



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



In the matter of: )  
)  
) ISCR Case No. 18--01524  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel  
For Applicant: *Pro se*

08/19/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On September 21, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 or after June 8, 2017. On October 22, 2018, he addressed all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on May 15, 2019.

A notice of hearing was issued on June 5, 2019, setting the hearing for June 12, 2019. Applicant waived his right to 15 days notice of the hearing in order to proceed directly. The hearing was convened as scheduled, during which time the Government offered six exhibits (Exs.), marked as Exs. 1-6. Applicant gave testimony and was given until June 30, 2019, to submit any materials. The transcript (Tr.) was received on June 20, 2019. On June 30, 2019, Applicant offered four documents, which were accepted

without objection as Exs. A-D. Based on the testimony, materials, and record as a whole, I find Applicant mitigated security concerns.

### **Findings of Fact**

Applicant is a 56-year-old senior project manager who has worked in the same capacity for the past decade. He completed high school and attended some college-level courses. Applicant is married with one child, aged 20. He has not served in the U.S. military.

In February 2015, Applicant filed for bankruptcy protection under Chapter 13. It covered approximately \$700,000 in debt. (Tr. 21) This route was initiated as a way to save his home and to lighten Applicant's stress after suffering a heart attack. Despite the bankruptcy protection, he could not make the monthly payments on the plan and he fell about \$33,000 behind on monthly bankruptcy payments. He ultimately decided to terminate the bankruptcy, sell the house, move to a smaller apartment, and then make progress on some of the debts with excess proceeds from the house sale. His bankruptcy petition was dismissed in August 2015. (Tr. 22)

As a result of the bankruptcy dismissal, Applicant remained indebted to several other creditors noted in the SOR at the following allegations:

1.b.i-iii - Three timeshare balances (\$5,142, \$11,300, \$14,486) – Applicant provided a copy of his current Experian credit report indicating that the account at allegation 1.b.iii (\$14,486) was charged off in 2018. No indication of the balance at that time is reflected; he was only told there was no longer any outstanding debt for him to address. He last spoke with the three entities about their statuses about a month after the SOR was issued. (Tr. 29) He was again informed no outstanding debt was owed. Neither of the other two timeshare accounts are represented in the credit report, although he stated they were similarly charged off. (Ex. D at 9; Tr. 28-30)

1.b.iv – This account was for an insurance policy Applicant stated he terminated. (Tr. 32) The balance at issue is for \$2,377. He testified that he was given a refund check after the account was closed, but no documentary evidence regarding either the account closure or the refund could be located before the record closed.

1.b.v – This is for a disputed debt regarding damage to a rental car. (Tr. 33) Since Applicant failed to provide the company with his insurance information, it sought an adverse judgment against him for \$13,999. Applicant has paid nothing on this debt. (Tr. 34) Although Applicant provided no documentation reflecting he disputed the debt, he said he continues to dispute this debt.

Applicant owed a \$41,000 tax debt to the federal government (IRS). That debt originally represented combined taxes owed for Applicant and his wife for the period of 2007-2008. At the time, both spouses were W-2 employees and she had not been having sufficient money withheld from her paychecks to cover her portion of their tax

liability. (Tr. 15) Applicant is unsure if they were filing jointly before 2008. However, when it came time to pay their income taxes, they did not have enough cash reserves to do so. The couple ultimately entered into a repayment agreement with the IRS in early 2018. (Ex. 3; Tr. 16-17)

That agreement has since had other tax year obligations added to its total outstanding balance, such as \$1,000 owed for tax year 2018, \$12,000 for tax year 2015, \$2,000 for tax year 2014, and \$3,900 for tax year 2013. (Tr. 13-15) Payments on the plan started in February 2018 at \$400 a month and rose to \$500 a month in April 2019. Meanwhile, he requested that his tax liability for tax years 2007, 2008, and 2009, or any federal tax liability over 10 years old, be dropped. (Tr. 13) They have made progress reducing this debt. (Tr. 12-13; Ex. B) The balance now owed to the IRS was shown to now be \$26,970 for balances owed for tax years 2017, 2015-2012, and 2010. (Ex. B)

Also at issue is a 2017 state tax liability for approximately \$960. He has a financial arrangement to pay off that balance through monthly payments of \$50. He initiated that plan at the beginning of 2019 with an initial payment of \$300 or \$400. (Tr. 19-20) (Ex. C) The remaining balance owed is \$431.33. (Ex. C; Tr. 20)]

Today, Applicant is living within his means. He has a total monthly net income of about \$9,591, with a monthly net remainder of about \$2,100. (Ex. A) He is generally paying more than the minimum balances on his debts, where applicable (*i.e.* IRS, state, car loan, credit card). He has made reasonable reductions in living expenses, consolidated their needs for vehicles down to only having one car, and focused on saving. Applicant plans to continue paying off the rest of his debt and, to ameliorate the heavy financial burden of renting a home by buying a condo in July 2010. He feels he is now financially on “the right path.” (Tr. 37)

## **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 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. 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 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 any doubt concerning personnel being considered for access to classified

information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant had numerous delinquent debts, an adverse judgment, and outstanding tax obligations. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Four conditions could mitigate the finance related security concerns posed here:

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 person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit 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 heart attack protracted his acquisition of debt and delinquent debt. It seems to be what prompted him to initially file for bankruptcy before the SOR was issued. In filing for Chapter 13 bankruptcy, he chose a legitimate avenue for protection. However, the monthly payments were too high and unmanageable. He abandoned that method and, instead, sold his house, reduced his expenses, and used excess profits from his home sale to begin addressing his the debts at issue.

Of his three timeshares, Applicant showed that he has disposed of the most expensive unit, which represented about half of the debt those timeshares represented. Regarding that particular unit, he was told no outstanding debt was owed. He was told the same thing with regard to the other two timeshares, although he offered no documentation showing they had similarly been charged-off.

Applicant also initiated a repayment plan with the IRS which incorporated all federal income taxes owed over multiple years, the balance of which he has reduced from over \$41,000 to about \$27,000. He continues making payments on that plan and has the resources to do so. Similarly, he has reduced his state tax obligation by more than half, from \$960 to \$431. He will continue to investigate the situation with the rental car judgment and dispute his responsibility for the debt while locating documentation reflecting his insurance plan refund. Taken together, his efforts demonstrate that he is earnestly addressing all of his debts with sufficient success to raise AG ¶ 20(d).

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to

grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 56-year-old senior project manager who has worked in the same capacity for the 10 years. He has attended some college course, is married, and has one grown child. He suffered from a heart attack in late 2014 or early 2015 which led him simplify his life and address his financial issues. His initial method of choice was Chapter 13 bankruptcy, but the monthly payments were too unwieldy and unrealistic.

Ultimately, Applicant decided to downsize and sell his house. The proceeds from that sale have helped fund his more recent repayment measures, while his downsizing has added comfortably to his coffers. He showed one of his three timeshares has been charged-off and been told there is nothing more for him to pay toward that debt. He started addressing his debts to the IRS before receiving the SOR. They have since been consolidated, a reasonable repayment plan has been initiated, and he has made measurable progress in reducing that balance. He has thus far similarly paid more than half of his debt balance to his state.

This process does not demand that an applicant pay all of one's delinquent debts. It does, however, expect an applicant to describe a workable and manageable plan for addressing his debts and to present documentary evidence that such a scheme has successfully been implemented. While there is more to be done toward completely satisfying his debts, Applicant demonstrated that he now has both the income, the motivation, and the ability to pay off these obligations and fulfill his dream of owning a new home. I find that Applicant has mitigated 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
Subparagraphs 1.a-1.d:	For Applicant

### **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 a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge