



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



In the matter of: )  
)  
) ISCR Case No. 18-00230  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

12/18/2018

**Decision**

LYNCH, Noreen A., Administrative Judge:

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

**Statement of the Case**

On February 8, 2018, in accordance with the Department of Defense (DoD) Directive 5220.6, as amended (Directive), the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on April 2, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 9, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 9, 2018, scheduling the hearing for November 9, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted. Applicant testified on his own behalf. He submitted Exhibits, which were marked as Applicant Exhibit (AE) A-V, and accepted into the record without objection. At Applicant’s request, I held the record open for additional documents. Applicant submitted four

documents which were marked as AE ( W, X, Y, and Z), and admitted into the record without objection. DOHA received the transcript of the hearing (Tr.) on November 26, 2018.

### **Findings of Fact**

Applicant, age 52, is divorced and has one adopted adult daughter. He served in the United States Army Reserves for 28 years, and was deployed overseas. Applicant obtained his undergraduate degree in 1989 and a master's degree in 1992. Applicant completed his security clearance application on May 16, 2016. He has held a security clearance. (GE 1) He has worked for his current employer since 2016. From 2010 until 2015, Applicant worked abroad. (Tr. 24) He usually had four jobs to support the family. (Tr. 30)

The SOR alleges that Applicant has five delinquent debts in the approximate amount of \$76,000. (GE 2, 3) The debts include a home equity loan, and three collection accounts. Applicant admitted one delinquent debt, which amounts to about \$21,000. He provided explanations for each allegation.

Applicant acknowledged his financial hardship. He takes responsibility and is attempting to correct the issues. (Tr. 14) He does not want to make excuses, but wants to clarify the situation. During the marriage, Applicant's wife was responsible for payment of all bills, and he did not own a checkbook, or a credit card. Applicant was divorced in October 2010. A marital settlement agreement, dated October 12, 2010, required the parties to comply with certain provisions. (AE P) A relevant provision to this case concerns the marital home. Under the terms of the marital settlement agreement, the marital home was to be sold as soon as possible, and the wife shall reside in the marital home until it is sold. Applicant was to pay the mortgage and other costs for the home until the property is sold or one year from date of divorce. Before the divorce, Applicant did not have any financial issues. Applicant's wife agreed to pay the home equity loan and one-half of other expenses. (AE P)

Applicant signed and read the marital agreement, but he explained that he read it quickly before he was off to Germany for work. He did not recall the provision that obligated him to pay the home equity loan until the house was sold and other bills related to the house. (Tr. 35) He stopped paying the mortgage in 2012. He did not think about the house until he returned to the states in 2015. The house was not sold, and the broker would not talk to Applicant. His wife resides in the home, and she pays the mortgage. (Tr. 42) The house was for sale at one point in time, but it was not sold. Applicant stated that his wife does not want to move and that he is enlisting legal counsel to help bring about a sale of the home.

Applicant was candid and open when he stated that he did not understand the marital agreement, but he knows now that he should have been more aware. He apologizes for the mistake. He was not aware of a duty to pay the home equity loan, and he really does not know why. However, as soon as he learned about the financial issues with the SOR, he agreed immediately to pay whatever was necessary to rectify the

situation. He is working two jobs and is making payments on the home equity loan and the collection account. He is using legal means to enforce the sale of the home. Applicant and his ex-wife will use proceeds of the first mortgage to pay whatever debts remain on the home equity loan.

As to SOR ¶ 1.a., Applicant denied this allegation for a home equity loan in the amount of \$47,000, because as part of the marital agreement his wife was to pay the home equity line of credit. He was abroad from 2010 until 2015, and he never was on notice. He contacted the creditor and he was told that he is not the primary borrower on the account and he received no information. His wife still resides in the marital home. He never knew that he was responsible for the home equity loan if the house was not sold. He agreed to begin making payments on the home equity loan in the amount of \$207 until the house is sold. He submitted evidence that he is making payments and is current on the equity loan. (Tr. 44; AE A, B, C, D, W) Applicant had sent his wife various amounts of money to help her pay the mortgage while he was in Germany.

As to SOR ¶ 1.b, a charged-off credit account in the amount of \$5,304, Applicant denied the account as it was an account that he was not aware of. His ex-wife was to have made payments. However, he negotiated a settlement payment. He had already made several monthly payments before the settlement. (AE H, I) The settlement amount was \$2,025. (AE L) He had not been aware of the account before he received the SOR. In fact, he did not have access to the credit card. However, he had agreed to make payments of \$337.50. (AE H, I, J, W) He is current with the payments.

As to SOR ¶ 1.c, a collection account in the amount of \$21,472, Applicant made payments on this account until 2015. He never had access to the credit card. Since learning about the account, he is making payments of \$120 monthly. (AE K, L, M and W)

As to SOR ¶ 1.d, Applicant denied the debt because it has been paid in full. (AE N) It was for electric service while he worked in Germany. He presented documentation that the bill is paid. SOR ¶1.e is a duplicate of 1.d. (AE O)

Applicant paid non-SOR debts that were joint accounts. (Tr. 57) He also took a loan from his thrift savings plan (TSP) to pay other joint accounts. Applicant acknowledged that he has made some mistakes. He and his ex-wife have agreed that proceeds from the purchase of the marital home will go toward the home equity loan. (AE G)

Applicant's annual salary is about \$94,000. He submitted a financial statement. (AE V) Applicant is also working a second job on the weekends at an hourly rate of \$19.95. He has a net monthly remainder of about \$450. Applicant has no current delinquent debts. Applicant also has a Veteran's monthly disability payment. He works with a budget and has made several changes to his life style to cut expenses. (Tr. 96) His credit report does not reflect any collection accounts. (AE Q)

## **Character References**

Applicant submitted awards, training certificates, and recognitions that he has received during his career. He also presented evaluations that reflect successful ratings. (AE R, S, T, U, V) Each character letter attests to his good judgment and professionalism both in the military and civilian world. Applicant performs at a high standard and has always followed protocol.

## **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.

Applicant's debts are the result of circumstances beyond his control. Due to his divorce and the ensuing marital agreement, Applicant had to pay certain amounts under the marital agreement. AG ¶ 20(a) is partially established. Applicant is unlikely to put himself in a similar situation. He is applauded for his good judgement in his career.

AG ¶ 20(b) is established. While Applicant was abroad, he sent money to his wife for the mortgage and he continued to send money after the first year. The house did not sell, and he had little control over that as he was working abroad. He acknowledges that he did not understand, but should have, that he was responsible for continuing payments on the home equity loan. He believed his wife was responsible for that, and he had no notice that he owed any money. He was sincere and credible in his testimony. As soon as it became clear to him that the situation required him to pay the home equity loan and collection accounts, he immediately addressed the issues. He has set up plans and has paid two debts, and settled one. He provided sufficient information that under the circumstances he acted in good-faith and was responsible. He candidly admitted that he made a mistake. He now has a track record of responsible payments.

AG ¶ 20(c) and AG ¶ 20(d) are partially established. Applicant did not receive any formal financial counseling. He is making payments on the home equity loan and has addressed the other debts. He is back in the United States and will take any legal action necessary to have the marital home sold. The proceeds will pay the mortgages. He has no delinquent debts at this time. He is current on his daily expenses. He is adjusting his life style to save money. He has a good job. In fact, he is working two jobs to pay bills.

Applicant met his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.e. for 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 all the evidence in the context of the whole person, including his credibility and openness at the hearing, and his many years of military service, I conclude that Applicant presented sufficient information to mitigate the security concerns raised by his financial indebtedness. Accordingly, Applicant has 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 (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.e:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch  
Administrative Judge