



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-09690
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

01/30/2013

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**Decision**

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COACHER, Robert E., 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 September 7, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DoD acted 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 DoD on September 1, 2006.

Applicant answered the SOR on September 23, 2012, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 19, 2012. The FORM was mailed to

Applicant and he received it on November 16, 2012. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On November 20, 2012, he provided a response (Response) to the FORM, which included several attachments. The case was assigned to me on January 3, 2013.

### **Procedural Ruling**

Department Counsel indicated in her FORM submission that she amended SOR ¶¶ 1.c and 1.d by replacing the names of the listed creditors with the names of subsequent creditors. Counsel cited ¶ E.3.1.13 of the Directive as authority for this amendment. I conclude that this amendment falls under ¶ E.3.1.17 of the Directive because the amendment of the respective creditors conforms the pleading to the evidence admitted in this case. In his Response to the FORM, Applicant posed no objection to Department Counsel's amendment, nor did he request more time to prepare his case in light of the amendment.

### **Findings of Fact**

In Applicant's answer to the SOR, he denied the allegations in SOR ¶¶ 1.a and 1.b, and admitted the allegations in SOR ¶¶ 1.c and 1.d. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 44 years old. He was born in Afghanistan and became a U.S. citizen in 2000. He is married and has one child. He has worked for his current employer, a defense contractor, since November 2012. He worked for another defense contractor from November 2009 until November 2012. He is a linguist. He attended a community college from 1991 to 1993. He is seeking a security clearance for the first time.<sup>1</sup>

The debts listed in the SOR are supported by credit reports dated November 2009 and August 2012. The debts alleged in ¶¶ 1.a and 1.b. are both credit card debts. The debts alleged in ¶¶ 1.c and 1.d arise out of the foreclosure of Applicant's home. The debt at ¶ 1.c was the second mortgage taken on Applicant's home. The debt alleged in ¶ 1.d was the first mortgage on the home. Both mortgage loans are delinquent.<sup>2</sup>

The delinquent debt alleged in SOR ¶ 1.a is a credit card account in the amount of \$3,011. Applicant provided documentation showing this debt was paid in January 2011. This debt is resolved.<sup>3</sup>

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<sup>1</sup> Item 4; Response.

<sup>2</sup> Items 3, 5-6.

<sup>3</sup> Items 3; Response.

The delinquent debt alleged in SOR ¶ 1.b is a credit card account in the amount of \$5,899. Applicant claims this debt was paid in March 2011. The original creditor is listed on a credit report dated September 2012, which Applicant supplied. That debt was charged off by the creditor in March 2009. There is also an entry by the subsequent collection company that states that the status of the account is “no status”. There is one further notation on the credit report relating to this account stating that the account is in dispute. Applicant wrote on the credit report that he closed the account because of a high interest rate and that the account was closed after everything was paid. He did not provide any documents showing payment towards the debt. This debt is unresolved.<sup>4</sup>

The two delinquent mortgage debts arose when Applicant purchased a house in June 2005. The house was financed with a first mortgage in the amount of about \$324,000, and a second mortgage in the amount of about \$81,000. There is no evidence of Applicant’s income during the 2005 time period, but for 2008, Applicant’s gross income was about \$41,500 and his wife’s income was about \$32,000. His wife lost her job in 2008 and Applicant was unable to make the mortgage payments. The house went into foreclosure in August 2008. The second mortgage is reported on the most recent credit report as open and past due in the approximate amount of \$39,000 as of August 2012. Applicant states that he is working with an attorney to develop a payment plan for both mortgages. He did not provide any details about this payment plan or any information from the attorney. These debts are unresolved.<sup>5</sup>

In April 2012, Applicant prepared a personal financial statement listing his net monthly income at about \$9,390, his total monthly expenses at about \$6,695, and a monthly remainder of about \$2,694. He also listed a personal saving account with about \$140,000. He provided a statement from a previous supervisor who described him as an outstanding professional. He has served in a deployed status performing his duties in hostile environments.<sup>6</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

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<sup>4</sup> Items 3, 5-6; Response.

<sup>5</sup> Item 3-6; Response.

<sup>6</sup> Response.

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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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**

AG ¶ 18 expresses the security concern for financial considerations:

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 them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 paid one debt, but the other three remain unpaid. He did not provide sufficient evidence to show that the debts are unlikely to recur. I find mitigating condition AG ¶ 20(a) does not apply because several of Applicant's debts remain unresolved. Applicant provided evidence that his wife's job loss in 2008 contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. Although he showed some responsible behavior by paying one of the credit card debts, he failed to produce evidence that he was taking any action on the three remaining debts. Even though he apparently has contacted an attorney concerning the two mortgage debts, he failed to produce any evidence showing that this contact had any effect on the debt. This

demonstrates a lack of responsible behavior. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling, and while one debt was paid, there is no clear evidence that Applicant's financial problems are being resolved or under control because the other three debts remain unpaid. There is some evidence that he has made a good-faith effort to pay by resolving one of the debts. I find AG ¶¶ 20(c) and 20(d) partially apply. Applicant failed to provide any evidence disputing any of the debts. AG ¶ 20(e) does not 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 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 guideline 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 considered Applicant's deployed service in a hostile environment, the recommendation of his supervisor, and the impact his wife's job loss had on his debt situation. However, he has not shown a track record of financial stability. His financial worksheet shows that he has liquid assets available to apply towards these debts, yet he failed to do so. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall 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:	For Applicant
Subparagraphs 1.b – 1.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge