



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



In the matter of: )  
)  
) ISCR Case No. 17-04271  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

11/28/2018  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On January 19, 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. 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 February 23, 2018, 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 April 2, 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 did not submit a response to the FORM or object to the Government's documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on June 29, 2018.

### **Findings of Fact**

Applicant denied all of the SOR allegations and provided explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He is a high school graduate and has been taking college classes since 2017, but has not earned a degree. He married in 2000 and divorced in 2010. He has an 18-year-old child from the marriage. Applicant served in the Marines from 1999 until 2007, when he was honorably discharged in the paygrade E-5. He stated in his SOR answer that he was in the process of reenlisting in the Marine Corps Reserve.

Applicant completed a security clearance application in April 2017. In July 2017, he was interviewed by a government investigator. He attributed his financial difficulties to periods of unemployment. Applicant was unemployed from January 2012 to January 2013; April 2013 to October 2013; and April 2014 to August 2014.<sup>1</sup>

Applicant's admissions on his security clearance application, statement to the government investigator, answer to the SOR, and credit reports from February 2017 and June 2017 corroborate the six SOR allegations.<sup>2</sup>

Applicant acknowledged the debt owed to Capitol One (\$23,700) alleged in SOR ¶ 1.a. He stated in his SOR answer that he fell behind on payments when he lost his job. He acknowledged he is still behind, but he has been making consistent payments since January 2017. He provided documentation to corroborate 13 payments since then, although some were for different amounts. This debt is being resolved.<sup>3</sup>

Applicant acknowledged the debts in SOR ¶¶ 1.b (\$8,812) and 1.d (\$1,559) owed to the same creditor. He told the investigator he got behind when he was unemployed, but he continued to make payments. He stated in his answer to the SOR that he makes a combined payment towards the debts. He provided proof of payments and a letter from the creditor with a settlement offer.<sup>4</sup> These debts are being resolved.

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<sup>1</sup> Items 2, 3, 4, 5, 6.

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

<sup>3</sup> The months are from January 2017 until February 2018.

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

Applicant acknowledged he fell behind on his child support payments as alleged in SOR ¶ 1.c. He provided documents to show he is making payments, but is still behind. His child turned 18 in March 2018, and the support order was scheduled to terminate. He stated in his SOR answer that he intended to continue to make payments until he satisfied the arrearage.<sup>5</sup> The debt is being resolved.

Applicant denied the debt alleged in SOR ¶ 1.e owed to a collection company for a cell phone account. He acknowledged the debt to the government investigator in July 2017. He said he attempted to contact the creditor, but was unsuccessful. In his SOR answer, he stated that he would continue to attempt to resolve the debt.<sup>6</sup> The debt is being resolved.

Applicant denied the debt in SOR ¶ 1.f (\$339) owed to the Veterans Administration, stating it was paid in March 2018. This debt is listed as being an overpayment by the creditor. The June 2017 credit report reflects the collection account was paid and the balance is zero.<sup>7</sup> The debt is resolved.

In Applicant's answer to the SOR, he stated that through his service in the Marines and continued support to the Federal Government, he has exhibited his loyalty, good judgment, reliability, and trustworthiness. He understands the reasons why being financially responsible is important. He stated he is taking the necessary steps to resolve his financial issues.<sup>8</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 information about the person, past and present, favorable and unfavorable, in making a decision.

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

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

<sup>7</sup> Items 5, 6.

<sup>8</sup> Item 2.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>9</sup>

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 had several debts that became delinquent when he was unemployed and unable to resolve. 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;
- (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.

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<sup>9</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant got behind on payments for some accounts when he was unemployed. He did not ignore his debts, but continued to make payments on the accounts, although not always the full amount in some instances. He is resolving his debts. There is sufficient evidence to conclude that his financial problems are unlikely to recur and do not cast on his current reliability, trustworthiness, and good judgment. His unemployment was beyond his control. He acted responsibly by continuing to make payments on the debts. AG ¶¶ 20(a), 20(b), and 20(d) apply to the debts alleged in SOR ¶¶ 1.a through 1.e.

Applicant disputed that he owed the debt in SOR ¶ 1.f. The credit reports support the debt was paid and there is a zero balance. AG ¶ 20(e) applies to this debt.

### **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 37-year Marine veteran. He experienced financial difficulties during long periods when he was unemployed. He made payments to his creditors, but not the full amount during those periods, demonstrating that he did not ignore his debts. He continues to resolve past-due debts. Although he has not made payments on the debt in SOR ¶ 1.e, I am confident that he will contact the creditor and rectify the debt. He understands the importance of acting fiscally responsible. He is addressing all of his delinquent accounts. At this juncture, I do not believe Applicant's financial issues rise to the level of raising security concerns. He has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability

for a security clearance. For all these reasons, I conclude Applicant mitigated 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:	FOR APPLICANT
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Subparagraphs 1.a-1.f:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge