the mortgage loan that was \$56,770 past due with a balance of \$251,759; three miscellaneous delinquent debts with balances totaling about \$9,600; and four delinquent medical debts totaling \$650. The debts are established through credit reports, Applicant’s admissions, and the Chapter 13 bankruptcy petition.

Applicant accepted a full-time position with his company in another state in May 2017. His house is vacant. He stated that it requires improvements to be able to sell at his estimated value of \$390,000. He testified that he would use the proceeds of the sale to pay his delinquent debts.<sup>8</sup>

Applicant did not provide proof that he paid any of the delinquent debts alleged in the SOR. In his post-hearing submission, he indicated that he was no longer planning on selling his house. He wrote that it “is currently under refinancing/loan modification.” No further information was provided about the mortgage loan. He indicated that he “started a new eQIP (Electronic Questionnaire for Investigations Processing) investigation” and identified ten outstanding accounts “for re-investigation.” All of the non-mortgage debts alleged in the SOR are included, except for the \$302 medical debt alleged in SOR ¶ 1.f. That debt is not listed on the most recent credit report.<sup>9</sup>

Applicant wrote in his post-hearing response that he spoke with the district manager for the creditor for the debt alleged in SOR ¶ 1.d, and that “it appears this account is in error.” He wrote that he was awaiting resolution. Applicant admitted owing this debt in his response to the SOR and at his hearing. He stated that the debt was for “a couple of televisions.” The debt is listed on the July 2018 credit report.<sup>10</sup>

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<sup>6</sup> Tr. at 26; Applicant’s response to SOR; GE 6-9.

<sup>7</sup> Tr. at 28-34; GE 8, 11; AE A.

<sup>8</sup> Tr. at 23, 32-33, 36-41, 44; GE 1.

<sup>9</sup> AE D.

<sup>10</sup> Tr. at 45-47; AE D.

Applicant traveled to a foreign country for tourism in July 2015, which was a few months before he filed his Chapter 13 bankruptcy case. He received financial counseling as a requirement of his bankruptcy case. His most recent credit report lists new delinquent debts that were not alleged in the SOR.<sup>11</sup>

## **Policies**

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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

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<sup>11</sup> Tr. at 54, 57-58; GE 1, 11. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

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 a history of financial problems. The evidence is sufficient to raise the above disqualifying conditions.

Applicant filed a Chapter 13 bankruptcy case in order to avoid foreclosure. The bankruptcy case was dismissed after he reached an agreement to modify his mortgage loan. The Chapter 13 bankruptcy case does not raise security concerns independent of the delinquent debts that are alleged in the SOR. SOR ¶ 1.a is concluded for Applicant. The \$302 medical debt alleged in SOR ¶ 1.f is not listed on the most recent credit report. That allegation is also concluded for Applicant.

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 attributes his financial problems to the failure of his business, which he dissolved in 2008; his 2013 separation and 2015 divorce; and his employer making him a part-time employee and cutting his hours in half in June 2016. Those events qualify as conditions that were largely beyond his control. However, Applicant has done virtually nothing to actually pay any of his non-mortgage debts, and the status of his mortgage loan is murky at best. Moreover, he has accrued additional delinquent debts. He testified that he planned to sell his house and use the accrued equity to pay his delinquent debts. In his post-hearing submission, he indicated that he was no longer planning on selling his house, but he failed to establish that he had a workable plan to pay his debts.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

## 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(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 ¶ 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 also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge