



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-02437  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

03/05/2018  
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**Decision**  
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RICCIARDELLO, Carol G., 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 July 31, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 15, 2017, and elected to have his case decided on the written record in lieu of a hearing. Applicant received the Government's file of relevant material (FORM) on November 3, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30

days of receipt of the FORM. The Government's evidence is identified as Items 2 through 8. Applicant responded to the FORM. He did not object to the Government's evidence, and it is admitted. He submitted documents that were marked as Applicant Exhibits (AE) A through C, which were admitted into evidence without objection. The case was assigned to me on January 16, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.j and 1.k. He denied the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He earned a bachelor's degree in 2002. He married in 2006. He has two children, ages nine and six years old. He has worked for federal contractors since approximately 2003 and for his present employer since July 2013.

Applicant attributed his financial problems to his son's medical issues. In 2009, his infant son was assaulted and suffered severe injuries. The perpetrator was convicted. His wife went back to work in 2010 to help pay the medical expenses, but was unable to work after July 2011, when their second child was born. His wife's inability to work also affected their finances. He estimated she was earning about \$2,000 a month.

In March 2016, Applicant's son was approved for the Disabled Child Living at Home Program with an inception date of October 2015.<sup>1</sup> Applicant stated that this program has helped cover medical costs not covered by insurance, but in some instances a balance may still be owed. Applicant stated that prior to acceptance into this program, one of his son's prescriptions retailed at \$750 for a one-month supply, and his son was on it for two years. Applicant did not detail what his out-of-pocket costs were for the prescription. He stated that participation in the program has helped him to better address his financial obligations.<sup>2</sup>

In 2016, Applicant's wife received a Veteran's Affairs disability rating of 100%. The amount of her monthly disability payment is unknown, and whether it was retroactive to a different date. She had previously been denied Social Security disability benefits, appealed, and in June 2016 was granted full disability beginning in May 2011. The amount of that monthly payment is also unknown, and whether it was retroactive to May 2011, and if so, the amount she received in back payments.<sup>3</sup>

As part of Applicant's answer to the SOR, he provided a letter from the IRS that was responding to Applicant's April 2017 request for an installment agreement for

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<sup>1</sup> It is unknown if Applicant's child received payments and if they were retroactive.

<sup>2</sup> Items 3, 8. AE A.

<sup>3</sup> Item 3.

payment of his 2016 Federal income taxes. In his FORM response, he stated he is making monthly payments of \$500 to the IRS for his 2016 tax debt. He stated his tax debt should be resolved by July 2018. He offered no explanation for his failure to timely pay his Federal income taxes or the amount he owes.<sup>4</sup> He stated when he completes the payment plan with the IRS, he will use the additional money to resolve his delinquent debts.<sup>5</sup>

Applicant admitted the debt in SOR ¶ 1.a (charged off credit card-\$11,306). In his September 2016 Electronic Questionnaire for Investigations Processing (e-QIP) regarding this debt he stated, "Goal is to enter payment plan with [creditor] in October-November 2016. This account will take years to pay off, so we are currently budgeting to calculate a proper payment plan." In his interview with a government investigator in April 2017, he indicated he was unable to pay the debt, but intended to do so after paying other small debts. In his August 2017 SOR answer, he said he had not settled this debt. In his FORM response, he said that he had made an arrangement with the creditor to pay \$300 to \$500 per month on the debt, depending on his monthly expenses. He provided a copy of a payment receipt from November 2017, showing \$300 was paid. A copy of a payment plan agreement was not provided.<sup>6</sup>

Applicant admitted the debt in SOR ¶ 1.b (\$4,288). He disclosed it in his e-QIP. He said that it became delinquent in April 2011 and was "written off" in December 2012. He did not provide any other information about this debt, except that it had not been settled.<sup>7</sup>

Applicant admitted the debt in SOR ¶ 1.e (\$1,269). He did not provide any other information about this debt, except that it had not been settled.

The debts in SOR ¶¶ 1.c (\$2,834), 1.d (\$1,395), and 1.g (\$983) are charged off credit card accounts that Applicant denied in his SOR answer. He stated that these debts had a zero balance on his August 2017 credit reports. Applicant provided no evidence that he paid the debts. In his e-QIP, Applicant disclosed that he received IRS Cancellation of Debt Forms 1099C from these creditors, which he filed with his 2014 Federal Income tax returns. He failed to provide copies of these tax documents to substantiate his claim. The debts are included on his December 2016 and June 2017 credit reports. These debts are unresolved.<sup>8</sup>

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<sup>4</sup> This information was not alleged in the SOR and will not be considered for disqualifying purposes. I may consider it when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

<sup>5</sup> Item 3; AE A, B.

<sup>6</sup> Items 3, 4, 5, AE A, C.

<sup>7</sup> Items 3, 4, 5.

<sup>8</sup> Item 5.

In Applicant's SOR answer, he admitted the debts in ¶¶ 1.f (collection account-\$1,173), 1.j (collection account-\$568), and 1.k (collection account-\$492) "with exception".<sup>9</sup> Applicant disclosed these debts in his e-QIP, acknowledging they were consumer debts that became delinquent in 2011 and were sold to the same collection company. He indicated he would make a written request to the collection company to validate the debts by September 2016. In his April and May 2017 interview with a government investigator, he confirmed that the debts were his credit card debts that became delinquent, and were sold to the collection company. He provided to the investigator a copy of the specific pages of his credit report verifying the original creditor for each debt. The investigator attached the copies of the pages Applicant provided to the summary of interview. In his SOR answer, Applicant stated he was disputing the debts with one of the credit bureaus to force a response from the collection company. It is unclear the basis of the dispute as he already acknowledged the debts belonged to him. He did not provide documentary evidence to substantiate the basis of his dispute or action he has taken to resolve the debts.<sup>10</sup> These debts are unresolved.

Applicant disclosed on his September 2016 e-QIP the two judgments alleged in SOR ¶¶ 1.h (\$1,172) and 1.i (\$1,659). He made the same statement in the e-QIP for both judgments. That is, "No action taken to date. Working to resolve one delinquent debt at a time. Goal is to have this account paid in full or in a payment plan within the next 6 months."<sup>11</sup> During his background interview, he acknowledged the judgment in SOR ¶ 1.i, and said that in November 2014 he fell behind in paying this credit card and a garnishment order was entered for monthly payments of \$40. At the time of the interview, he still owed approximately \$1,300 on the debt. Regarding the judgment in SOR ¶ 1.h, he told the investigator that three delinquent accounts were consolidated by this collection company. He had not taken any action at the time to resolve the judgment, but intended to do so once his garnishment was completed. In Applicant's SOR answer, he denied both judgments and stated they were no longer on his August 2014 credit reports. He did not provide copies of those credit reports or evidence that he paid the judgments or completed the garnishment. Both judgments are reflected on his June 2017 and December 2016 credit reports.<sup>12</sup>

Applicant denied the account in SOR ¶ 1.l (\$89). This debt was brought to his attention during his background interview. He stated he had no knowledge of the debt. The debt is listed on Applicant's December 2016 credit bureau report as a medical debt in collection that was reported in November 2016. He stated it was not on his August 2017 credit report, which he did provide. Applicant did not submit evidence of actions he may have taken to dispute it.<sup>13</sup>

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<sup>9</sup> Item 3.

<sup>10</sup> Item 5 pages 7-10.

<sup>11</sup> Item 4 pages 28-29.

<sup>12</sup> Items 3, 5, 6, 7.

<sup>13</sup> Items 5, 6.

The debt in SOR ¶ 1.m (\$75) is a medical debt that was brought to Applicant's attention during his background interview. He acknowledged the debt was for his son's immunizations, and he believed his insurer was required to pay it. It is listed on his December 2016 and June 2017 credit bureau reports. He did not provide evidence of actions he has taken to resolve the debt.<sup>14</sup>

Applicant did not submit a budget or provide information about his income, the amount of disability payments his wife receives from the Department of Veteran's Affairs, and Social Security Administration. He did not provide any information about his finances and current obligations. There is no evidence he participated in financial counseling. After his wife began receiving disability benefits, they purchased two vehicles in August 2016 (\$32,760 and \$16,046). Applicant explained the vehicle they owned needed major repairs and he wanted reliable transportation for himself and his family.<sup>15</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 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

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<sup>14</sup> Items 5, 6, 7.

<sup>15</sup> AE A.

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.

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 relating to the guideline 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 has unresolved delinquent debts and judgments from 2011 that he is unwilling or unable to pay. The evidence established the above disqualifying conditions.

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;

(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 admitted some of the alleged debts and denied others that he had previously disclosed and acknowledged. He did not provide documentary proof that he satisfied any of the alleged debts. Although he stated some are no longer on his credit reports (which he did not provide), he also did not submit proof that he had paid or settled them. Many of these were debts he disclosed in his e-Qip and confirmed he owed during his background interview in April and May 2017. Many of the debts date back to 2011 and may have been removed from a credit report due to their age. However, that fact does not absolve Applicant of his responsibility to pay his delinquent debts. In addition, Applicant indicated that he received IRS cancellation of debt forms for the three debts that were charged off. He did not provide evidence to substantiate his assertion. That action by the creditor does not constitute payment of the debt, but rather is a tax consequence for his failure to pay them. Applicant provided proof that he has made one payment toward one delinquent debt. There is insufficient evidence that he

has paid, resolved, or is paying any of the other delinquent debts. Applicant's financial problems are recent and ongoing. AG ¶ 20(a) does not apply.

The horrific incident that severely injured Applicant's son and the continuing medical expenses incurred were beyond Applicant's control. His wife is unable to work and was awarded both Veteran's Affairs disability and Social Security disability benefits. Her loss of income impact the family finances and was also beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant incurred credit card debts from 2011 that he was unable or unwilling to pay. It appears now that Applicant's financial situation has improved since his son and wife have begun to receive disability benefits. I have considered that these benefits began relatively recently. However, Applicant is not acting responsibly toward his delinquent debts. He disclosed and acknowledged many of the debts that he is now denying. He failed to provide proof he has taken action to pay them even after discussing them the government investigator. He was aware of the judgments, one of which resulted in a garnishment of his wages. He has not provided evidence of his intention to pay the other judgment or his other debts. His one payment toward the debt in SOR ¶ 1.a is insufficient to conclude he is acting responsibly. Debts that may have fallen off of credit reports or that the creditor canceled due to delinquency for which he received tax forms, does not constitute responsible conduct. AG ¶ 20(b) partially applies.

No evidence was provided to show Applicant has received or is receiving financial counseling for the problem and there are not clear indications that Applicant's financial problems are being resolved or are under control. Applicant recently made one payment to one creditor. He explained he was paying his 2016 Federal taxes first and then would pay other creditors. He did not provide an explanation for why he did not pay his taxes when they were due. The evidence is insufficient to conclude that Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant denied and disputed some of the SOR debts. Most of these debts he previously disclosed on his e-QIP and admitted owing. He stated he was waiting for verification from the collection company for some debts. He previously provided pages from his credit report to the government investigator listing the collection company and the original creditors, and he acknowledged the debts belonged to him. Applicant did not provide evidence that he had a reasonable dispute about the legitimacy of any debts. He indicated he is no longer responsible for some debts that he said have a zero balance on his credit report. He failed to provide the credit reports or documents to show he paid the debts, which he admitted owing. He failed to provide IRS documents to show the debts were canceled and he filed the appropriate forms with his tax returns. He also failed to provide evidence of actions he may have taken to dispute other debts. AG ¶ 20(e) does 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 is a 37-year-old college graduate. His wife is unable to work, and he has two children, one who needs significant medical care. I have considered the impact his son's special needs has had on his finances. However, Applicant has failed to show he is responsibly addressing the delinquent debts that he acknowledged he owed. He indicated he is paying his 2016 Federal income taxes through an installment payment plan. When he completes that plan, he said he will begin to pay other creditors. He is disputing debts that he previously disclosed he owed. He did not provide evidence of his current finances. Applicant's financial track record is not sufficiently stable to conclude he will resolve his debts many that have been delinquent since 2011. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

## **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**

Subparagraphs 1.a-1.m:                      **Against Applicant**

## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge