



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03622

**Appearances**

For Government: Tara R. Karoian, Esq. Department Counsel  
For Applicant: *Pro se*

10/10/2018

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**Decision**

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MURPHY, Braden M., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 2, 2017. On November 6, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations.<sup>1</sup>

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<sup>1</sup> The action was taken under Executive Order (Exec. Or.) 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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

Applicant answered the SOR on November 29, 2017. He elected to have his case decided on the written record in lieu of a hearing. On February 28, 2018, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on March 28, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's undated response to the FORM was received by the Defense Office of Hearings and Appeals on May 2, 2018. He did not object to the Government's evidence. Applicant's FORM Response included an updated Answer, marked as Applicant's Exhibit (AE) A, as well as three new documents or groups of documents, marked AE B through AE D.<sup>2</sup> Those documents are admitted without objection. The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, 1.e, 1.g, 1.h, and 1.k, and he denied SOR ¶¶ 1.c, 1.d, 1.f, 1.i, 1.j, 1.l and 1.m, all with brief explanations. He provided no documents with his Answer. I have incorporated his admissions and other statements into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 30 years old. He and his wife have been married since 2011. They have one son. Applicant has been employed as a technician with a defense contractor at a naval shipyard since February 2011. (Item 3)

Applicant did not disclose any delinquent debts on his SCA. However, he pulled his credit report before his September 2017 background interview, and brought updated documentation to his interview about his efforts to pay some of his debts. (Item 6) The Government's evidence also includes credit reports from April 2017 and October 2017, which establish the debts alleged in the SOR.<sup>3</sup>

Several of the debts are medical debts for Applicant's wife and son. Applicant provided proof that several of the accounts had been paid. This includes SOR ¶¶ 1.a (\$86), 1.b (\$504), 1.c (\$97), 1.d (\$50). (Item 6, Att. 2b-2.g) One medical debt, SOR ¶ 1.e, (\$300) is not yet paid.

The largest debt in the SOR is Applicant's \$234,286 mortgage, alleged to be \$13,733 past due. (SOR ¶ 1.l) Applicant denied the allegation, and said that his mortgage had been modified. He provided documentation that the mortgage was current as of May 1, 2018. The current principal was about \$220,000, and the next payment was for \$1,616.

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<sup>2</sup> With his FORM Response, Applicant also included a copy of the Government's FORM, as well as the summary of his personal subject interview, and all the attachments to it (Item 6, and Attachments 2A-2G, Attachment 3, and Attachment 4) These documents have not been relabeled.

<sup>3</sup> SOR ¶¶ 1.a through 1.i are found on Item 4. SOR ¶¶ 1.b through 1.l are found on Item 5.

SOR ¶ 1.f is a \$1,331 debt placed in collection by a private lender. Applicant said that the debt was paid off through garnishment, but he provided no corroborating documentation. SOR ¶ 1.g (\$762) is a debt in collection to a credit card company or a bank. Applicant has set up a payment plan for the debt. (AE C) SOR ¶ 1.h (\$3,115) is a debt placed for collection. It remains pending, though he is looking into resolving it.

SOR ¶ 1.j (\$2,273) is a past-due debt to a bank. Applicant stated that the debt is to a home furnishing company and provided documentation showing that the debt was paid off in February 2016. (Item 6, Att. 3) SOR ¶ 1.k (\$1,833) is a debt that has been charged off. Applicant has made several payments towards the debt. (Item 6, Att. 4)

SOR ¶ 1.l (\$353) is a debt to a gas company. Applicant denied the debt, saying it has been paid off. He provided no corroborating proof. SOR ¶ 1.m (\$346) is a debt to a credit union. He denied the debt and said it is current but provided no proof.

Applicant stated that he was not aware of his credit issues until his background interview because his wife handled the finances. He also noted that they filed for Chapter 13 bankruptcy in late November 2017 (after he received the SOR). He did so “to seek financial help,” specifically with medical debts. Other than that general statement, Applicant gave no indication that he had been through credit counseling. He asserts that he will be more alert to his credit report so debts are taken care of more promptly. (Answer) With his FORM Response, he did not provide proof that he had filed Chapter 13 bankruptcy, nor did he provided updated information of the status of the case. Despite prompting from Department Counsel,<sup>4</sup> he did not provide updated information about his current financial situation.

### **Policies**

It is well established that no one has a right to a security clearance.<sup>5</sup> As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”<sup>6</sup>

The adjudicative 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(a),

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<sup>4</sup> FORM, P. 3 (“Financial stability is typically shown through a detailed budget outlining [an] applicant’s monthly debt to income [ratio] establishing that [an] applicant is able to keep up with his or her current financial obligations and/or steady payments towards one’s debts (e.g., cancelled checks, bank statements, statements from creditors).”).

<sup>5</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

<sup>6</sup> 484 U.S. at 531.

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, 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. 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 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.

## **Analysis**

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

The security concern relating to the guideline for 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. . . .

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.<sup>7</sup>

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<sup>7</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns: ¶¶ 19(a) “inability to satisfy debts” and (c) “a history of not meeting financial obligations” are applicable, given the record evidence of Applicant’s delinquent debts.

The financial considerations 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, 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;
- (d) the individual initiated and is adhering to 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 did not provide sufficient evidence to fully apply any of these mitigating conditions. He admitted some of the debts in the SOR and denied others. Applicant gets some credit for being proactive at the time of his background interview to show action to resolve his debts. He provided some documentation to show that several of his debts are paid, being paid, or are now current. In particular, his medical debts are resolved, and he has modified his home mortgage and brought it current. However, he also filed for Chapter 13 bankruptcy in November 2017, after receiving the SOR, and he provided no documentation or updated information about his current financial stability with his FORM Response.

Particularly since he recently filed bankruptcy, Applicant’s debts are ongoing. He provided insufficient evidence from which to conclude that his financial issues are unlikely to recur and no longer cast doubt on his current reliability, trustworthiness, and good judgment. He did not establish that AG ¶ 20(a) should apply. AG ¶ 20(c) also does not

yet apply, since he provided insufficient evidence of credit counseling or that his financial issues are being resolved or are under control.

Applicant did not give enough indication of how his debts occurred to warrant application of AG ¶ 20(b). He stated that his ignorance of his financial situation was due to the fact that his wife pays the bills. But he gave no indication that the debts are due to conditions beyond his control.

Applicant gets some credit under AG ¶ 20(d). He provided documents to his interviewer about some of his debt payments, and provided proof of some updated payments with his FORM Response. However, he filed bankruptcy after receiving the SOR. Bankruptcy may be a way to achieve a fresh financial start, but it is not a substitute for a track record of steady payments towards one's debts. He did not establish that AG ¶ 20(d) should fully apply.

AG ¶ 20(e) potentially applies to debts Applicant has denied. Applicant provided proof that the medical debts at SOR ¶¶ 1.c and 1.d are paid. His home mortgage (SOR ¶ 1.i) was modified and is current. SOR ¶ 1.j was paid over two years ago. AG ¶ 20(e) applies to these debts.

### **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(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(a), 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. While he established that several of his debts have been or are being paid, he also recently filed for bankruptcy, and the current status of the bankruptcy and his overall financial situation is not known. He did not establish that

his financial issues are unlikely to recur or no longer cast doubt on his current judgment, trustworthiness, and reliability. Put simply, it is Applicant's burden to mitigate the security concerns shown by his various ongoing debts, and he did not meet his burden. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the financial considerations security concerns.

### **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-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i-1.k:	For Applicant
Subparagraphs 1.l-1.m:	Against Applicant

### **Conclusion**

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

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Braden M. Murphy  
Administrative Judge