



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-02494  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2018

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Applicant did not present sufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 11, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on March 15, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 16, 2018, scheduling the hearing for June 21, 2018. The hearing was convened as scheduled. The Government offered Government Exhibits (GE) 1 through 6, which were admitted. Applicant testified on his own behalf, and presented Applicant Exhibit (AE) A, which was admitted into the record without objection. I held the record open until July 5, 2018 and at Applicant's request, granted him an extension of time until August 5, 2018

for additional documentation. Applicant did not submit any information. DOHA received the transcript of the hearing (Tr.) on June 29, 2018.

### **Findings of Fact**

Applicant, age 39, is married and has three children. Applicant graduated from high school in 1996, and has completed about two years of college. He served in the United States Army from 1996 to 2001. After that he joined the National Guard from 2001 until 2004. Applicant completed a security clearance application on March 21, 2015. He has held a security clearance since 2003. (GE 1) He has worked for his current employer for two years. (Tr. 15)

The SOR alleges that Applicant filed for Chapter 13 bankruptcy twice and both petitions were dismissed; that he has a 2016 Federal tax lien in the amount of \$23,926; and that he has other delinquent medical debt in the amount of approximately \$3,000. Applicant admitted the debts, and provided explanations. He provided documentation that the debt in SOR 1.e for \$494 was paid in full in 2015. (AE A)

Applicant acknowledged his financial difficulties in the past. He stated that it was never his intention to ignore debts, but due to certain life changes he could not always pay his bills at once. He bought a home in 2017 through the Department of Veteran's Affairs (VA). He takes responsibility and has worked hard the past two years to get his credit in a good status. He stated that two collection accounts on his credit report will be taken care of soon and he is in the process of making payment arrangements to resolve all delinquent debts. He wanted to wait until after the closing on his home to decide the maximum amount that he could afford monthly. He knows he made mistakes and he continues to work hard to address them.

As to SOR 1.a, Applicant admitted the medical account in the amount of \$999, but at the hearing he stated that he is disputing the debt. He believes it may belong to his father. (Tr.16) He contacted the company last year. He was also told by his mortgage broker not to pay it because it could lower his credit score. He provided no documentation for his assertion that he has been disputing the debt.

As to SOR 1.b, Applicant admitted the 2016 Federal Government tax lien in the amount of \$23,926. He stated that he is currently on a payment plan of \$400 monthly. He stated that the payments started in July 2016. (Tr.35) He did not produce any documentation for this assertion. He blamed the debt on a tax accountant who "mis-filed" his taxes for two years. He was audited. He called the IRS so that they would not garnish his wages. (Tr. 33) He reiterated that he set up a payment plan with the IRS. (Tr. 35)

As to SOR 1.c, Applicant admitted that he filed a chapter 13 bankruptcy petition in March 2011 and that it was dismissed before he left for Afghanistan. (Tr. 32; GE 6)

As to SOR d., Applicant filed in October 2009, for Chapter 13 Bankruptcy, which was dismissed in January 2011. Applicant explained that both bankruptcy petitions were due to a pending home foreclosure. He bought his first home in 2008, but shortly

thereafter his wife stopped working to attend school. With the loss of her income and his overtime hours reduced, he could not make the mortgage payment. He asked the bank for a loan modification. He explained that the bank told him not to pay the mortgage payments for three months or until the process was completed. The bank required a sum of money and Applicant provided the sum of \$2,000 or \$3,000. After that they denied the loan modification. The bank asked Applicant to file another loan modification but then rejected it. They also stressed that he not pay the mortgage. This continued for about one year. To save his home in state L he filed for bankruptcy and was able to make some payments. Applicant noted that this bank was involved in a class action law suit for unethical dealings. (Tr.30-32)

He filed another bankruptcy (SOR 1.c), but the payments were not affordable. He lost his contract job in 2009. Another twist occurred when Applicant was sent to Afghanistan. (Tr. 24) He took a job in state V when he returned in 2011. He lost the home but was given \$1,000 in compensation as a result of the class action suit. (Tr. 32) He then was not responsible for the home that the bank foreclosed. (Tr. 32) He never received a notice for a deficiency balance.

As to SOR 1 f, Applicant admits owing \$30 for a medical account in collection. He stated that he paid the bill. (Tr.92) He stated that he paid it two years ago and it is no longer on his credit report.

As to SOR 1.g, a collection account in the amount of \$1,577, Applicant believes this is for a cable service. A box was not returned to the company. He admits the debt, but he stated that he sent the cable equipment. His mortgage broker told him not to pay the account. Now, Applicant stated that his current intention is to make arrangements to pay the account.

Applicant's net monthly income is about \$9,000, which includes his wife's earnings. (Tr. 37) He has a monthly budget. He obtained financial counseling independent of the bankruptcy process. He has a monthly net remainder of about \$1,000. (Tr. 40)

## **Policies**

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, “Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, and bankruptcy filings, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations") and 19(f) (....."failure to pay annual Federal ..income tax as required."

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

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 (g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts are the result of unemployment for him and unemployment for his wife. He filed a Chapter 13 bankruptcy petition to keep his home from foreclosure in 2011. He made payments on one bankruptcy, but it was dismissed. Another bankruptcy in 2009 was filed due to his wife having no employment. Applicant tried to obtain a loan modification from the bank several times, but after telling him not to pay the mortgage, the home was still foreclosed. Due to the nature of a class action suit against the bank, Applicant was compensated and absolved of any deficiency balance. He has been gainfully employed for two years. His tax returns were mis-filed and according to Applicant, he has a tax lien that he owes to the Federal Government. Applicant stated

that he has a payment plan in place with the IRS and that the plan is current. He received counseling through the bankruptcy process. He paid the debt in SOR 1.g and plans to pay the other debts. He did not have documentation for the other debt that he paid. AG ¶ 20(a) is fully established as to the two bankruptcy petitions which were tied to the loan modifications and petitions. They were time bound to a possible home foreclosure and loan modification with a particular bank. Applicant was credible in his testimony with respect to the bankruptcies, which are legitimate means of resolving debt.

AG ¶ 20(b) is not established. While Applicant's unemployment was a condition beyond his control, he has not acted responsibly to address the resulting debts. He did not provide documentation that he has a plan in place with the IRS for the tax lien. He was given an extension of time to produce documentation, but he did not submit any information. He did not pay several other debts.

AG ¶ 20(c) is fully established. However, 20(d) and 20(g) are not fully established. Applicant received financial counseling as a result of his bankruptcy petition. He admitted that he would pay two other debts and that he would produce documentation of his current plan with the IRS. He did not have documentation to support this allegation. Promises to pay other debts in the future are not sufficient for mitigation. He provided insufficient documentation to support the claim. Applicant has not met his burden to mitigate the financial concerns set out in the SOR.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his many years of military service, and work abroad as a contractor, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has not carried his burden of showing that

it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
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Subparagraphs 1.c-e:	For Applicant
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Subparagraphs 1.f-g:	Against Applicant
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### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch  
Administrative Judge