



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03369

**Appearances**

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

10/12/2018

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant's delinquent debts arose due to a catastrophic illness he suffered in 2014, a circumstance beyond his control. He has been working with his creditors to set up payment plans, and he has resolved several of his delinquent accounts. Resulting security concerns were mitigated. Based upon a review of the testimony, pleadings and exhibits, national security eligibility is granted.

**History of the Case**

On May 23, 2016, Applicant completed and signed his SCA. On October 12, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued 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 November 15, 2017, and requested a hearing before an administrative judge. He admitted all of the Guideline F SOR allegations,

except he denied SOR allegation ¶1.c, a disputed medical account. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 31, 2018, and the case was re-assigned to me on April 16, 2018. DOHA set the hearing for June 14, 2018. On that date, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence, which I admitted without objection. Applicant testified, but he did not offer any documents during the hearing. I granted Applicant's request to leave the record open until July 14, 2018, to permit the submission of records. DOHA received the hearing transcript (Tr.) on June 25, 2018. Applicant submitted an e-mail on July 13, 2018, with two attached documentary exhibits. I labeled the e-mail and documents as Applicant's Exhibits (AE) A, B, and C, which I admitted into the record without objection. The record closed on July 14, 2018.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions to all of the Guideline F SOR allegations, (¶¶ 1.a, 1.b, and 1.d through 1.i), I make the following findings of fact:

Applicant is 59 years old. He listed on the SCA that he is working towards a Bachelor of Science degree in electrical engineering. At the hearing, Applicant stated he is currently enrolled in Grantham University since he is only two or three courses shy of obtaining his bachelor's degree. (Tr. 51-52; GE 1) He served on active duty in the U.S. Air Force between 1976 and 1980, and he was in an inactive status from 1980 to 1982. Applicant received an honorable discharge. He married in 1992 and has one son, age 17. Applicant currently has an offer of employment with a DOD contractor pending his issuance of a DOD security clearance. He would be a security quality assurance engineer for the DOD contractor, and Applicant's annual salary would increase from his current employment salary of \$40,000 to approximately \$80,000. (Tr. 5, 9, 22, 30-32; GE 1, 4)

Applicant attributed his financial problems due to a life-threatening medical condition he suffered in September 2014 while visiting the Grand Canyon on vacation. He was diagnosed with Rhabdomyolysis. He was picked up by helicopter and transported to a hospital, where he remained for 19 days. Once Applicant returned home, he needed medical care from several physicians. He was unable to report to work for an extended period of time. Applicant was then only able to work half-days until he was medically approved for full-time work, which also attributed to his financial difficulties. Applicant had medical insurance, but the cost of his medical treatment totaled approximately \$250,000. Applicant was responsible for paying a portion of his medical expenses, and he estimated that his overall medical debt amounted to approximately \$60,000. Applicant began to use credit cards to help pay for his monthly living expenses during this difficult time. (Tr. 19, 27; Answer)

Applicant's spouse was diagnosed with Multiple Sclerosis in about 2008. She is unable to work, and in 2013, she began to receive disability income of approximately \$1,300 per month. Applicant and his spouse decided to file for Chapter 13 bankruptcy

protection in September 2015. The attorney received full compensation from Applicant to file the bankruptcy case. Applicant waited about a year-and-a-half, but his Chapter 13 bankruptcy petition was never filed. He fired his attorney in March 2017. Applicant decided he would personally contact his creditors and try to establish repayment plans or settlement offers. Applicant's monthly net pay is approximately \$3,375, and his wife's disability income is about \$1,300 per month, for a combined monthly net of about \$4,675. After paying their monthly expenses, Applicant has a monthly remainder of approximately \$200 to apply towards his delinquent accounts. (Tr. 19-21, 32-34, 48, 53)

The SOR alleges nine delinquent accounts totaling \$53,819, which are supported by the credit reports in evidence. The record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a charged-off loan account in the approximate amount of \$9,280. Applicant used his car as collateral to obtain the loan in about 2015. He needed the money to pay for living expenses and pay bills. Applicant testified that he has been in contact with this creditor to settle this account. He recently received a form from the creditor requesting his current financial information. The creditor will use the form to determine how much Applicant should pay to resolve the debt. The form was sent a couple of weeks before the hearing, and Applicant intends to work with the creditor to resolve this debt. (Tr. 35-38)

Applicant stated in his response to SOR ¶ 1.b, a medical debt in the amount of \$105, that this account was paid in full. He submitted documentation after the hearing showing that this account was satisfied. (AE B)

SOR ¶ 1.c alleges a medical collection account in the approximate amount of \$754. Applicant disputes this account. The bill stems from his 2014 ambulance ride from the rim of the Grand Canyon to a hospital about 70 miles away. The ambulance service refused to process the bill through Applicant's medical insurance company. Applicant even had a representative from his insurance company call the ambulance company to assist them with the claim, however, the ambulance company refused to process the claim through insurance. Applicant is disputing this account and he will not pay it until the claim is processed through his medical insurance. (Tr. 38-41)

The charged-off loan debt alleged in SOR ¶ 1.d, in the amount of \$30,361, is currently being negotiated by Applicant with the creditor. Applicant obtained this loan to sustain his living expenses and to also repair the air conditioning in his home while he was unable to work. Similarly to the loan alleged in SOR ¶ 1.a, Applicant is presently working with the creditor to establish either a repayment plan, or a settlement amount. Applicant recently provided his financial information to the creditor and is waiting for a response. (Tr. 41-44)

SOR ¶¶ 1.e, and 1.f, are unpaid credit card accounts with the same creditor, in the total amount of \$5,271. Applicant stated these credit cards were used for living expenses during the time his income was reduced. As of the date of the hearing,

Applicant had not yet contacted the creditor because he is only able to pay about \$200 per month toward his delinquent debt. Applicant is working to resolve one delinquent account at a time. It is his intention to contact the creditor when Applicant is in the position where he can start making monthly payments to this creditor. (Tr. 46-47)

SOR ¶ 1.g alleges a delinquent account referred for collection in the amount of approximately \$4,812. Applicant stated the collection creditor reduced the outstanding balance to approximately \$1,100. Applicant made monthly payments on this account until the debt was fully resolved. Applicant provided documentation of his monthly payments and the final resolution of this account. (Tr. 44-46; AE C)

SOR ¶ 1.h alleges a delinquent account referred for collection in the amount of approximately \$3,168. Applicant stated the collection agency has sold this account to another unknown collection agency. Applicant is currently in the process of determining where this account is being serviced. As of the date of the hearing, this debt had not been resolved. (Tr. 45-46)

Applicant stated that a medical debt alleged in SOR ¶ 1.i, in the amount of \$68, was paid in full. He submitted documentation post-hearing showing that this account was satisfied. (AE B)

Applicant completed a security clearance application (SCA) in May 2016. He fully disclosed his financial delinquencies on the application, as required. (GE 1) Applicant stated his financial difficulties originate from a single aberration, his catastrophic illness he suffered while he was on vacation in the Grand Canyon in 2014. Applicant's intention is continue resolving his delinquent debts to the best of his ability. In order to prevent this financial medical predicament from happening again, Applicant opened a health savings account (HSA) and has \$150 weekly deposited into his HSA. Applicant also received credit counseling while he was in the process of filing his Chapter 13 bankruptcy.

## **Policies**

When evaluating an applicant's national security eligibility, 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 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. 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. Directive ¶ E3.1.15 says that an “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 applying for national security eligibility seeks to enter 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 Exec. Or. 10865, “[a]ny 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant intended to file for Chapter 13 bankruptcy, but the case was never filed. The SOR alleges nine delinquent accounts totaling over \$53,000. The above disqualifying conditions apply.

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, or 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant provided evidence (AE B, C) to show that he has resolved, or paid, some of his delinquent debts. (SOR ¶¶ 1.b, 1.g, and 1.i.) He is currently in the process of working with his creditors to settle, or arrange payment plans, for his remaining delinquent accounts. His financial problems stem from a catastrophic illness he suffered in 2014, which is a situation beyond his control. Applicant opened an HSA to prevent this financial quandary in the future in the event another family member should suffer a medical crisis. There is sufficient evidence to conclude Applicant has acted responsibly under the circumstances. Applicant's history of addressing his financial issues over time demonstrate that he is reliable and uses good judgment. I find AG ¶ 20(a) and (b) apply.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has not incurred additional delinquent debts. He participated in financial counseling. While he has unresolved SOR debts remaining, Applicant has demonstrated a good-faith effort to continue resolving his delinquent accounts. AG ¶ 20(c) and (d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant experienced financial problems after he suffered a medical crisis in 2014, and he accumulated significant debt. He has taken responsible action to resolve his debts. While he has

unresolved SOR debts remaining, he credibly testified at hearing and there is sufficient evidence to show that he is committed to resolving them.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.i: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

Pamela C. Benson  
Administrative Judge