



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



In the matter of: )  
)  
) ISCR Case No. 12-05179  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

04/16/2015

**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 October 27, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 20, 2014, and requested an administrative determination. On January 15, 2015, Department Counsel converted the case to a hearing before an administrative judge.<sup>1</sup> The case was assigned to me on

<sup>1</sup> Tr. at 12.

February 3, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 18, 2015, and the hearing was convened as scheduled on March 3, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, but did not offer any exhibits at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE A through C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 11, 2015.

### **Findings of Fact**

Applicant admitted the following SOR allegations: ¶¶ 1.f – 1.h and 1.q. He denied ¶¶ 1.a – 1.e and 1.i – 1.p. These admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 36-year-old employee of a defense contractor. He has worked for this employer since September 2009. He provides information technology support. He graduated from high school and has taken some college courses. He spent 11 years in the Air Force, separating in 2009 with an honorable discharge. He is married, but has been separated from his wife since 2003. He has one child from this marriage and another child from a different relationship. He is obligated to pay child support for both children as they reside with their mothers. He pays \$636 monthly for both children.<sup>2</sup>

The SOR alleges 14 delinquent debts and Applicant's three dismissed Chapter 13 bankruptcy cases. The total debt is in excess of \$26,000. The debts were listed in credit reports from December 2011 and December 2013.<sup>3</sup>

Applicant had financial problems when he was in the Air Force and he filed for bankruptcy protection under Chapter 13 three times from 2003 through 2005. His financial problems increased when he separated from the Air Force in early 2009. He was initially unemployed (March to September 2009) then gained part-time employment (September to November 2009) with his current employer. He was receiving unemployment at the time, but became delinquent on his child support obligations. He became a full-time employee in November 2009. The status of the SOR-related debts is as follows:<sup>4</sup>

#### **SOR ¶¶ 1.a (medical account-judgment \$1,017); 1.c (medical account-judgment \$1,017); 1.d (judgement \$1,017):**

These judgments appear to be duplicative, since they were all filed at the same time (September 2010) in three different state district courts for the same amount. I find

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<sup>2</sup> Tr. at 21-22, 24, 25, 49-50; GE 1, 4.

<sup>3</sup> GE 2-3.

<sup>4</sup> Tr. at 22, 45; GE 4.

for the Applicant on two duplicate judgments. Applicant stated that he contacted the court and the court indicated the judgment was satisfied, but because the judgment was so dated there was no record that could be sent to him. He failed to provide documentation to support his assertion of payment. The most recent credit report in the record shows the judgment is still unsatisfied. This debt is unresolved.<sup>5</sup>

**SOR ¶ 1.b (medical account-judgment \$979):**

Applicant stated that he contacted the court and the court indicated the judgment was satisfied, but because the judgment was so dated there was no record that could be sent to him. He failed to provide documentation to support his assertion of payment. The most recent credit report in the record shows the judgment is still unsatisfied. This debt is unresolved.<sup>6</sup>

**SOR ¶ 1.e (judgment \$1,485):**

Applicant stated that he contacted the court and the court indicated the judgment was satisfied, but because the judgment was so dated there was no record that could be sent to him. A credit report in the record shows the judgment is satisfied. This debt is resolved.<sup>7</sup>

**SOR ¶ 1.f (education debt \$2,928):**

The last action on this student loan account was in March 2009. Applicant proposed a payment plan to the creditor (school) on a current balance of \$3,724 in which he agreed to pay \$100 monthly at 12% interest until the debt is paid. The school has yet to agree to the plan. This debt is unresolved.<sup>8</sup>

**SOR ¶ 1.g (education debt \$3,715):**

The last action on this collection account was in June 2011. Applicant claims he turned this account over to a debt relief company (DRC) for payment. He further claims he has paid the DRC for the last four months. He failed to produce documentation of the DRC's terms or proof of payment. This debt is unresolved.<sup>9</sup>

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<sup>5</sup> Tr. at 22; GE 3; AE A.

<sup>6</sup> Tr. at 22; GE 3; AE A.

<sup>7</sup> Tr. at 22; GE 2; AE A.

<sup>8</sup> Tr. at 22; GE 2, 3; AE A, C.

<sup>9</sup> Tr. at 34-35; GE 2.

**SOR ¶ 1.h (telecommunications debt \$448):**

The last action on this collection account was in September 2013. Applicant claims he turned this account over to the DRC for payment. He further claims he has paid the DRC for the last four months. He failed to produce documentation of the DRC's terms or proof of payment. This debt is unresolved.<sup>10</sup>

**SOR ¶¶ 1.i – 1.k (three dismissed Chapter 13 bankruptcy case in 2003 - 2005):**

His first Chapter 13 was filed in December 2003. Both he and his wife were supposed to each contribute \$350 monthly toward the payment of the plan. He claims that only he made the required payments and as a result the bankruptcy was dismissed in September 2004 for failure to make plan payments. He immediately refiled a Chapter 13 bankruptcy in his name alone. A plan was established requiring him to make monthly payments of \$600. It was dismissed after a few months when it was discovered he failed to file his 2002 and 2003 tax returns. After filing his returns, he once again refiled a Chapter 13 case. This bankruptcy was dismissed in August 2008 because he could not get his wife to cooperate in signing some documents.<sup>11</sup>

**SOR ¶ 1.l (education debt \$7,573):**

The last action on this collection account was in December 2009. Applicant stated he is disputing this debt. He stated he called the education institution a few times about the debt. He failed to produce documentation showing the nature of his dispute over the debt. This debt is unresolved.<sup>12</sup>

**SOR ¶ 1.m (education debt \$3,715):**

This debt is duplicative with the debt listed in SOR ¶ 1.g. I find for the Applicant on this debt.<sup>13</sup>

**SOR ¶ 1.n (telecommunications debt \$591):**

A credit report shows the date of the last action on this account was September 2011. Applicant claims he paid this debt, but he provided no supporting documentation. This debt is unresolved.<sup>14</sup>

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<sup>10</sup> Tr. at 34-35; GE 3.

<sup>11</sup> Tr. at 45; GE 4.

<sup>12</sup> Tr. at 36-38; GE 2.

<sup>13</sup> Tr. at 38; GE 2, 3.

<sup>14</sup> Tr. at 39; GE 2.

**SOR ¶¶ 1.o – 1.p (child support debt \$983 and \$1,043):**

Applicant admitted he got behind on his child support, but he believes he is caught up. He provided documents showing that his current monthly child support payment is \$323 for one child and \$313 for the second child. The document also indicates greater monthly amounts (\$486 and \$467) are owed. It does not state if these larger amounts are for back child support or some other reason. The document also does not state whether the amounts relate to any of the SOR allegations. These debts are unresolved.<sup>15</sup>

**SOR ¶ 1.q (consumer debt \$172):**

Applicant's last action on this collection account was in February 2009. At the hearing, Applicant claimed this debt was to be paid by the DRC. He did not supply any documentation about the DRC's plan. He then claimed he contacted the creditor post-hearing and was told he does not owe the debt. He did not support his assertion with documentation. This debt is unresolved.<sup>16</sup>

According to his personal financial statement completed in April 2014, Applicant listed his net monthly income as \$2,274 and his expenses and obligations as \$2,050. This total left him with a remainder of \$224. He also indicated in April 2014 that he would act on the debts. His testimony at hearing revealed that he has not filed his 2010 or 2011 federal tax returns.<sup>17</sup> When he was asked why he has not filed, he replied that he did not have a reason. He has not received any financial counseling.<sup>18</sup>

**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 that are to be 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, administrative judges apply the guidelines 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

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<sup>15</sup> Tr. at 40; GE 2; AE B.

<sup>16</sup> Tr. at 40; GE 2; AE A.

<sup>17</sup> Since there are no SOR allegations concerning his failure to file his federal tax returns, I will only consider this evidence as it might relate to the application of mitigating factors and the whole-person analysis.

<sup>18</sup> Tr. at 47-48; GE 4.

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 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 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, 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.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 the 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 adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had 11 non-duplicate delinquent debts and three dismissed Chapter 13 bankruptcies. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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.

Applicant's debts are recent and multiple, and his inaction on them after becoming aware of their existence shows a lack of reliability, trustworthiness and good judgment. AG ¶ 20(a) is not applicable.

Applicant's unemployment (for a short period) and underemployment after he left the Air Force can be considered a condition beyond his control. He has done little, if anything to address the debt. He claims to have turned over several of the debts to a DRC, yet he failed to supply documentation showing the terms of their arrangement or proof of payment. He is making regular monthly child support payments, but it is unknown whether back payments are owed. Overall the record evidence does not support that Applicant's action were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not sought financial counseling. Given the unpaid status of the SOR debts and his history of dismissed Chapter 13 bankruptcies, there are not clear indications that Applicant's financial problems are under control. Although he paid one debt, evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) does not apply and ¶ 20(d) partially applies.

Applicant failed to supply documentary evidence to support his dispute of certain debts. AG ¶ 20(e) does not apply. However, as stated earlier, there are three debts that I found duplicative with other debts. Those will be found in favor of Applicant.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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 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(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service and the circumstances by which he became indebted. However, I also considered that he has made little effort to resolve his financial situation and provided no documentation of his efforts. His indifferent attitude toward his financial responsibilities is evident by his nonpayment of his debts and his failure to file his federal tax returns. 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.



## 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:	Against Applicant
Subparagraphs: 1.c – 1.e:	For Applicant
Subparagraphs: 1.f – 1.l:	Against Applicant
Subparagraph: 1.m:	For Applicant
Subparagraphs: 1.n – 1.q:	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