



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 12-09625  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

12/31/2012

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On September 19, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR on October 5, 2012, and requested a hearing before an administrative judge. The case was assigned to me on November 6, 2012. DOHA issued a notice of hearing on November 16, 2012. I convened the hearing as

scheduled on December 5, 2012. The Government offered Exhibits (GE) 1 through 6, and they were admitted into evidence without objection. Applicant testified and offered Exhibits (AE) A through E, and they were admitted into evidence without objection. The record was held open until December 26, 2012, to allow Applicant an opportunity to submit additional documents. He submitted AE F through K. Department Counsel had no objections, and they were admitted into evidence.<sup>1</sup> DOHA received the hearing transcript (Tr.) on December 13, 2012.

### **Procedural Matters**

Department Counsel moved to correct a typographical error in SOR ¶ 1.b, changing the year of the credit report from 2002 to 2012. There was no objection to the amendment, and it was granted.

### **Findings of Fact**

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He graduated from high school in 1989 and served in the Army from 1989 to 1993, when he was honorably discharged. He attended technical school, and he recently began taking college classes online. He married in 1996 and has two children, ages 15 and 13.

In approximately 2008, Applicant learned his wife, who was a registered nurse, was addicted to pain killers, due to a medical condition. She lost her job and her license due to her unauthorized use of narcotics. She sought counseling for her addiction and completed an inpatient rehabilitation program. Applicant stated that she is now drug-free. Because of her misuse of a prescription drug, she has been unable to work in her field. She has not completed the stringent requirements of the state licensing bureau to have her license reinstated. She is now attempting to get her license reinstated in the new state where they live, but is required to be cleared first by the state where she previously held a license.<sup>2</sup>

Applicant and his wife decided it was best to home school their children, so his wife stayed home to do so. She has not worked outside the home since 2008.

Applicant worked in his field of expertise and was able to further his career. His company began laying off employees in phases, and in about 2010, he was laid off. He

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<sup>1</sup> Hearing Exhibits I and II are Department Counsel's memoranda forwarding the exhibits and noting there were no objections.

<sup>2</sup> Tr. 20-25, 37-40.

was unemployed briefly. Applicant and his family relocated to a new state because he had a job offer. When he resumed work, he was earning a significantly lower income.<sup>3</sup>

Applicant lived in City A from 1996 to 2003. He and his wife purchased a home there in 1996 and lived in it for seven years. They attempted to sell the home, but it was in disrepair, and they could not sell it. Their mortgage went into foreclosure. He had a first and second mortgage loan on the home. He does not know if he received an Internal Revenue Form 1099C, cancellation of debt. He does not know if he received a deficiency notice from the lender. He admitted he could not afford to repair the home, and he decided to walk away from the debt. He regrets his actions. He believes the home was financed 100 percent.<sup>4</sup>

Applicant purchased another home in 2005 with an adjustable rate mortgage. The original interest rate was six percent. The rate changed in April 2008 to eight percent, and the monthly mortgage payment increased by a couple of hundred dollars. Applicant and his wife filed Chapter 13 bankruptcy in May of 2008 because their debts were accumulating with first and second mortgage payments, two vehicle loans, unsecured debts, and unpaid homeowner association fees. He estimated he made one or two bankruptcy payments and was unable to make any more. The bankruptcy was dismissed in October 2008 for failure to make payments.<sup>5</sup>

Applicant lists in his personal financial statement that he has approximately \$1,000 in disposable income each month. He stated he began paying some of his bills and contacting some of the creditors. He stated that since he has moved, he has not been contacted by his creditors. He sent letters to some of his creditors, but he has received few responses. He does not dispute his debts, and he knew his finances were an issue when he applied for a security clearance and had his background interview. He stated he has tried to pay his outstanding bills, but he has had other expenses, such as medical bills, car repairs, and the purchase of school clothes for his children. His children now attend public school.<sup>6</sup>

Applicant and his wife took two vacations to Europe in May 2010 and again in April 2011. He estimated they were in Europe in April 2011 for about nine days. He stated they stayed in hostels while there and estimated they spent about \$3,000 for the trip. The vacation in May 2010 was also for nine days, and he estimated they spent

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<sup>3</sup> Tr. 24-26.

<sup>4</sup> Tr. 40-44. The mortgage foreclosure is not alleged in the SOR and will not be considered for disqualifying purposes. It will be considered when analyzing the "whole person" and in making a credibility determination.

<sup>5</sup> Tr. 44-49, 59. The current status of the two mortgages is unclear.

<sup>6</sup> Tr. 49-52.

about \$3,000 on this trip. He admitted that he chose to take these two vacations instead of paying his delinquent debts.<sup>7</sup>

The debt in SOR ¶ 1.b (\$500) is a medical debt owed since 2006. This balance was not covered by Applicant's insurance. Applicant indicated he contacted the creditor but has not received a response. The debt is unresolved.<sup>8</sup>

The debt in SOR ¶ 1.c (\$3,989) is a judgment for amounts owed on a rental house. Applicant stated he was not served notice and the judgment was entered by default. He disputes the debt, stating that the county issued a notice of violation regarding discrepancies on the property.<sup>9</sup> Applicant claimed the property was uninhabitable. He stated he attempted to dispute the debt with the credit bureau, but the result was that the debt was correctly reported. He stated he tried to settle the debt with the landlord but has not received a response. He believes the balance on the debt is now around \$7,000. The debt is unresolved.<sup>10</sup>

The debt in SOR ¶ 1.d (\$8,500) is for a repossessed car. It was purchased new in January 2007 and was repossessed in the fall of 2008. The debt is unresolved.<sup>11</sup>

The debt in SOR ¶ 1.e (\$4,354) is for a repossessed car. It was purchased used in May 2005 and was repossessed three to four years later. The debt is unresolved.<sup>12</sup> After Applicant's cars were repossessed, he purchased two used cars in 2010 and 2011. One was purchased for \$4,300 and the other for about \$3,800. Applicant stated his in-laws assisted them financially and he could not remember where the other money came from to pay for the vehicles, but it was likely their income tax return refund.<sup>13</sup>

The debts in SOR ¶¶ 1.f (\$312), 1.g (\$170), 1.h (\$464), 1.i (\$1,367), 1.j (\$179), and 1.k (\$583) are medical debts that are in collection. Applicant received a response to his letter from the creditor in SOR ¶ 1.g, but has not yet settled the debt. He provided a document that shows the debt in SOR ¶ 1.j has been removed from his credit report. He indicated he intended to inquire about the remaining delinquent debts.<sup>14</sup>

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<sup>7</sup> Tr. 52-56.

<sup>8</sup> Tr. 62-63.

<sup>9</sup> Applicant admitted in his answer to the SOR that the debt was factual and valid.

<sup>10</sup> Tr. 63-66; GE 3 at 114; AE I.

<sup>11</sup> Tr. 58-59, 66.

<sup>12</sup> Tr. 57-58.

<sup>13</sup> Tr. 59-60, 66.

<sup>14</sup> Tr. 28-31, 67-68; AE B, C, K.

Applicant attributes his financial problems to his wife's loss of income. He admitted also that his decision-making process was poor. About five to six years ago, he and his family began attending church regularly. He decided he wanted to pay his debts and be more proactive to get his finances under control. He admitted he lived beyond his means. He stated he has been attending financial counseling since December 2011. He estimated he had about \$1,000 in savings and no retirement savings. His wife has not sought employment in a different field. He has a budget, but it does not include payment of his delinquent debts. He does not have any credit cards.<sup>15</sup>

Applicant provided character letters. The writers describe him as humble, passionate, caring, and thoughtful. He is a good neighbor who has a good heart. He learns from his mistakes. He is a caring father and husband. He is considered thoughtful and patriotic. He is involved in the Boy Scouts of America. Applicant has a committed work ethic and is a tenacious and skilled employee. He is considered organized, efficient, and extremely competent.<sup>16</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 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

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<sup>15</sup> Tr. 26, 28, 56, 61, 70-71, 74-75; AE A.

<sup>16</sup> AE E.

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. Such decisions entail a certain degree of legally permissible extrapolation of 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 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 all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant admitted he owes the delinquent debts alleged in the SOR, except he disputes the judgment. He has made a nominal effort to resolve his delinquent debts. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

AG ¶ 20(a) is not established because Applicant's debts are numerous, most are not resolved, and they are not the product of unusual circumstances. Applicant's wife lost her job because she became addicted to prescription drugs. Her loss of income impacted the family's finances. This was a condition beyond Applicant's control. Applicant admitted he also made poor financial decisions. Despite having surplus income each month, he failed to show he has been responsibly addressing his delinquent debts. Applicant and his wife took two European vacations in 2010 and 2011 despite owing many creditors money for many years. Although Applicant's wife's situation was beyond his control, he did not act responsibly under the circumstances. I find AG ¶ 20(b) only partially applies.

Applicant stated he has been attending financial counseling since 2011. There is no clear indication that his financial problems are being resolved or are under control. He failed to provide sufficient evidence to conclude that he is making a good-faith effort to pay his overdue creditors or otherwise resolve his debts. I find AG ¶ 20(c) partially applies, and AG ¶ 20(d) does not apply.

Applicant disputed the judgment entered against him on property he rented. He provided a copy of the notice of violation, dated September 2005. He has done little to actively pursue resolving this judgment. I find AG ¶ 20(e) minimally 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 41 years old. He served his country in the military and was honorably discharged. Applicant has provided minimal evidence to conclude he is actively pursuing resolving his delinquent debts. When his wife lost her job it impacted their finances. However, that did not occur until 2008. Before that time, he admitted he walked away from a mortgage that was foreclosed. He has some small medical bills that he has not paid, despite having income remaining each month. Instead of paying his creditors, he and his wife took two European vacations. Applicant's finances are a security concern, and he has not met his burden of persuasion. 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 failed to mitigate the security concerns arising under the financial considerations guideline.

## 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
Subparagraphs 1.a-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant



Subparagraph 1.k:

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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge