



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



In the matter of: )  
)  
) ISCR Case No. 17-03664  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

10/18/2018  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On January 26, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 on June 8, 2017.

Applicant answered the SOR on February 26, 2018, and requested a hearing before an administrative judge. The case was assigned to me on May 14, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2018. I convened the hearing as scheduled on July 26, 2018. The Government offered

exhibits (GE) 1 through 4.<sup>1</sup> Applicant testified and offered Applicant Exhibits (AE) A and B. There were no objections to any exhibits offered, and all were admitted into evidence. The record was held open until August 20, 2018, to allow Applicant to submit additional documents, which he did. They were marked AE C through F and admitted into evidence without objection. DOHA received the hearing transcript on August 6, 2018.

### **Procedural Issues**

Department Counsel withdrew all of the personal conduct allegations in SOR ¶ 2.<sup>2</sup>

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b and 1.g through 1.k. He denied the allegations in SOR ¶¶ 1.a and 1.c through 1.f. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. He graduated from high school in 2006 and enlisted in the Army reserves shortly thereafter. He deployed to Iraq for a year in 2008 in a support role. He was honorably discharged in 2016 in the paygrade E-5. He married in 2008 and divorced in 2014. He has a seven-year-old child from the marriage. He has four other children from relationships. Their ages are six years old, four-year old twins, and a one-year-old child. He cohabitates with the youngest child's mother. Applicant pays child support for all five children, including the one who lives with him.<sup>3</sup>

Applicant pays approximately \$1,394 monthly in child support. Three children are in state A, and two are in state B. SOR ¶ 1.c alleged he was \$660 in arrears on his child support. He explained that when he changed jobs, it took several months for the system in state A to update his new information. He provided proof that his child support payments are current.<sup>4</sup>

Applicant has worked for his present employer, a government contractor, since February 2016. Before then he worked for another federal contractor for four years. He worked for the federal government for about four or five months. He testified that he was unemployed for a period before he deployed to Iraq, but has been steadily employed since his return in 2008. Applicant's annual income is approximately \$60,000. The debts alleged in the SOR are corroborated by Applicant's admission, statements, and credit reports from October 2016 and October 2017.<sup>5</sup>

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<sup>1</sup> Hearing Exhibit (HE) I is the exhibit list and II is the discovery letter. HE III are emails from Department Counsel noting he had no objections to AE C through F.

<sup>2</sup> Tr. 9-10.

<sup>3</sup> Tr. 20-27; GE 1.

<sup>4</sup> Tr. 29-32, 48-50; AE A.

<sup>5</sup> Tr. 27-29; GE 1, 2, 3, 4.

Applicant was interviewed by a government investigator in January 2017. His financial issues were discussed during the interview. He disclosed that he had hired a credit counseling service (CCS) in 2012 to help resolve his financial difficulties. He testified that he has been working with CCS for seven years. The CCS reviewed his credit report and disputed accounts to have creditors verify the validity of the accounts. He told the investigator that he does not use the CCS all the time, but when he does, he pays it \$120 a month. Applicant provided a July 2018 document from the CCS. It listed numerous accounts and the status of each account. It did not specify if any accounts were being paid or if settlements offers were made. Applicant testified that he is currently working with CCS and paying them monthly. He said they are sending letters to creditors to obtain correct information about his accounts and remove accounts from his credit reports. He further stated that moving forward, CCS will advise him which debts are the most serious and give him a monthly assessment. He stated that CCS has provided financial counseling to him.<sup>6</sup>

During the background interview, Applicant was asked to explain significant financial transactions. He told the investigator that in January 2016 he won \$100,000 from a lottery. The taxes on his winnings were \$25,000. His child support was in arrears at the time and money was withheld to pay it. He received about \$70,000. In April 2017, he received a tax refund of approximately \$16,000. The amount was large because he had overpaid the tax on his lottery winnings. He told the investigator that he used the remaining lottery winnings to purchase a truck, pay debts owed to family members, pay a furniture bill, and pay other debts he owed the government.<sup>7</sup>

Applicant provided post-hearing documents to show action he is taking on other debts. Included is a payment agreement for a settlement he reached from a car accident from 2011, when he did not have insurance. The balance owed is \$13,935. Applicant agreed to pay \$75 a month until the balance is paid. He provided a document to show he reached a settlement in small claims court to pay \$215 a month on a settlement agreement of \$2,150. The debt was incurred due to damage to an apartment he rented. The document shows that there is a stipulation to stay the entry of a judgment. If he fails to make the payments, a final judgment will be entered for \$4,500. Applicant showed he has made the monthly payments. He also provided a document noting that he made a payment for a stepdaughter's daycare. Applicant testified that he paid off a credit card and three debts owed to the Veteran Administration. He has some student loans that are deferred.<sup>8</sup>

The charged-off debt in SOR ¶ 1.a (\$13,529) is for a repossessed vehicle that Applicant purchased in 2009. He could not afford it and returned it to the creditor in 2011.

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<sup>6</sup> AE B.

<sup>7</sup> GE 2.

<sup>8</sup> Tr. 76-81; AE C, D, and E. I have not considered for disqualifying purposes any derogatory information that was not alleged in the SOR. I may consider information when making a credibility determination, in the application of mitigating conditions, and in my whole-person analysis.

The original balance was \$22,000. He testified that he received a letter from the creditor in 2011 explaining the vehicle had been sold and he owed the balance. He was unable to pay the balance when it was due. Applicant disputes the amount owed because he believes it should be approximately \$7,000. He did not provide the letter from the creditor or any supporting documents to show the amount of the debt he believes to be accurate. He stated that the CCS has been working for four years to correct the balance. The status of the debt listed by CCS on the document provided is "intervening." Applicant does not dispute he owes the debt, but disputes the balance. Applicant stated that the CCS sent three letters to the creditor. He could not recall the last time letters were sent. He did not provide supporting documents. This debt is not resolved.<sup>9</sup>

The debt in SOR ¶ 1.b (telephone service-\$1,427) has been delinquent since October 2016. Applicant explained he could not afford to pay this debt because he is paying other debts. He stated he plans on paying it in the future. This debt is unresolved.<sup>10</sup>

The debt in SOR ¶ 1.d (\$625) is an account that was charged off in January 2015. Applicant provided a document to show the debt was paid in February 2018.<sup>11</sup>

The debt in SOR ¶ 1.e (\$8,735) is an involuntary vehicle repossession. The last activity on the account was in September 2014. There is no balance listed on the credit reports. Applicant stated he could not afford to make the payments and defaulted.<sup>12</sup> It is unresolved.

The debt in SOR ¶ 1.f is a judgment (\$3,186). Applicant stated he purchased a tires and rims package for a vehicle. He could not afford the payments. He told the creditor he would pay the debt when he was able. He stated he intends to pay this debt after he pays other debts. The Government conceded this debt is the same debt as alleged in SOR ¶ 1.h (\$2,227). The judgment is not paid.<sup>13</sup>

The debt in SOR ¶ 1.g (\$3,821) is for furniture. Applicant does not believe the balance owed is correct. The account was charged off in March 2014. Applicant stated he was working with the CCS to correct the amount owed. He does not know when the CCS sent letters to the creditor. He admitted he made some payments on the debt and returned the furniture. He stated that he knows he owes the debt and said he will pay it. The debt is not resolved.<sup>14</sup>

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<sup>9</sup> Tr. 32-46; GE 3; AE B.

<sup>10</sup> Tr. 46-48; GE 4.

<sup>11</sup> Tr. 50-53; GE 4; AE F.

<sup>12</sup> Tr. 53-55; GE 3.

<sup>13</sup> Tr. 55-57; GE 3; AE B.

<sup>14</sup> Tr. 58-63; AE B.

The debt in SOR ¶ 1.i (\$3,044) is a medical debt. Applicant admits he owes this debt, the balance is accurate, and he intends to pay it. He did not have medical insurance when it was incurred. He believes it was sold to a collection agency in 2015. He stated the CCS has contacted the creditor. No other information was provided. It is unresolved.<sup>15</sup>

Applicant admitted he owes the debt in SOR ¶ 1.j (\$1,595). He stated he intends to pay it. It is listed with the CCS. It is unresolved.<sup>16</sup>

The debt in SOR ¶ 1.k (\$606) is a medical debt owed from 2012. Applicant agreed he owes this debt, it is with the CCS, and he intends to pay it in the future. It is unresolved.<sup>17</sup>

Applied testified that he is prioritizing his delinquent debts. Three months ago he paid the debt in SOR ¶ 1.d. He was then behind three months in his car payments, so he had to catch up, which he did. His plan is that he will speak with the CCS and it will do an assessment of his debts. Based on the largest debt, it will attempt to negotiate a payment agreement.<sup>18</sup>

Applicant testified that his mother recently passed away, and he took over the payments of her 2013 vehicle loan. His grandmother cosigned the loan. He decided to keep the car and make the payments for his grandmother. She does not drive. He has made one payment of \$400.<sup>19</sup>

Applicant testified that he has about \$200 to \$300 remaining each month after he pays his bills. He does not own any real property. He has a budget. He received about \$8,000 refund for his federal income taxes. He said he gave the money to his mother who had helped him pay his debts. He does not have any credit cards. He owes about \$2,000 for student loans that are in deferred status. Applicant testified that he intends to pay his debts and is moving forward so he can purchase a house. He recently completed a certification program that may increase his income. It took two weeks to complete, and he has submitted the cost to be reimbursed through the GI Bill. He explained he will also receive a stipend for that two weeks, which will help his financial situation.<sup>20</sup>

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<sup>15</sup> Tr. 63-66; AE B, GE 3.

<sup>16</sup> Tr. 66-67; GE 3; AE B.

<sup>17</sup> Tr. 67-68; GE 3; AE B.

<sup>18</sup> Tr. 66-72.

<sup>19</sup> Tr. 72-76.

<sup>20</sup> Tr. 77-90.

## Policies

When evaluating an applicant's national security eligibility, 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 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 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; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that began accumulating in 2012. 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;

(d) the individual initiated and is adhering to a 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 has numerous delinquent debts that remain unresolved. Although he has worked with a CCS for years, he did not provide evidence that he is paying his delinquent debts or has reached settlements on accounts he admits he owes. His debts are numerous, recent, and there is insufficient evidence to conclude future financial problems are unlikely to recur. Applicant's conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant did not attribute his financial problems to anything specific, but it appears he is underemployed, which is a circumstance possibly beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant sought help with a CCS in 2012, which shows he made an attempt to address his financial problems. However, it has been six years, and there is insufficient evidence to show that settlements have been reached or that Applicant is paying the debts he admits he owes. Applicant provided a list of his debts that are being managed by the CCS, but no information beyond that. In addition, it appears Applicant won the lottery in January 2016. He used the money to purchase a truck and pay debts. AG ¶ 20(b) partially applies.

Applicant presented evidence that his child-support payments are current. AG ¶ 20(d) applies to this debt. The debt in SOR ¶ 1.d was charged off in 2015. Applicant did not pay it until February 2018. I cannot find this falls within the application of AG ¶ 20(d). Applicant showed that he is working with the CCS, but there is insufficient evidence that in the last six years substantial progress has been made toward resolving, settling or paying his delinquent debts. I cannot find there is a good-faith effort to repay his overdue creditors or otherwise resolve his debts. Although Applicant has paid other debts not alleged in the SOR, there is not clear evidence that his financial problems are being resolved or are under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant admitted he owed certain alleged debts, but disputed the balances owed. Although he is working with the CCS and said that they sent letters to the creditors, he failed to provide documents to corroborate his statement or evidence to substantiate the basis of his dispute. There is some evidence he is disputing some debts' balances, but it is insufficient to fully apply AG ¶ 20(e).

## 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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a 30-year-old father of five. He has numerous delinquent debts that are unresolved. Applicant has an unreliable financial track record. Despite winning the lottery and paying other debts, he continues to have financial problems. The record evidence leaves me with serious 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.

## 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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN

## **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