



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



In the matter of: )  
)  
) ISCR Case No. 17-02245  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

05/08/2018

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On April 7, 2016, Applicant submitted a security clearance application (SCA). On July 3, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Items 1, 3) 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; and the National Security Adjudicative Guidelines (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 31, 2017. He did not specifically admit or deny the SOR allegations and he did not submit any documentation with his Answer. He requested that his case be decided by an administrative judge on the written record in

lieu of a hearing.<sup>1</sup> On August 23, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on August 24, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM and he did not object to Items 1 through 5, which are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 16, 2017.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, I make the following findings of fact: Applicant is 33 years old and he has been employed part-time as an adjunct instructor at a technical institute since September 2014. He is also employed part-time as a consultant 3-D artist for another company since October 2015. He has been employed full-time with a federal contractor as a multimedia specialist/3-D modeler since February 2016. He earned an associate's degree in 2006 and a bachelor's degree in 2008. He was employed full-time during the four years of his education. Applicant was unemployed from November 2013 to September 2014 after being laid off. He was in the Army Reserves from June 2003 through December 2003, when he was honorably discharged. He married his current spouse in 2013 and he does not have any children.<sup>2</sup>

The SOR alleges 11 delinquent accounts with a total debt of \$68,688.<sup>3</sup> All of the listed accounts, except one, are delinquent student loans. The other delinquent account, alleged as SOR ¶1.e, is an unpaid medical account. Under the Financial Section of his SCA, Applicant disclosed several delinquent accounts and listed that he experienced financial strain due to low income, job instability, and lack of health insurance. He listed that his wages had been garnished to pay off some of his delinquent student loans. He was laid off in October 2013 from a federal contractor and remained unemployed until September 2014. From October 2014 through present, Applicant has been continuously employed, at times, with multiple employers.

Applicant claimed in his Answer that he had been paying on his student loans and was looking into loan consolidation as an option for repayment (SOR ¶¶ 1.a-1.d). He also claimed that the medical debt alleged in SOR ¶ 1.e. had been paid in full, and that he resolved the student loan collection accounts (alleged in SOR ¶¶ 1.f-1.k) via a significant discounted settlement. He did not provide any supporting documentation with his Answer. The Government stated in the FORM brief that Applicant "failed to provide any documentation to corroborate his assertions as to accounts that have been paid, creditors that have been contacted or attempts to put repayment plans into place."

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<sup>1</sup> Item 2.

<sup>2</sup> Item 3.

<sup>3</sup> Item 1.

(FORM brief page 2) Applicant did not provide any documentation within the 30 days after his receipt of the Government's FORM.<sup>4</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, 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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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<sup>4</sup> Item 2.

Section 7 of EO 10865 provides that 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 used student loans to pay for his technical education during the years 2004-2008. The SOR alleges unpaid student loans and a medical debt totaling over \$68,000. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and

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

Applicant did not provide any documentation to support his claim that he has been paying on his student loans, settled other student loans, paid his medical debt, or of his efforts of acquiring loan consolidation for repayment purposes. There is no evidence that he has made contact with his creditors, or that he made any effort to repay even the smallest delinquent debt. Applicant's conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is some evidence that Applicant's financial problems were beyond his control, since he was laid off by an employer in October 2013. However, Applicant must show that he acted reasonably under the circumstances. He has been fully employed, at times with multiple employers, since September 2014. Applicant did not meet his burden to establish that he acted responsibly under the circumstances in dealing with his creditors. Hence, AG ¶ 20(b) does not apply.

There is no evidence Applicant received financial counseling. There is no evidence that Applicant has initiated and is adhering to a good-faith effort to repay overdue creditors. AG ¶¶ 20(c) and (d) do not apply.

### **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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant attributed his financial indebtedness to loss of employment and underemployment. Applicant did not provide sufficient evidence to corroborate any payments, legitimate disputes, or otherwise take responsible action for any of the financial security concerns. Despite being put on notice, Applicant did not submit any response or supporting documentation within 30 days after receipt of the FORM. Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability, as well as eligibility and suitability for a security clearance. Because protection of the national interest is the principle focus of these adjudications, any unresolved doubts must be decided against the granting of eligibility to classified information.

### **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
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Subparagraphs 1.a-1.k:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge