



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



In the matter of: )  
)  
) ISCR Case No. 17-03192  
)  
Applicant for Security Clearance )

**Appearances**

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

08/16/2018

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

On January 8, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government’s file of relevant material (FORM) on March 23, 2018. Applicant received the FORM on June 5, 2018, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and he provided no response to the FORM. The Government’s evidence, identified as Items 1 through 9, is admitted into evidence without objection. The case was assigned to me on August 13, 2018.

## Findings of Fact<sup>1</sup>

Applicant is 43 years old. He was born in Germany and graduated from high school there in 1993, and took some college courses. Applicant has been employed as a security engineer by a federal contractor since December 2015. He reported previous assignments with federal contractors going back to 2002. Applicant served honorably on active duty in the U.S. Army from 1993 to 2001. He reports a previous security clearance from his time in the service, and continuing for 20 years with no issues. Applicant has never married.

Applicant reported delinquent debts in section 26 of his security clearance application (SCA),<sup>2</sup> including failure to file a state B income tax return in 2007, and a voluntary vehicle repossession in April 2015. The SOR alleged 10 delinquent debts totaling \$45,610. In his Answer to the SOR, Applicant admitted seven of the ten delinquencies alleged in the SOR, totaling \$42,465. He denied the allegations in SOR ¶¶ 1.c, 1.i, and 1.j, including the tax lien in the amount of \$2,372 owed to State A. Applicant claims to have made great strides in his financial situation, but admits to living outside his means in the past.<sup>3</sup> He also claims in his Answer to the SOR that he has reached out to experts to help him in this matter, and he has been in frequent contact with all of the creditors listed in the SOR to negotiate payment settlements.

In his Answer to the SOR, Applicant attached a letter from the creditor in SOR ¶ 1.d confirming receipt of Applicant's dispute of that \$364 cable television debt. He also attached documents to prove that the creditor in SOR ¶ 1.f was paid in full on September 8, 2017, and he enrolled with a debt repair agency on October 13, 2016. It is unclear what progress has been made by this debt repair agency concerning the delinquencies alleged in the SOR. Although, Applicant denied the State A tax lien alleged in SOR ¶ 1.c, it is substantiated by the circuit court records attached to the FORM by department counsel, as well as the credit bureau report.<sup>4</sup> Similarly, the delinquent debts alleged in SOR ¶¶ 1.i and 1.j are reflected as past due in the earlier 2016 credit report. Although these delinquencies fell off the 2017 credit report, Applicant has provided no explanation or documentary evidence to show why. It is unclear whether there was a good faith resolution of these old debts, or did the creditors simply stop chasing him.<sup>5</sup> Applicant admitted to all of the other SOR delinquent debts, and they are confirmed in his credit reports.

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's April 4, 2016 Security Clearance Application (SCA) (Item 9).

<sup>2</sup> Item 9.

<sup>3</sup> Item 2, attached statement.

<sup>4</sup> Items 3 - 7.

<sup>5</sup> Items 6 - 7.

Applicant received financial counseling from a credit repair agency starting in October 2016. It is unclear what progress the agency has made on the debts alleged in the SOR, some of which are over a decade old. He provided no response to the FORM or budget showing income against expenses, or other documentation to show progress on his delinquent debts. He professed his intentions to repay these delinquencies in his undated response to the SOR in 2017, but provided no substantiation showing results.

### **Policies**

This 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 new Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017. This decision is based on the new AGs.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the adjudicative guidelines 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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. Under 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. 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 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 abuse, 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 an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

- (f) failure to pay or fraudulently filing annual federal, state, local income tax returns or failure to pay annual federal, state, or local income tax as required.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>6</sup> Applicant has not met that burden. Most of the delinquent debts have not been addressed.

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 . . . , 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 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;
- (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; and
- (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 claims to be making smarter decisions in his spending and great strides in his financial situation, he has not provided any explanation how he became delinquent on these debts in the first place, aside from under withholding his

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<sup>6</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

taxes for state B in 2007. He has not identified any circumstances or conditions that were beyond his control. He has produced no relevant or responsive documentation either with his Answer to the SOR, or in response to the FORM. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. Applicant's credit reports and SOR list 10 delinquent debts totaling \$45,610. Applicant did not provide enough details with documentary corroboration about what he did to address his SOR debts. He did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;<sup>7</sup> (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was important for him to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 3) Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts except SOR ¶¶ 1.d (disputed) and 1.f (paid in full). He did not provide his budget, or any character reference letters or evidence of community involvement. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM informed Applicant that he had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3)

### **Whole-Person Concept**

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<sup>7</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or his] 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 or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 those guidelines. Notably, Applicant has served honorably for eight years in the U.S. Army, and he has retained a credit repair agency to help him. Most importantly, Applicant has not addressed the specific allegations in the SOR. He has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 through 1.c:	Against Applicant
Subparagraph 1.d and 1.f:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.g through 1.j:	Against Applicant

## **Conclusion**

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

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Robert J. Kilmartin  
Administrative Judge