



# Applicant for Security Clearance

## Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

07/03/2018

## Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant refuted the security concerns under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

## Statement of the Case

On December 12, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, and 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 December 27, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's file of relevant material (FORM), and Applicant received it on March 23, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant submitted a timely response and his exhibits are marked as Applicant's Exhibits (AE) A through G. There were no objections by Applicant or Department Counsel and all Items and exhibits are admitted into evidence. The case was assigned to me on June 11, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations in ¶ 1.a through 1.m and denied the allegation in ¶ 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 82 years old. He was born in Iraq, moved to the United Kingdom in about 1978 and then to Canada in 1982. He moved to the United States in 1994 and was naturalized in 1999.<sup>1</sup>

Applicant earned a bachelor's degree in Iraq in 1958. He married in 1968 and has three grown children. He worked for the United States Government from 2005 to 2011. From 2011 to the present, he has been employed at a consulting company that has federal contracts. He has also been employed by a federal contractor since May 2017.<sup>2</sup>

Applicant's admissions and credit reports from May 2017 and December 2017 corroborate the delinquent debts alleged in the SOR.<sup>3</sup> Applicant attributed his financial problems to insufficient income. His debts began becoming delinquent in approximately 2014. The SOR alleges 13 delinquent debts that include numerous credit cards and consumer accounts totaling approximately \$71,243.<sup>4</sup>

During Applicant's May 2017 counterintelligence interview, he told the investigator that his personal finances were "not bad."<sup>5</sup> He was getting assistance from his son because he did not receive enough income from his Social Security benefits. His son gives him about \$1,000 a month. He explained he did not have enough money to pay his debts. He had hired a debt consolidation company to assist him in negotiating settlement agreements with his creditors. Applicant did not disclose any of his delinquent debts in his security clearance application (SCA) because he believed he did not have to because

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<sup>1</sup> Item 3.

<sup>2</sup> Item 3.

<sup>3</sup> Items 2, 3, 4, 5, 6.

<sup>4</sup> Items 4, 5, 6.

<sup>5</sup> Item 6.

he was engaged in negotiations to establish payment plans through the debt consolidation company.<sup>6</sup>

In Applicant's answer to the SOR, he indicated that through his attorney he was negotiating monthly installment payments to settle each debt. For the delinquent debt alleged in SOR ¶ 1.c (\$3,886) he provided a copy of a check from December 2107 for \$29; for the debt in ¶ 1.d (\$1,609) a copy of a check was provided for \$50 from December 2017; and for the debt in ¶ 1.m (\$7,047) a copy of a check was provided for \$145 from November 2017.<sup>7</sup>

In Applicant's response to the FORM, he provided an April 2018 letter from his attorney confirming there are payment plans for the debts in SOR ¶¶ 1.c, 1.d, and 1.m. No documents were provided to show Applicant has made additional payments beyond the initial payments noted above.<sup>8</sup> Documents provided show that Applicant was offered settlement agreements for the following debts: SOR ¶ 1.a (current balance owed \$11,464-settlement offer \$4,012, expired February 15, 2018); ¶ 1.k (balance is \$1,203-settlement offer \$421 or monthly payments of \$70); ¶ 1.f (\$9,226-settlement offer \$4,152 or monthly payments of \$173); and ¶ 1.h (balance \$9,729-settlement offer \$4,378 or monthly payments of \$182). Applicant did not provide documents to prove that he has accepted the settlement offers and made payments toward resolution of the those debts, or on any of the other debts, except as previously noted. No information was provided regarding the remaining debts alleged in the SOR. Applicant did not provide information about his current finances or budget.<sup>9</sup>

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, 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(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

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<sup>6</sup> Item 6.

<sup>7</sup> Item 2.

<sup>8</sup> The debts in SOR ¶¶ 1.a and 1.c have the same collection company. Applicant's answer to the SOR stated he is making payments on SOR ¶ 1.c.

<sup>9</sup> AE B, C, D, E, F, G.

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. Directive ¶ E3.1.15 states 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.

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 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. 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has 13 unresolved delinquent debts totaling more than \$70,000, which he is unable or unwilling to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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's history of not meeting his financial obligations began in 2014. He attributed his financial problems to limited income. After completing his SCA, he made some effort to address three of his delinquent debts, but it was minimal. He provided proof of one payment to three creditors. He also provided documents to show he has been offered settlement agreements by some creditors, but did not show he has acted upon the offers or made any payments. He has not provided evidence of his current finances,

and his ability to make the settlement payments. Without additional information, I am unable to conclude his financial problems were beyond his control. There is no documentation to substantiate his participation in the settlement agreements or proof that he made consistent payments to the three creditors. Thus, I cannot find he has acted responsibly under the circumstances. There is insufficient evidence to conclude that his behavior is unlikely to recur. Applicant's failure to pay his financial obligations casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(b) do not apply.

Applicant stated that he had engaged a debt consolidation company and later an attorney to help him resolve his financial problems. There is insufficient evidence to conclude there are clear indications that his financial problems are being resolved or under control because he did not provide evidence he has followed through on payments to his creditors. Although he made a payment to three creditors and has settlement offers from others, the evidence does not support a finding that he is adhering, in good faith, to efforts to repay overdue creditors. AG ¶¶ 20(c) and 20(d) do not apply.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant stated that he did not disclose delinquent debts on his SCA because he believed he did not have to because he was engaged in negotiations to establish payment plans through a debt consolidation company. I find there is insufficient evidence to conclude that Applicant deliberately failed to disclose his past debts, but rather believed he was not obligated because he was addressing them. I find AG ¶ 16(a) does not apply. I find for Applicant under this guideline.

## 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(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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 82 years old. He failed to provide sufficient evidence to show he has been making payments on his delinquent debts or is participating in settlement agreements. Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. He refuted the Guideline E, personal conduct 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.m:	Against Applicant
Paragraph 2, Guideline E:	FOR Applicant
Subparagraph 2.a:	For 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 to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge