



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



In the matter of: )  
)  
) ISCR Case No. 18-00234  
)  
Applicant for Security Clearance )

**Appearances**

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

07/24/2018

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant has mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 27, 2015. On February 16, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR on March 23, 2018, denying all of the SOR allegations with explanations. He stated that he sold a house in state A in April 2014 for \$280,000 and the mortgage pay-off was only \$214,000. He was moving to state B and claims that he directed the mortgage bank to pay off the creditors listed in the SOR, providing names, account numbers and addresses. Applicant also requested a hearing

before an administrative judge. The case was assigned to me on May 14, 2018. On May 24, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 12, 2018. I convened the hearing as scheduled.

The Government's Exhibits (GE) 1-3 were admitted without objection. At the hearing, Applicant testified but submitted no documents.

### **Findings of Fact<sup>1</sup>**

Applicant is 57 years old. He graduated from high school in 1979. Applicant has been employed as a missile technician and security specialist for federal contractors since he retired from the Navy in 2010. He served honorably from 1990 to 2010 as a submariner, attaining the rank of petty officer, first class (E-6). Applicant's first marriage was from 1981–1983; second marriage was from 1988 to 1996; third was from 1999 to 2000; and his present marriage commenced in 2011, and it is strained. (Tr. 22) Applicant testified that although he continues to live under the same roof with his wife, the relationship is over. (Tr. 47) It is an economic relationship since she needs his health insurance coverage. Applicant reports one daughter, age 34.

In § 26 of his March 2015 SCA, Applicant disclosed that he owed a delinquent debt on a mortgage of approximately \$240,000, to a bank creditor. Applicant testified that he purchased a house in state A in 2011, obtaining a mortgage to do so. In 2014, he had to move across country for his job in another state. However, his wife refused to sign-off on the sale of their home in state A. (Tr. 19) Applicant deliberately allowed the house to go to foreclosure sale because he was angry at his estranged wife and wanted to punish her, by making sure that if he had nothing, she would also have nothing. (Tr. 46-47) The house sold for \$280,000 and they owed \$214,000 on the mortgage at the time of sale. (Tr. 15)

Applicant testified that he exercised poor judgment in placing his faith in unnamed subject matter experts, who supposedly advised him that the \$66,000 remainder from the sale, would be used to pay all of the debts listed in the SOR. (Tr. 12-14) He claims that he left instructions, along with account numbers, and addresses of creditors, for the mortgage bank to apply the remainder to satisfy these debts. He offered no explanation why the proceeds of the house sale would be used to pay unrelated consumer debts from 2013-2014. Applicant conceded that he had no documents or substantiation showing that he left such instructions. (Tr. 25) Since only \$9,000 to \$10,000 was deposited into his bank account, after he moved across the country, Applicant assumed that the majority of the remainder went to pay off these debts. He produced no truth-in-lending or closing documents. (Tr. 17)

In his March 2018 Answer, Applicant claims that he has been contacting the listed creditors to make payment arrangements "in 12 months or sooner." (Tr. 26,

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's March 27, 2015 Security Clearance Application (SCA).

Answer) Applicant testified that he has made progress and paid off some of the delinquent debts, and he agreed there should be an electronic or paper trail to substantiate this fact. (Tr. 29) I left the record open until June 26, 2018, for Applicant to provide proof of payments. Applicant submitted documents post-hearing including: E-mails, a screenshot of a bank account, and a letter showing that the creditor at SOR ¶ 1.b was paid \$10,594, representing payment in full, on May 2, 2018 (AE A); a June 19, 2018 e-mail indicating that the creditors at SOR ¶¶ 1.a and 1.f would not provide requested documentation concerning his delinquent accounts (AE B); and several pages from an Equifax credit report and bank statement showing that the debt at SOR ¶ 1.f was paid in the amount of \$3,152 in October 2016 (AE C). All were admitted without objection.

The SOR alleges six delinquent debts totaling over \$25,000. Five are charged-off debts, and one placed for collection (SOR ¶ 1.d). Applicant produced post-hearing documents to show that the largest delinquency (SOR ¶ 1.b), a credit-card debt owed to a federal credit union, has been paid in full in the amount of \$10,595 as of May 2, 2018. (AE A) Applicant has also paid off the delinquency (SOR ¶ 1.c), another credit-card debt opened in late 2011, with a balance of \$4,207. (GE 3, Tr. 30) He paid it in full on May 7, 2018. (AE A) Applicant also paid off the debt (SOR ¶ 1.f) charged off in June 2014, in the amount of \$3,152, paid in October 2016. (AE C) He provided evidence that the \$342 debt owed to a telecommunications provider was paid on May 23, 2018 (AE A). The delinquent debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.f, have been paid. Applicant has reached out to the creditor in SOR ¶ 1.a, and he has established a payment plan to make payments online. (AE B)

Applicant needs a security clearance for his job. Applicant's earns \$65,000 per year in salary plus \$800 a month from his navy pension, and \$1,700 from his VA disability. (Tr. 44) He has \$17,000 to \$18,000 in his 401k retirement plan, and his wife recently got a job working for low wages at a restaurant. (Tr. 45) Applicant, has taken financial counseling on base, through the Family Assistance Program. (Tr. 46-47) He blames his wife for his financial predicament since she was unemployed for a long time and refused to cooperate in the sale of their home in state A. (Tr. 46)

### **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, 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and

a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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, Appendix A, ¶ 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. Under Directive ¶ E3.1.15, 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."

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to 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 abuse, 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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following potentially apply here:

- (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.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports and testimony. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>2</sup> Applicant has not met that burden.

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 . . . , 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 non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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<sup>2</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

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

Applicant had to move across the country to follow his job in 2014, and this caused him to have to sell his house in state A. His chronically unemployed wife was estranged and refused to cooperate in the sale. Thus, he followed very poor advice and let the house go to a foreclosure sale. To some extent, these conditions were beyond his control. He testified credibly that he only recently became aware that the SOR debts were not resolved with the proceeds from the sale of the home. He has produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances, albeit only recently.

Applicant has combined annual earnings of almost \$100,000. I trust that he will be able to continue with payments in accordance with his payment plan entered with the creditor in SOR ¶1.a. He produced documents substantiating that the other five delinquencies alleged in the SOR, have now been paid in full. He had financial counseling. Applicant has met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He admits to making some foolish judgment errors in trying to punish his wife, but he has moved past this. The mitigating conditions enumerated above apply.

### **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, Appendix A, ¶ 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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Applicant served on active duty for 20

years without security issues. Most importantly, Applicant has now addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has met his burden of production.

Applicant's finances no longer remain a security concern. There is sufficient evidence to conclude that his financial problems are under control. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has 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

Subparagraphs 1.a through 1.f:              For Applicant

### **Conclusion**

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

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Robert J. Kilmartin  
Administrative Judge