



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



In the matter of:

ISCR Case No. 17-03766

Applicant for Security Clearance

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

06/06/2018

**Decision**

Gregg A. Cervi, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 9, 2016, requesting a Department of Defense (DOD) security clearance. On December 13, 2017, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on January 4, 2018, and requested a hearing before an administrative judge.<sup>1</sup>

The case was assigned to me on February 8, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2018, scheduling the hearing for March 15, 2018. The hearing was convened as scheduled.

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<sup>1</sup> The DOD CAF acted 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant and his father testified, and Applicant's Exhibit (AE) A was admitted into evidence without objection. In a post-hearing submission, Applicant submitted several documents marked as AE B that were admitted without objection.

### **Findings of Fact**

Applicant is a 37-year-old industrial scale modeler for a government contractor. He received his general education degree in 2000, and has some college credit. He honorably served in the U.S. Navy from 2000 to 2009, and is a partially-disabled veteran. He twice deployed in 2004 and 2006. He was married in 2001, separated in 2011 and divorced in 2015. He has three biological children and another child that he has raised as his own as the child's father was incarcerated and does not provide any child support. His ex-spouse has custody of the four children but is unemployed. Applicant has visitation rights for all four children every other week, and provides financial support for all, including voluntary support for the non-biological child.

Applicant was employed by a defense contractor from 2009 to 2013, but was discharged because of a dispute over lost work time and for his refusal to check off work that was not properly completed. He was self-employed from 2013 to 2016 as he tried to start an industrial modeling business, and then rehired by his previous employer. While self-employed, he struggled financially and had significant expenses as a result of his separation and divorce. He does not currently hold a security clearance, but has held one in the past without incident.

The SOR alleges four delinquent debts totaling nearly \$22,000, including child support arrearages, two credit union debts, and a small medical debt. Applicant generally admitted the allegations, and provided extensive explanations and documentation with his Answer to the SOR.

While Applicant was self-employed he earned very little, and was supported by loans from his father and his veteran's administration disability payments. He fell behind in his child-support payments as he was giving money directly to his ex-spouse and buying items for the children when they were with him, but not getting credit for the expenditures with the state child-support enforcement authorities. Once he regained full-time employment, he began making substantial payments toward his child-support obligations, and by February 2018, he was no longer in arrears. He now pays the monthly amount owed through an automatic payment plan and is current on all obligations. The two credit union debts were from a consolidation loan while he was married and a credit card. Prior to the hearing, Applicant was in negotiations with the credit-union on repayment plans, but wanted to ensure he was current on his child-support payments first. Since resolving his child support issues, he has also settled and paid the two credit-union debts and the small medical debt in full.

Applicant uses a credit-monitoring service and is current on all of his debts and expenses. He has saved about \$15,000 toward the future purchase of a home, and has about \$600 in net remainder after payment of monthly expenses.

## Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, 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(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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has had financial problems and incurred delinquent debts following the loss of steady employment and his divorce. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 attributed his financial problems to falling behind on child-support payments and other debts during his separation and divorce, and loss of a steady job in 2013. Once he was rehired, he was able to gain control of his finances and completely satisfy his debts. He provided evidence of actions taken with regard to the SOR debts and his financial status is now good. I believe Applicant's financial management is now under control, and he no longer carries delinquent debts. The likelihood of a recurrence of financial difficulty is low. Applicant's past financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), and (d) are applicable.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

I considered Applicant's testimony, his honorable military service, and documents provided after the hearing. Applicant has shown current financial responsibility and appears to have control of his finances and child support obligations.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
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Subparagraphs 1.a – 1.d:	For Applicant
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### **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge