



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



In the matter of: )  
)  
) ISCR Case No. 19-00909  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

11/18/2019

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 9, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD 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) effective on June 8, 2017.

Applicant answered the SOR on May 20, 2019, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 10, 2019, and the hearing was convened as scheduled on September 26, 2019. The Government offered exhibits (GE) 1-5 and 7-9 (GE 6 was withdrawn as an exhibit because it did not pertain to Applicant), which were

admitted into evidence without objection. The Government's exhibit list was identified as hearing exhibit (HE) I. Applicant testified but did not offer any exhibits at hearing. The record remained open until October 25, 2019, to allow Applicant to submit documentary evidence. He submitted AE A-D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 7, 2019.

### **Findings of Fact**

In his SOR answer, Applicant admitted all the allegations except SOR ¶ 1.j, which he denied. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 42-year-old employee of a defense contractor. He began working at his present job in May 2016. He is a senior consultant. He deployed as a contractor to Afghanistan on two six month rotations in 2009-2010. He has a high school diploma. He married in 2013, has two children from his marriage, and two step-children. (Tr. 6, 18-19; GE 1)

The SOR alleged a dismissed Chapter 13 bankruptcy in 2018, a delinquent state tax debt of \$739 for tax year 2013, a judgment in the amount of \$3,171 filed in March 2016, and seven charged-off or past-due debts (credit cards and consumer debts) totaling approximately \$46,411. The debts are established by credit reports from October 2016, January 2019, and September 2019; Applicant's answers to interrogatories; a court record; a state tax record; and his SOR admissions. (SOR ¶¶ 1.a – 1.j). (AE 2, 4-5, 7-9)

Applicant explained that his financial distress began when he decided to change jobs and move to a different state in 2014. The job he took paid about \$40,000 less than the job he left. Applicant also admitted that he borrowed approximately \$47,000 in personal loans to pay for his wedding in 2013. He defaulted on those loans after about six months, which were then charged off by the lender, and Applicant received an IRS Form 1099-C, cancellation of debt designation. Applicant claimed that he included these cancelled debts on his 2018 federal tax return and paid the associated tax. He did not provide documentation of his tax return to corroborate this assertion. (Note: the three cancelled debts were not alleged in the SOR and I will not use them for disqualification purposes. I may use this evidence as it relates to the applicability of any mitigating conditions and consideration of the whole-person factors). (Tr. 19-20, 34, 38-39, 41-43; GE 2)

Applicant stated that he terminated the Chapter 13 bankruptcy filed in January 2018 after talking with family members and deciding that was not his best solution. In March 2019, a month before the issuance of his SOR, Applicant entered into a payment plan (Plan) with a debt relief company (DRC). Under the terms of the Plan, Applicant is to pay \$693 monthly (through bi-monthly withdrawals from his bank account) and the DRC will negotiate settlements with the creditors included in the plan. Documentation shows that six creditors are in the Plan, including five listed in the SOR (SOR ¶¶ 1.d, 1.e, 1.g, 1.h, and 1.i). One non-SOR creditor is also in the Plan. Applicant provided

documentation showing that he made his monthly payments to the DRC for August and September 2019. Although a “Dedicated Account Agreement” under the Plan is documented, which shows Applicant’s authorization to debit his bank account for payment in March 2019, there is no documentation of any payments to the DRC from March through July 2019. (Tr. 24-25; GE 2; AE A, C)

The status of the SOR debts is as follows:

**State tax debt (SOR ¶ 1.b).** Applicant provided documentation from the state taxing authority showing that he has a zero balance related to his personal state income tax account as of September 2019. This debt is resolved. (Tr. 27; AE D)

**Judgment (SOR ¶ 1.c).** Applicant testified that this judgment was included in the Plan. His documentation does not support this assertion. There is no other evidence showing payment of this judgment. (Tr. 28; GE 2, 4; AE A)

**Credit card debt (SOR ¶ 1.d).** Documentation supports that this debt is included in the Plan, a settlement in the amount of approximately \$14,000 was reached with the creditor, and two payments of \$631 were made towards the settlement amount in September 2019. (Tr. 28; GE 2; AE A, C)

**Credit card debt (SOR ¶ 1.e).** Documentation supports that this debt is included in the Plan. No settlement has been reached and no payments have been made to this creditor. (Tr. 28; GE 2; AE A, C)

**Credit card debt (SOR ¶ 1.f).** Documentation supports that Applicant entered into a separate payment plan with this creditor. Applicant stated that this creditor was unwilling to enter into a formal written settlement agreement, but agreed to take monthly payments from him. Applicant made his first payment of \$200 in October 2019. (Tr. 28-29; AE B)

**Credit card debt (SOR ¶ 1.g).** Documentation supports that this debt is included in the Plan. No settlement has been reached and no payments have been made to this creditor. (Tr. 29; GE 2; AE A, C)

**Credit card debts (SOR ¶¶ 1.h and 1.i).** Documentation supports that these debts are included in the Plan. No settlement has been reached and no payments have been made to this creditor. (Tr. 30; GE 2; AE A, C)

**Credit card debt (SOR ¶ 1.j).** Applicant denied this debt in his answer to the SOR, but he testified that this debt was included in the Plan. His documentation does not support this assertion. There is no other evidence showing payment of this debt. (Tr. 30; GE 2; AE A, C)

Applicant produced a budget as part of his application to the DRC. His monthly residual after all expenses (including his monthly payment under the Plan, but it is unclear if the separate settlement payment of \$200 monthly is included) is \$2. A

separate personal financial statement prepared in March 2019 shows his residual after all expenses and payments (including Plan payments) as \$159. Other than hiring the DRC, Applicant has not received any financial counseling. (Tr. 37; GE 2)

### **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. 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(a), 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.

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.

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 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 about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant filed a Chapter 13 bankruptcy that was dismissed, owed a state tax debt, and had other delinquent debts, which remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;

(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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's debts are recent and, although he resolved his state tax debt and has entered into two payment plans, he has not resolved his remaining debts. He failed to produce evidence showing that recurrence of his financial problems is unlikely. This is of particular concern because Applicant's residual income after all his current financial obligations are paid is such a small amount. AG ¶ 20(a) is not applicable.

Applicant's decision to take a lower paying job and to expend approximately \$40,000 on his wedding were not circumstances beyond his control. Moreover, he did not act responsibly by waiting so long to contract with the DRC and engage his other creditors in an attempt to settle his debts. AG ¶ 20(b) is not applicable.

Applicant did not present evidence of financial counseling. Applicant paid his state tax debt and his Chapter 13 bankruptcy was voluntarily dismissed. Even though he entered into two payment plans, both of those plans are in their infancy and it is uncertain whether Applicant will continue to make his required payments. His track record to date does not support his ability to do so. Additionally, he failed to put forth a good-faith effort by waiting so long to address his debts. Given the unpaid status of the remaining consumer debt, Applicant's financial problems are not under control AG ¶¶ 20(c) does not apply. AG 20(d) has some application. Applicant resolved SOR ¶ 1.a and AG ¶ 20(d) applies to that debt. Applicant resolved SOR ¶ 1.b and AG ¶ 20(g) applies to that 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's federal contractor service, including his two deployments, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient and untimely efforts to resolve his debts. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. (I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.)

### **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:	AGAINST APPLICANT
Subparagraphs: 1.a, 1.b, 1.d:	For Applicant
Subparagraphs: 1.c, 1.e – 1.j:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge