



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-07001
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On January 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on February 17, 2015, and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 13, 2015, scheduling the hearing for December 10, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in

evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail and attached documents that were marked AE E through O and admitted without objection. DOHA received the hearing transcript (Tr.) on December 17, 2015.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He served in the U.S. military from 1996 until he was honorably discharged in 2002. He worked for previous defense contractors from 2002 until shortly before he was hired by his current employer in 2011. He seeks to retain a security clearance. He attended college for a period, but he has not earned a degree. He is married with three minor children.<sup>1</sup>

Applicant developed financial problems in about 2004 to 2005, which he attributed to the day-to-day living expenses of having a family. He also admitted that he was young, stupid, and did not live within his means. He consulted a bankruptcy attorney who advised him to stop paying his bills as they would be addressed in the bankruptcy. Applicant did not file bankruptcy, and his debts went unpaid.<sup>2</sup>

The SOR alleges nine delinquent debts totaling about \$23,875, with the largest debt of \$12,513 resulting from an unpaid auto loan. Applicant admitted owing all the debts at one time, but he stated that the debts alleged in SOR ¶¶ 1.b (\$40) and 1.h (\$662) had been paid. Applicant's documentation establishes that the \$662 debt to a telecommunications company was paid in 2010, and the \$40 debt for a returned check was paid in February 2015.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2012. He reported significant financial issues, including almost all the debts alleged in the SOR.<sup>4</sup>

Applicant was interviewed for his background investigation in March 2012. He discussed his financial problems and his delinquent debts. He stated that he planned to pay his delinquent debts when he was able.<sup>5</sup>

Except for the \$662 debt paid in 2010 and the \$40 debt paid in February 2015, Applicant has not paid any of the debts alleged in the SOR. Most of the debts are no longer listed on his credit report. The creditor holding the \$12,513 debt never

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<sup>1</sup> Tr. at 17-18, 22, 40-41; GE 1.

<sup>2</sup> Tr. at 14-16, 22-24, 38-39; GE 2.

<sup>3</sup> Tr. at 19, 24-25, 36; Applicant's response to SOR GE 3, 4; AE A, C-E.

<sup>4</sup> GE 1.

<sup>5</sup> GE 2.

repossessed Applicant's pickup truck after he stopped paying the loan in about 2006. He still has the truck, but he stated that it has not run in quite some time.<sup>6</sup>

In April 2012, shortly after his background interview, Applicant bought a new car, which was financed through a \$29,326 loan. He stated that the actual purchase price was about \$20,000, and the remainder of the loan was used to pay off the loan on the car he traded in. Applicant was 90 days past due on the loan in November 2013, and the car was repossessed in December 2013. He was able to catch up on the payments, and the car was returned to him.<sup>7</sup>

Applicant submitted a plan to address his delinquent debts in his post-hearing submission. On January 15, 2016, he paid \$116 and \$138 to resolve two debts that were not alleged in the SOR. The plan calls for \$263 monthly payments for more than seven years. Applicant has a budget. He took a financial counseling course through his church, and he intends to enroll in another course through his church.<sup>8</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, which 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."

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,

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<sup>6</sup> Tr. at 18-27, 33-35; GE 3, 4; AE A, H.

<sup>7</sup> Tr. at 41-43, 46-48; GE 4; AE A, H.

<sup>8</sup> Tr. at 17, 37, 40-41; GE ; AE A, E-J.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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* EO 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:

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. The following are potentially applicable in this case:

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

Applicant has delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his financial problems to the day-to-day living expenses of having a family. He also admitted that he was young, stupid, and did not live within his means. He stopped paying his bills in anticipation of filing a bankruptcy case. The bankruptcy case never happened, and he did not pay his debts. He stated in March 2012 that he planned to pay his delinquent debts when he was able. He bought a new car a month later. Except for the \$662 debt paid in 2010 and the \$40 debt paid in February 2015, Applicant has not paid any of the debts alleged in the SOR. After the hearing he paid two small debts not alleged in the SOR, and he submitted a plan to address his delinquent debts over the next seven years. The Appeal Board has held that "intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches." See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

Applicant has a plan to resolve his financial problems, but he has not taken significant action to implement that plan. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The paid debts alleged in SOR ¶¶ 1.b and 1.h are mitigated. AG ¶¶ 20(a), 20(b), and 20(d) are not applicable to the remaining debts. AG ¶ 20(c) is partially applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

I considered Applicant's honorable military service and his steady employment with defense contractors. However, he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	For Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge