



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



In the matter of: )  
)  
) ISCR Case No. 12-07877  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

04/27/2016

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On June 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

On July 14, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On November 20, 2015, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was

mailed to Applicant, and it was received on January 4, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and Items 3 through 15 are admitted into evidence. Applicant provided a response and additional evidence that was marked as Applicant Exhibit (AE) A, and it was admitted into evidence without objection. After the record closed, Applicant provided an additional document. It was marked as AE B. Department Counsel did not object to its late submission, and it is admitted into evidence.<sup>1</sup> The case was assigned to me on March 7, 2016.

### **Findings of Fact**

Applicant admitted the SOR allegation in ¶ 1.a and denied the remaining allegations with explanations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He has a bachelor's degree. He has worked for a federal contractor since 2004. He has been married since 1990. He has two children ages 16 and 13.<sup>2</sup>

Applicant's wife's had a real estate investment business. He and his wife invested in real estate and owned rental properties along with their primary residence.<sup>3</sup> They had first and second mortgages on the properties. In 2007, they invested in a condominium project that went bankrupt. They were sued by their real estate agent for breach of contract concerning the transaction and a \$70,000 judgment was entered against them. Applicant indicated that their joint debts were incurred not from irresponsible spending, but from real estate holdings that "went under."<sup>4</sup> In Applicant's statement of January 24, 2014, he said:

Due to the business failures and [real estate agent] lawsuit [it] caused my spouse to file Bankruptcy protection.... [We] incurred legal debts in excess of \$180,000 from the lawsuit from December 2007 until January 2009. She had no other choice tha[n] using the unsecured credit cards and line of credit to keep up with the legal fees and continue financing the real estate projects in [State A and State B].<sup>5</sup>

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<sup>1</sup> Hearing Exhibit I is Department Counsel's memorandum.

<sup>2</sup> Item 3.

<sup>3</sup> Items 12, 13, 14, and 15 are credit reports that reflect most of the real estate holdings were held jointly.

<sup>4</sup> Item 2.

<sup>5</sup> Item 5 page 3. In Applicant's response to the FORM, he acknowledged that he and his wife invested in a commercial strip mall development from 1995 to 2003. After they sold this property they invested in real estate projects in State A and State B. These projects failed. It appears from Applicant's statements that the investments were jointly held.

Applicant's wife filed Chapter 7 bankruptcy in 2009 and her debts were discharged in August 2010. Applicant is listed as the co-debtor in Schedule H of his spouse's bankruptcy filing. Under Schedule D of the bankruptcy petition, \$408,269 is listed as the unsecured portion of their secured debts, and under Schedule F, \$476,716 is listed as unsecured debt.<sup>6</sup> This included significant credit card debt, personal loans, the civil judgment and legal fees. Following the discharge, Applicant received IRS forms 1099-C, cancellation of debt, for two debts in the amounts of \$29,833 and \$39,847.<sup>7</sup>

Applicant filed Chapter 11 bankruptcy in January 2010. Under Schedule D, Applicant listed \$444,190 as the unsecured portion of secured debts and under Schedule F, listed \$438,552 of unsecured debt. He listed his spouse as a co-debtor under Schedule H. A year later, the Bankruptcy Trustee moved the case be dismissed because Applicant failed to file a plan or disclosure statement, a monthly operating report, and due to post-petition liabilities of \$99,286 to two secured creditors. The bankruptcy was dismissed in April 2011.<sup>8</sup>

In May 2012, Applicant filed a Request for Modification and Affidavit concerning the mortgage associated with his primary residence (SOR ¶ 1.f). In the request he listed his monthly income as \$11,344, expenses as \$13,373 and his total assets as \$12,500.<sup>9</sup> In response to interrogatories in January 2014, Applicant completed a personal financial statement. He estimated his monthly income as \$8,875 with a net remainder of \$3,075 and total assets valued at \$1,450,000.<sup>10</sup> It does not appear Applicant's modification request was granted.

In February 2013, June 2014 and July 2014, Applicant's wife filed Chapter 13 bankruptcy protection. In each instance the case was dismissed for failing to file supporting documentation.<sup>11</sup> In an order dated September 3, 2014, Applicant's wife was barred from refiling a Chapter 13 bankruptcy petition for 180 days.<sup>12</sup>

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<sup>6</sup> Item 7 pages 3 and 10.

<sup>7</sup> Item 6; Answer to SOR at page 23. Applicant provided information that explained in a community property state creditors are not entitled to collect from any of the community assets of the non-filing spouse. I have not considered Applicant's wife's bankruptcy filings, individual real estate investments, or financial actions for disqualifying conditions. I have considered them when analyzing Applicant's credibility, mitigation, and the whole-person.

<sup>8</sup> Item 8.

<sup>9</sup> Item 5.

<sup>10</sup> Item 4.

<sup>11</sup> Items 9, 10, and 11.

<sup>12</sup> Item 11.

The SOR alleges consumer debts that are past due or charged off totaling approximately \$55,500 and multiple mortgage accounts that are past due in the approximate amount of \$339,000.

Applicant indicated that he is not legally obligated to pay the debts that are included in his wife's bankruptcy, that have fallen off his credit report, or are barred from enforcement by the statute of limitations.

The consumer debt in SOR ¶ 1.b (\$22,467) is an individual credit card account that was charged off. Applicant indicated that the debt was included in his wife's Chapter 7 bankruptcy that was discharged in 2010. Applicant also included this debt in his Chapter 11 bankruptcy filing that was later dismissed. Applicant provided a document, after the record closed, from the creditor indicating Applicant's account is closed and charged off, and due to the age of the account it was removed from Applicant's credit report. Applicant also stated in his answer that the debt is unenforceable under the statute of limitations.<sup>13</sup>

Applicant indicated he paid the debt in SOR ¶ 1.c (past due \$13,278) listed as a home equity loan. He provided a document that stated: "we have approved your Home Equity account for a principal forgiveness program offered by [creditor] as part of its recent settlement with the Department of Justice. You will receive full forgiveness of the remaining balance of \$88,735 on your Home Equity account." The letter informed Applicant that the forgiveness of this debt did not affect his first mortgage.<sup>14</sup>

The consumer debt in SOR ¶ 1.d (\$31,468) is an individual credit card account that was charged off. In his answer to the SOR, Applicant indicated the debt is uncollectible because it was discharged in his wife's Chapter 7 bankruptcy and also barred by the statute of limitations.

The loan in SOR ¶ 1.e (past due \$2,275, balance \$107,000) appears to have been paid and the account closed in 2012. The amount is also listed in Applicant's wife's 2010 Chapter 7 bankruptcy Schedule D, as an unsecured amount for a secured credit line.<sup>15</sup>

Applicant has been disputing the mortgage loan on his primary residence in SOR ¶ 1.f (\$324,000 past due on a \$681,079 balance) since at least 2011. He indicated the loan has been transferred several times to different mortgage companies. He indicated the debt was discharged in his wife's 2010 Chapter 7 bankruptcy, and there was an improper filings and procedures by the creditor. Due to the residence value being less than the loan, he anticipated submitting a loan modification that he anticipated would be

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<sup>13</sup> Item 2 page 20, Item 7 page 26; AE B.

<sup>14</sup> Item 2 at 29.

<sup>15</sup> Item 2 page 27; Item 7 page 20.

resolved by April 2016. No additional documents were provided to show that he has resolved the debt. The current status of this debt is unclear.<sup>16</sup>

Sufficient documentation was provided to show the debt in SOR ¶ 1.g (past due \$1,625 on \$11,152 balance) is paid.<sup>17</sup> Applicant provided his performance appraisal for 2015 reflecting his excellent performance.<sup>18</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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(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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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

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<sup>16</sup> Answer to SOR; Response to FORM. It is unclear how Applicant claims the mortgage debt was discharged in bankruptcy yet he is still attempting to modify the loan.

<sup>17</sup> Item 2 page 30.

<sup>18</sup> Response to FORM.

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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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**

The security concern relating to the guideline 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. I have considered the following under AG ¶ 19:

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

Applicant filed Chapter 11 bankruptcy that was dismissed in 2011. He had consumer debts and real estate loans that were delinquent. Applicant was unable or unwilling to satisfy his debts. The above disqualifying conditions have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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 had consumer debts and mortgage loans that were charged off or discharged in his wife's bankruptcy. Applicant continues to dispute his past-due mortgage loan on his residence with the creditor, but failed to show recent actions he has taken to resolve it. He filed Chapter 11 bankruptcy that was dismissed due to his failure to provide a plan and incurring additional debt.

Applicant relied on bankruptcy and the statute of limitations to resolve his delinquent debts and past-due mortgage loans. Bankruptcy is a legitimate legal means to discharge debt. It does not, however, preclude consideration of Applicant's past financial problems. Although the debts included in his wife's bankruptcy may be unenforceable against Applicant, it does not mean he acted responsibly toward the debts. Relying on the statute of limitations regarding delinquent debts does not constitute a good-faith effort to resolve debt. Applicant's behavior is recent and frequent. Considering his conduct in failing to pay legitimate debts, I cannot find his actions happened under unique circumstances that are unlikely to recur. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a downturn in the real estate market, which was beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant and his wife had considerable real estate holdings. They were overextended and used credit cards to fund their expenses. Many of Applicant's debts were charged off, included in his wife's bankruptcy, or unenforceable under the statute of limitations. Although the debts may be legally unenforceable, his actions do not constitute acting responsibly under the circumstances. AG ¶ 20(b) partially applies. There is no evidence Applicant received financial counseling. Although some of Applicant's debts are no longer legally enforceable there is insufficient evidence at this time to conclude his finances are under control. AG ¶ 20(c) does not apply.

Applicant has not resolved the mortgage loan (SOR ¶ 1.f). He disputes the debt claiming it was discharged in bankruptcy. Its current status is unclear. It is unknown if he has made any payments on the loan since his wife's bankruptcy discharge in 2010. It is unknown if he still resides in the house. He anticipated filing a new modification request and resolving the matter in 2016. He did not provide documents to show its current status, whether he has completed the request or other recent action he has taken to resolve the problem. Applicant has not initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts. AG ¶ 20(d) does not apply. AG ¶ 20(e) partially applies.

### **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(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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 54 years old. He has been steadily employed since 2004. He indicated his delinquent debts were discharged in bankruptcy, charged off, or unenforceable under the statute of limitations. Applicant failed to pay legitimate creditors. He has an unstable financial track record, which raises questions about his trustworthiness, reliability, and good judgment. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.



## 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge