



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



In the matter of: )  
)  
) ISCR Case No. 12-09454  
)  
Applicant for Security Clearance )

**Appearances**

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

01/10/2014

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 28, 2013, 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 answered the SOR in writing on February 26, 2013, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on August 8, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns.

Applicant received the FORM on October 5, 2013. He responded with an e-mail that was marked Applicant's Exhibit (Ex.) A. The case was assigned to me on November 13, 2013. On November 15, 2013, I reopened the record for Applicant to submit additional documentary evidence. E-mail correspondence about reopening the record was marked Ex. I. Applicant responded with an e-mail that was marked Ex. B and an attachment that was marked Ex. C. Department Counsel's e-mail was marked Ex. II. The Government exhibits included in the FORM and Ex. A through C are admitted without objection.

### **Findings of Fact**

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer for more than 26 years. His first marriage ended in divorce. He has been married to his second wife for more than 16 years. He has two adult and two minor children.<sup>1</sup>

The SOR alleges five delinquent debts, including debts of \$10,264; \$6,799; and three medical debts totaling \$1806. Applicant admitted owing the debts, and all of the debts appear on at least one credit report.<sup>2</sup>

Applicant developed financial problems in the late 2000s, when he fell behind on his bills. He contracted with a debt-management company in 2009 to assist in resolving his debts. He pays the company \$276 per month. The company negotiates with his creditors and uses the accumulated funds to settle his debts.<sup>3</sup>

From 2010 to 2012, Applicant paid or settled six debts through his debt-management company. A debt of \$1,040 was settled for a \$425 payment in August 2010. A \$2,481 debt was settled for a payment of \$800 in April 2011. A \$2,414 debt was settled for a \$583 payment in May 2011. A debt of \$1,967 was settled for a payment of \$885 in April 2012. A payment of \$966 was made to a collection company in April 2012. The original creditor and the amount originally owed are unclear. In September 2012, payments of \$1,842 and \$1,845 were made to a law firm that specializes in collecting debts. The original creditor and the amount originally owed for this debt are also unclear.<sup>4</sup>

Applicant submitted documentation that he has continued to utilize the debt-management company to resolve his debts. He stated that he will add the medical debts to his debt-management plan. A payment of \$950 was made in May 2013 toward the \$10,264 debt alleged in SOR 1.a. Subsequent payments of \$272 were made every

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<sup>1</sup> Items 5, 6.

<sup>2</sup> Items 4-10.

<sup>3</sup> Items 5-7.

<sup>4</sup> Items 4-10.

month from May 2013 through November 2013. Applicant's debt-management company reported a balance of \$524 after his November 2013 payment.<sup>5</sup>

Applicant indicated that the \$6,799 debt alleged in SOR 1.d was settled through his debt-management company. The debt is listed by Equifax on the May 2012 credit report, but it reports that Applicant is not the owner of the account and that he is only an authorized user of the account. The November 2012 Equifax credit report also lists Applicant as an authorized user of the account. The debt is not listed on the August 2013 Equifax credit report.<sup>6</sup>

Applicant received a written reprimand from his employer in 2009. No other information was provided about his job performance.<sup>7</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, 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.

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<sup>5</sup> Item 4; Ex. A.

<sup>6</sup> Items 4, 8-10.

<sup>7</sup> Items 5, 6.

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 accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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 contracted with a debt-management company in 2009 to assist in resolving his debts. He pays the debt-management company \$276 per month. Six debts were paid or settled before the SOR was issued. In September 2012, the debt-management company paid \$3,687 to a law firm that specializes in collecting debts. It is unclear who the law firm was representing, but it may have been the \$6,799 debt alleged in SOR 1.d. In any event, Applicant was only an authorized user of that account and not legally liable for it. In May 2013, the debt-management company paid \$950 toward the \$10,264 debt alleged in SOR 1.a. Subsequent payments of \$272 were made every month from May 2013 through November 2013. I am satisfied that this debt is being resolved. Applicant indicated that he will add the three medical debts to his debt-management plan.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. AG ¶¶ 20(c) and 20(d) are applicable.

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

Applicant has been employed by the same company for more than 26 years. He received a written reprimand from his employer in 2009. He has worked diligently for several years to resolve his financial problems. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems, and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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

Subparagraphs 1.a-1.e: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge