



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



In the matter of: )  
 )  
----- ) ISCR Case No. 12-09086  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire  
For Applicant: *Pro se*

09/11/2015

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On December 12, 2014, the Department of Defense (DOD) issued 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; 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 DOD on September 1, 2006.

In an undated response, Applicant denied the three allegations raised in the SOR. He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on April 27, 2015. DOHA issued a notice of hearing on May 4, 2015, setting the hearing for May 27, 2015. The hearing was convened as scheduled.

The Government offered four documents and a demonstrative exhibit, which were accepted without objection as exhibits (Exs.) 1-4 and Demonstrative Ex. (DE) 1, respectively. The Applicant offered testimony and two documents, accepted as Exs. A-B. The transcript (Tr.) was received on June 3, 2015, and the record was closed.

### **Findings of Fact**

Applicant is a 57-year-old operations manager. He has served in that position for six years. Previously, he was honorably discharged at the rank of E-9 from active duty in the United States military. Applicant has earned a bachelor's degree in information systems management and advanced certification in acquisition management. He is married with two children.

In 2002, Applicant and his family moved to a new state, which had a higher cost of living than their previous residence. Then their eldest child went away to college. Between 2007 and 2009, small balances became past-due accounts. Feeling overwhelmed, he contacted a financial counseling and debt reduction service in 2011. It helped him better understand credit, analyze his debt, establish a budget, and set up a repayment plan for his obligations. Tr. 19. Applicant found the counseling productive and helpful in addressing his situation. Tr. 20. He and his wife learned how to save money for emergencies. Tr. 20. Since using this service, he and his wife have been "really careful to make sure that this [type of situation] never happens again." Tr. 20.

Applicant no longer has any adverse financial issues. Tr. 28. He and his wife now have a combined salary which has grown to about \$200,000. This sum is more than sufficient to address their expenses, and permit them to help with their youngest child's educational and living expenses in a distant state. Tr. 31. They are ahead in their mortgage payments and current on all bills. It is Applicant's intent to stay financially stable, adhere to what he learned in financial counseling, and remain prepared for whatever financial pitfalls may occur in the future. Tr. 34.

At issue in the SOR are three delinquent debts (1.a-1.c). The debt noted at 1.a for \$4,113 was addressed with the help of Applicant's counseling and debt reduction entity. Tr. 15. The balance was reduced to \$800 and ultimately satisfied. DE1; Ex. B; Tr. 15-18. The obligation reflected at SOR allegation 1.b for \$3,309 was paid. DE1; Ex. A; Tr. 14-15. The debt alleged in the SOR at 1.c for \$12,288 previously was shown as satisfied in Applicant's response to the SOR, which included a copy of the judgment release and a letter from the creditor's attorney. DE1; SOR Answer at 5; Exs. 2-3; Tr. 22-26. Consequently, the three debts at issue have been addressed. Tr. 8.

### **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(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 not drawn 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 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.

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**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant was delinquent on nearly \$20,000 in debt. Such facts are sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 began addressing the delinquent debts at issue in 2011. Those three obligations are now satisfied. Applicant's successful efforts are largely attributable to excellent financial counseling and personal diligence. Since starting financial counseling and up to today, Applicant has employed the many basics he learned in counseling, such as budgeting, saving for contingencies, living within his means, and other core personal finance concepts. He and his wife have demonstrated their ability to live without acquiring new debts. Importantly, Applicant is highly credible in his statements when emphasizing his commitment to remaining solvent and free from financial distress. All the debts at issue have been addressed. AG ¶ 20(c)-(d) apply.

## **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). 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 incorporated my comments under the guideline at issue 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 a mature and credible man with a stable job history and decades of active duty military service to his credit. A move to a costlier region and the college education of his eldest child led to Applicant's acquisition of delinquent debt in the late 2000s. In 2011, Applicant enrolled in a financial counseling and debt reduction program. The experience was highly beneficial. He has satisfied the debts at issue in the SOR, adopted a budget, started saving for emergencies, and is now living well within his means.

This process demands that an applicant methodically devise a strategy or plan to address his debts in a manageable and realistic manner. It then requires documentary evidence that such a plan has been successfully implemented. Applicant met these criteria. In addition, he showed that he is now living within his means and free from financial distress. Applicant also demonstrated his diligence and commitment to remaining debt free. Given these considerations, I find that Applicant mitigated security concerns arising under Guideline F.

## **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
Subparagraphs 1.a-1.c:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge