



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04220

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

**08/29/2018**

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

This case invokes security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 20, 2016. (Item 3.) On January 4, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. (Item 1.) The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on April 26, 2018 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on May 15, 2018. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 8. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the

Government's evidence. He received the FORM on May 29, 2018, and responded to the FORM in a timely manner. The case was assigned to me on August 22, 2018.

### **Findings of Fact**

Applicant, age 36, is single and has one minor child. He graduated from high school in 2000, and received an undergraduate degree in 2004. He has been employed with his current employer since June 2005. He completed a security clearance application on October 20, 2016. He has held a security clearance since 2006. (Item 3)

The Statement of Reasons (SOR) sets forth security concerns under Guideline F (Financial Considerations). It lists eighteen unpaid debts, including student loans, child support arrears, charged-off auto loan, collection accounts, and a judgment totaling about \$118,000. Applicant admits to all allegations. He stated that his wages are being garnished for child support. (Item3)

Applicant disclosed his financial problems on his SCA. In late 2014, he loaned a friend money for doctor and lawyer bills, but was never repaid. He took out several pay-day loans. The pay-day loans were automatically deducted from his wages and that started a cycle of debt. He used credit cards to pay his bills. He never had sufficient funds to pay his bills. His car was repossessed. In his SCA, he stated that he tried to use a credit counseling service, but he did not have the money for the monthly fee. (Item 4).

In 2016, Applicant's financial problems were exacerbated when he was court ordered to pay child support for his child who was born in 2014. His wages were garnished. He and his girlfriend had an informal agreement and he paid money to the mother of the child since the child was born, but later she claimed that was not true. He disclosed this to his FSO and on his SCA. (Items 3 and 8)

Applicant told the investigator during his 2017 subject interview that he regrets his poor financial decisions that led to these issues. He intends to pay his debts. He confirmed that he would file a Chapter 13 bankruptcy petition. (Item 4) He noted that he did not have the money for the retainer fee. He also disclosed on his 2016 SCA that he would file for bankruptcy.

At the end of June 2018, Applicant responded to the FORM stating that he had retained a bankruptcy attorney. He added that they were in the process of gathering the necessary paperwork to file.

Applicant's monthly gross pay is about \$6,000. His child support is \$1,200 a month; student loan garnishment is \$43; and he has two loans from his employer that amount to about \$400. He has a net monthly remainder of \$530.

### **Policies**

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts remain unresolved.

AG ¶ 20(b) is not established. While Applicant loaned money to a friend, he did not receive any of his money. He took out pay-day loans to help his friend. It may have been a condition beyond his control that he was not repaid, but he did not act responsibly. He borrowed money and put himself in debt to give money to a friend. This was not good judgment.

AG ¶ 20(c) and 20(d) are not established. Applicant presented no documentary evidence of progress in resolving his debts or that his intention to file Chapter 13 bankruptcy since 2016 has actually occurred. He tried to consolidate his debts but did not have sufficient income. While filing for bankruptcy is a legitimate means to resolve his debts, he has promised to do so since 2016 and reaffirmed the intention during his 2017 interview. He responded to the FORM with the name of a bankruptcy attorney, but provided no filing date. They were still gathering paperwork. He has not provided sufficient documentation concerning the bankruptcy. His wages are garnished for child support, but that is only one part of this financial picture. His financial problems are not under control., and he has not established good-faith efforts to resolve his debts.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.r. against Applicant.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating the scant evidence he provided in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. He intends to use bankruptcy to resolve his debts, but he has had that intention since 2016; the Chapter 13 is still not filed. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a-r:                      AGAINST APPLICANT

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch  
Administrative Judge