



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



In the matter of:

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ISCR Case No. 17-02852

Applicant for Security Clearance

**Appearances**

For Government: Chris Morin, Esq., Department Counsel

For Applicant: *Pro se*

03/20/2018

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Clearance is denied.

**Statement of the Case**

On August 24, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On September 18, 2017, Applicant answered the SOR allegations, denying all of them, and requested a decision based on the administrative record instead of a hearing. On October 2, 2017, Department Counsel prepared a File of Relevant Material (FORM).

Applicant received the FORM on December 5, 2017, and filed a response on December 18, 2017. The case was assigned to me on February 14, 2018.

### **Findings of Fact**

Applicant is a 31-year-old man with one child, age seven. His marriage from 2009 to 2012 ended in divorce. He has a high school degree and has taken some college credits. (Item 3 at 12) He is a veteran of the U.S. Marine Corps, serving honorably from July 2008 through April 2012. (Item 3 at 15)

Applicant has incurred approximately \$54,000 of delinquent debt over the years, including \$2,300 of delinquent state income taxes (subparagraphs 1.a - 1.b), \$50,000 of delinquent student loans (subparagraphs 1.c – 1.f, and 1.h), and a miscellaneous debt for \$1,729 (subparagraph 1.g). Although he did not elaborate about how he incurred the debt, his security clearance application lists two periods of unemployment from May 2005 to July 2008, and April 2012 to May 2015. (Item 3 at 15)

Applicant contends that he had arranged a payment plan for the debt alleged in subparagraph 1.g, but was unable to make all of the payments because he “fell on hard times.” (Response at 1) In December 2017, Applicant consolidated his student loans and arranged a payment plan. (Response at 63) Per the plan, Applicant will make \$21 monthly payments. The first payment was scheduled to post on January 28, 2018. He contends that he is “vigorously working towards reducing and paying of [his] debt . . .,” but provided no additional documentary proof. (Response at 1)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>1</sup>

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns about financial considerations are set forth in AG ¶ 18:

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. . . .

Applicant’s delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(f), “failure . . . to pay Federal, state or local income taxes, as required.”

The following mitigating conditions are potentially applicable:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit

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<sup>1</sup> The factors under AG ¶ 2(d) are as follows:

(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.

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.

Although Applicant attributes his failure to sustain consistent payments under past payment plans to financial difficulties, and lists significant periods of unemployment on his security clearance application, he did not provide any specific details. Consequently, AG ¶ 20(b) does not apply.

Applicant provided no evidence that he has either sought counseling or arranged a payment plan for his delinquent state income taxes. Neither AG ¶ 20(c), nor AG ¶ 20(g) applies. Applicant consolidated his student loans and developed a payment plan. His first payment was not scheduled to begin until after he completed his response. Nevertheless, the development of a payment plan is sufficient to trigger the partial application of AG ¶ 20(d).

Given Applicant's unaddressed tax delinquencies, the amount of student loans that are outstanding, and the recency of his student loan payment plan, I conclude he has not mitigated the financial considerations security concern.

### **Whole-Person Concept**

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, and it does not warrant a favorable conclusion. I conclude that Applicant has not mitigated the security concerns.

### **Formal Findings**

Formal findings for 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.h:	Against Applicant

## **Conclusion**

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

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Marc E. Curry  
Administrative Judge