



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-02510  
 )  
Applicant for Security Clearance )

**Appearances**

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

03/29/2018  
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**Decision**  
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TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On September 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. On September 20, 2017, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

A complete copy of the file of relevant material (FORM), dated November 15, 2017, was provided to him by letter dated November 17, 2017. Applicant received the FORM on December 1, 2017. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional

information within the 30-day period, which was received without objection.<sup>1</sup> On January 16, 2018, the case was assigned to me.

### **Findings of Fact**

Applicant admitted all of the SOR allegations, with explanations. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information<sup>2</sup>**

Applicant is a 44-year-old network analyst employed by a defense contractor since December 2015. He seeks to renew his security clearance, which is a requirement of his continued employment. (Items 3, 7)

Applicant graduated from high school in 1992. He was awarded an associate's degree in business administration in 2006, and a bachelor's degree in business administration in 2017, both degrees earned from an on-line university. He served in the U.S. Air Force from 1992 to 1996, and was honorably discharged. Applicant married in 2003 and divorced in 2004. He remarried in 2005, and has two minor children. (Items 3, 7; SOR response)

### **Financial Considerations**

Applicant's SOR alleges four debts totaling \$26,640. Summarized, they are: 1.a – charged-off credit card account for \$14,094; 1.b – charged-off credit card account for \$8,277; 1.c – charged-off credit card account for \$3,529; and 1.d - charged-off credit card account for \$740. (SOR ¶¶ 1.a – 1.d) These debts are established through Applicant's admissions and the Government's evidence. (Items 2 – 5, 7, FORM response)

Department Counsel noted in his FORM that Applicant failed to explain how his debts were incurred or why he ignored them so long that his creditors charged them off. Applicant explained in his FORM response that he incurred these debts during a transition after he was injured during an Army training program and was required to accept another job in a different location. In addition, during this job transition, his wife was having a difficult pregnancy with their second son. To address her condition, Applicant took time off from work to escort his wife to the Philippines to stay with her family where she could receive "special care." He used credit cards to bridge the gap between job changes and to cover travel costs. (Item 2, FORM response)

To address these debts, Applicant retained the services of a law firm (LF) specializing in debt resolution in August 2015. The LF set up a debt resolution plan for

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<sup>1</sup> Applicant's additional information will be referred to as FORM response.

<sup>2</sup> The limited background information regarding Applicant was derived from the FORM and was the most current information available.

Applicant's four SOR debts that began in August 2015 with monthly payments of \$743 payable by direct debit. Under the current payment schedule, all of the SOR debts will be paid off in August 2018. Applicant stated that the LF allowed his creditors to write off his credit card debts in order to negotiate a payment plan. Applicant provided documentation of the plan developed by the LF as well as proof of payments to date. (Item 2; FORM response)

Applicant has provided 25 years of cumulative service to the Government as an Air Force veteran and as a defense contractor. During those years, he successfully held a security clearance. As a defense contractor, he spent significant periods overseas to include Iraq, Afghanistan, South Korea, Kuwait, Qatar, and Guantanamo Naval Base. He is currently working in the Mideast on a contract expiring in November 2018. (Items 2, 3, 6; FORM response)

### **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 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.”

The evidence establishes the validity of the allegations and the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and his behavior does not cast doubt on his current reliability, trustworthiness, or good judgement.

Full application of AG ¶ 20(b) is warranted. Applicant was injured in an Army training exercise that required him to change jobs and job locations, and incurred the travel costs associated with escorting his pregnant wife to the Philippines to receive proper care. He used high interest credit cards in order to make ends meet during that "transition" period.

AG ¶¶ 20(c) is partially applicable and 20(d) is fully applicable. Although Applicant did not receive formal financial counseling, his debts are resolved or being resolved and there are clear indications that his financial problems are under control. As noted above, Applicant engaged the services of a law firm specializing in debt resolution. He initiated his debt consolidation plan in August 2015, well before his September 2017 SOR was issued. Applicant stated that LF allowed his creditors to write off his credit debt card debt to prompt the credit card companies to negotiate a payment plan. Given Applicant's resources and situation at the time, he approached his debts in a responsible and measured way.<sup>3</sup> AG ¶ 20(e) is not relevant.

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<sup>3</sup>Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

## 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(a):

(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 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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's past military service and many years of employment as a defense contractor weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. Applicant has a viable plan in place and his debts are being resolved. He is currently serving in the Mideast with a defense contractor. Applicant understands what he needs to do to maintain financial responsibility.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

## Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

## **Conclusion**

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT TUIDER  
Administrative Judge