



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 18-00034
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

06/29/2018

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On January 19, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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.

On January 26, 2018, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on March 1, 2018. Applicant received the FORM on March 12, 2018. Applicant had 30 days to submit a response to the FORM. He did not submit a response to the FORM. On May 4, 2018, the FORM was forwarded to the Hearing Office and assigned to me on June 27, 2018. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

## **Findings of Fact**

Applicant is a 38-year-old employee of a DOD contractor since July 2014. This is his first time applying for a security clearance. He has a high school diploma and some college credits. He is twice divorced and has no children. (Item 3)

On August 8, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing. (Item 3) A subsequent background investigation revealed Applicant had ten delinquent debts which were delinquent in the approximate amount of \$38,462. The debts include a student loan with a balance of \$24,851 that is delinquent in the amount of \$1,382 (SOR ¶ 1.a: Item 5 at 1); a charged-off credit union account in the amount of \$13,906 (SOR ¶ 1.b: Item 5 at 2; Item 6 at 3); a charged-off automobile loan in the amount of \$11,785 (SOR ¶ 1.c: Item 5 at 2; Item 6 at 3); a student loan account with a balance of \$7,738 that is delinquent in the amount of \$928 (SOR ¶ 1.d: Item 5 at 2); an \$887 cable television account that was placed for collection (SOR ¶ 1.e: Item 5 at 2); a \$676 delinquent credit card account that was placed for collection (SOR ¶ 1.f: Item 5 at 2; Item 6 at 3); a \$1,335 judgment filed against Applicant in June 2015 (SOR ¶ 1.g: Item 6 at 3); a \$6,344 debt owed to a former landlord that was placed for collection (SOR ¶ 1.h: Item 6 at 8); a \$1,039 cable television account that was placed for collection (SOR ¶ 1.i: Item 6 at 8); and a \$180 electric utility account that was placed for collection (SOR ¶ 1.j: Item 6 at 8).

In his Response to the SOR, Applicant denies the debts alleged in SOR ¶¶ 1.g and 1.i. He admits the remaining allegations in the SOR. Applicant claims his financial problems were caused by his divorce which was effective on January 4, 2016. Applicant was going to file for bankruptcy, but decided against filing because he was concerned about the impact on his ability to buy a house. He intends to clean up his credit. He provided a copy of his divorce decree. He did not provide evidence of any payments or plans to pay the delinquent debts alleged in the SOR.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 access 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 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 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 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 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (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.

All of the above disqualifying conditions apply because Applicant incurred ten delinquent accounts, an approximate total of \$38,462.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The concern under Financial Considerations is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities.

The Government's substantial evidence and Applicant's admissions raised security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

- (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 financial counseling service, and there are clear indications 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.

None of the mitigating conditions apply. Applicant's financial problems are ongoing. He has provided no evidence of the steps he is taking to resolve the delinquent accounts. Although Applicant's financial situation was adversely affected by his divorce, the divorce occurred over two years ago. Since that time, Applicant has made no effort to resolve his delinquent accounts even though he has been fully employed since that time. The security concerns raised about Applicant's financial situation are not mitigated.

### **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 Applicant's employment history. I considered that his divorce had an adverse impact on his finances. However, Applicant has been employed full-time since the divorce in January 2016. He has not demonstrated that he is taking steps to resolve

his delinquent debts and improve his financial situation. The security concerns raised under financial considerations are not mitigated.

### **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.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge