



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



In the matter of: )  
)  
) ISCR Case No. 12-06468  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2015

**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 28, 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 December 15, 2014, and requested a hearing before an administrative judge. On February 27, 2015, the case was originally assigned to a different administrative judge. When the Applicant relocated to another state, it was reassigned to me on June 8, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2, 2015, and the hearing was convened as

scheduled on July 29, 2015. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel presented three ancillary documents that were marked as Hearing Exhibits (HE) I through III. Applicant testified and offered exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE E through N, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 6, 2015.

### Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a - 1.c, 1.e, and 1.g. He denied ¶¶ 1.d, 1.f, and 1.h – 1.i. 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 50-year-old employee of a defense contractor. He has worked for this employer since June 2008. He has an associate's degree and is working on his bachelor's degree. He spent two years in the Air Force from 1987 to 1989. He recently remarried. His divorce from his first wife was finalized in June 2015. He has two children from his first marriage and two stepchildren from his current marriage. He is obligated to pay child support for one child and spousal support for his ex-wife. He pays approximately \$1,640 monthly for both child and spousal support.<sup>1</sup>

The SOR alleges 12 delinquent debts in excess of \$14,400. The debts were listed in credit reports from January 2012, June 2014, and February 2015.<sup>2</sup>

Applicant's financial difficulties began in about 2009 when his ex-wife lost her job (her income was about \$40,000 annually). As a result of this drop in income, he was unable keep up his mortgage payments and the home ultimately was foreclosed in 2011.<sup>3</sup> He also had a timeshare unit foreclosed about the same time.<sup>4</sup> Many of the SOR-related debts accrued during his first marriage. His divorce was not finalized until June 2015. During his personal subject interview with an investigator in April 2012, he stated that he planned to file for Chapter 7 bankruptcy protection once his divorce was finalized. There is no evidence that he ever filed a bankruptcy petition. He is currently in arrears on his child/spousal support by about \$1,000.<sup>5</sup> The status of the SOR-related debts is as follows:<sup>6</sup>

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<sup>1</sup> Tr. at 6, 32-34; GE 1, 2.

<sup>2</sup> GE 3-5.

<sup>3</sup> This debt was not alleged in the SOR and will not be considered as a disqualifying factor, but will be considered as it may relate to mitigating factors and the whole-person factors.

<sup>4</sup> This debt was not alleged in the SOR and will not be considered as a disqualifying factor, but will be considered as it may relate to mitigating factors and the whole-person factors.

<sup>5</sup> This arrearage amount was not alleged in the SOR and will not be considered as a disqualifying factor, but will be considered as it may relate to mitigating factors and the whole-person factors.

<sup>6</sup> Tr. at 22, 45; GE 4.

**SOR ¶ 1.a (repossessed vehicle debt \$3,385):**

This was a joint debt with Applicant's ex-wife. She was responsible for making the car payments on it while he was away from home on business. She did not make the payments and the car was repossessed in 2010. Applicant could not afford to make the deficiency payments. In August 2015, he contacted the collection company and received a settlement offer for this debt. He did not provide documented proof of payment under the offer. This debt is unresolved.<sup>7</sup>

**SOR ¶¶ 1.b and 1.c (duplicate credit card accounts \$2,305):**

This is a credit card account that shows up as two separate collection accounts, but they arise from the same underlying debt. Applicant provided documentation that he paid this account in March 2015. These debts are resolved.<sup>8</sup>

**SOR ¶ 1.d (credit card collection account \$1,909):**

Applicant provided documentation that he paid this account in September 2015. This debt is resolved.<sup>9</sup>

**SOR ¶ 1.e (credit card collection account \$1,283):**

The last action on this credit card account was in March 2013. Applicant has not established a payment plan or made payments on this account. This debt is unresolved.<sup>10</sup>

**SOR ¶¶ 1.f and 1.h – 1.l (medical account debts \$873, \$545, \$487, \$385, \$219, \$94):**

Applicant stated these medical bills arose from emergency room visits by his son. He indicated these bills would be worked out between him and his ex-wife during their divorce settlement. His divorce settlement indicates that he owes more than \$3,400 to his wife for uncovered medical expenses. He provided two receipts for \$81 (AE H) and \$345 (AE L), but they do not correlate by amount or account number to the SOR-related debts. These debts are unresolved.<sup>11</sup>

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<sup>7</sup> Tr. at 44; GE 2-5; AE E.

<sup>8</sup> Tr. at 45-47; GE 4-5; AE C.

<sup>9</sup> Tr. at 47; AE N.

<sup>10</sup> Tr. at 47; GE 5; AE J.

<sup>11</sup> Tr. at 36-37; GE 5; AE B, H, L.

**SOR ¶ 1.g (charged-off home equity account debt payment of \$699 on a total debt of \$30,000):**

Applicant opened this home equity loan in about 2006 for home renovations. When he sought a loan modification on his first mortgage he stopped making payments on this loan. This account was not settled through the foreclosure on the first mortgage. The date of last action on this account was 2010. Applicant has not made payment arrangements on this account. This debt is unresolved.<sup>12</sup>

According to his personal financial statement completed in July 2014, Applicant listed his net monthly income as \$10,416 and his expenses and obligations as \$9,306. This total left him with monthly discretionary income of \$1,110. His current wife contributes about \$40,000 to their yearly income. Evidence revealed that he had his debts discharged in a prior Chapter 7 bankruptcy.<sup>13</sup> He has not received formal financial counselling, but his wife has a business background.<sup>14</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 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.

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<sup>12</sup> Tr. at 48-49; GE 2, 5.

<sup>13</sup> Since there are no SOR allegations concerning a Chapter 7 bankruptcy, I will only consider this evidence as it might relate to the application of mitigating factors and the whole-person analysis.

<sup>14</sup> Tr. at 47-48; GE 4.

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 has 11 non-duplicate delinquent debts. 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 all but two debts after becoming aware of their existence, shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's ex-wife's unemployment and his divorce can be considered conditions beyond his control. He has done little to address the debt. He settled two credit card accounts, but has not addressed the remaining accounts. He also failed to supply documentation showing proof that he paid on a settlement offer concerning a car repossession. Overall, the record evidence does not support that Applicant's actions were responsible under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not sought financial counseling, but his current wife has a business background. Given the unpaid status of most of the SOR debts, his history of a prior Chapter 7 bankruptcy, and having child/spousal support arrearage amount of \$1,000, there are not clear indications that Applicant's financial problems are under control. Although he paid two debts, evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶ 20(c) and ¶ 20(d) partially apply.

Applicant failed to supply documentary evidence to support his dispute of certain debts. AG ¶ 20(e) does not apply. However, as stated earlier, there is one debt that I found duplicative with another debt. That debt 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. 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 |
| Subparagraph: 1.a:        | Against Applicant |
| Subparagraphs: 1.b – 1.d: | For Applicant     |
| Subparagraphs: 1.e – 1.i: | 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