



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



In the matter of: )  
)  
) ISCR Case No. 12-11679  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

12/10/2015

**Decision**

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 April 30, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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; DOD 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.

Applicant answered the SOR on May 27, 2015, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 29, 2015. I convened the hearing as scheduled on November 17, 2015. The

Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. In addition, the Government submitted an exhibit list that was marked as Hearing Exhibit (HE) I. Applicant testified and offered Applicant Exhibit (AE) A, which was admitted into evidence without objection. The record was held open until December 1, 2015, to allow Applicant to submit additional documents, which he did. The documents were marked as AE B through D. The Government did not object to the documents and they are admitted into evidence.<sup>1</sup> DOHA received the hearing transcript (Tr.) on November 25, 2015.

### **Procedural Issue**

The Government moved to amend the SOR and added ¶ 1.i to read: “You failed to file your Federal income tax return for 2014, as required. As of the date of the Statement of Reasons, the tax return remains unfiled.” There was no objection, and the motion was granted.<sup>2</sup>

### **Findings of Fact**

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

Applicant is 49 years old. He is a high school graduate. He served in the military from 1986 to 1992 and was honorably discharged. He married in 1990 and has a 23-year-old son, and two stepdaughters ages 26 and 29. Applicant provides financial support to his son who lives at home and is unemployed. Applicant’s 11-year-old Godson lives with him. The boy was previously in an unstable and disruptive living situation. Applicant does not receive financial support from either of the child’s parents and has assumed financial responsibility for him. Applicant has worked for the same company since 1996.<sup>3</sup>

Credit reports from October 2010, July 2012, November 2014, and July 2015, substantiate the debts alleged in the SOR.<sup>4</sup>

Applicant and his wife purchased a house in 2000. They later missed several mortgage payments due to financial difficulties in approximately 2003. They filed bankruptcy under Chapter 13 in April 2003 because Applicant wanted to keep the house. They missed a payment under their bankruptcy plan and were advised by their attorney that they could restructure the plan to make the payments more affordable. The bankruptcy was dismissed in 2004. Applicant testified that in 2004, they got behind

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<sup>1</sup> HE II and III are the Government’s email memoranda.

<sup>2</sup> Tr. 72-73.

<sup>3</sup> Tr. 18, 64-70.

<sup>4</sup> GE 3, 4, 5, 6.

again on their mortgage payments, so they filed bankruptcy in March 2005. Applicant stated they complied with the terms of the Chapter 13 bankruptcy, and in July 2009 their debts were discharged.<sup>5</sup>

After the bankruptcy discharge, later in 2009, Applicant again got behind on his mortgage payments. He attempted to work with the mortgage company to resolve the delinquency on their mortgage loan. Applicant testified he participated in mediation with the mortgage lender two to three times, but could not reach an agreement. He attempted to negotiate a deed-in-lieu of foreclosure to keep the house. In 2010, Applicant believed they had reached an agreement, but the mortgage lender decided to continue with foreclosure proceedings. Applicant stated that the house was in need of repairs. He tried to pay for the repairs, but then could not pay other bills. He testified the house had mold and his son has asthma, so they had to move out of it sometime in 2011. In his interview with a government investigator on August 21, 2012, he indicated that after he completed his Chapter 13 bankruptcy in 2009, he attempted to resolve the mortgage debt from 2009 to 2011, with negative results. He continued to receive notices from the mortgage lender. Applicant's credit reports reflect he made his last mortgage payment on September 2009. There is no explanation for why after his debts were discharged in bankruptcy, he was again delinquent on his mortgage payments.<sup>6</sup>

Post-hearing, Applicant provided documents that reflect a deed in lieu of foreclosure was requested on November 13, 2012, and it was completed on December 7, 2012. Applicant provided a document dated September 22, 2014, that indicates the plaintiff mortgage company had filed a lawsuit against Applicant and it "voluntarily dismissed its complaint for Foreclosure and Other Relief, without Prejudice, and release the Notice of Lis Pendens . . ." <sup>7</sup> Applicant testified that he went to court regarding the lawsuit, and the judge told him the case was dismissed. The mortgage debt in SOR ¶ 1.a (\$41,362) is listed as charged off on his credit reports. It does not appear the creditor is seeking reimbursement for this debt.<sup>8</sup>

Applicant cosigned a lease for his stepdaughter for an apartment in approximately 2008 (SOR ¶ 1.b (\$5,998)). He agreed to pay the lease. During his 2012 interview with a government investigator, he indicated his stepdaughter had moved out of the apartment, and the management company renewed the lease. He was going to have his wife contact the company and see what could be worked out. At his hearing, he stated that after the lease expired, his stepdaughter renewed it without his signature. He stated that his stepdaughter disputed the account, and she is attempting to make arrangements for a payment plan with the creditor. In his post-hearing submission, he

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<sup>5</sup> Tr. 20-24, 51-54; GE 2.

<sup>6</sup> GE 3, 4, 6.

<sup>7</sup> AE A, C, D.

<sup>8</sup> Tr. 25-40; GE 2, 3, 4, 5, 6.

indicated he is disputing the debt and had contacted the creditor. He did not provide any documentation to substantiate his or his stepdaughter's actions to resolve the debt.<sup>9</sup>

During his 2012 interview, Applicant was confronted with the debt in SOR ¶ 1.c (\$278). He indicated he was unfamiliar with this collection account for medical services. At his hearing, he did not provide evidence of actions he has taken to research or resolve the debt.<sup>10</sup>

The debts in SOR ¶¶ 1.d (\$792) and 1.e (\$690) are reflected as paid on his credit report.<sup>11</sup> The debt in SOR ¶ 1.f (\$207) is a telephone account. Applicant was made aware of the debt during his 2012 interview. He indicated he was not aware it was in collection. At this hearing, he indicated he did not pay it.<sup>12</sup>

Applicant testified he failed to file his 2014 federal income tax returns. He stated he ran out of time, and it never got filed. He does not know if he owes taxes or is due a refund. He did not file for an extension. He stated that he does not have any other delinquent debts. He estimated he has about \$400 remaining at the end of the month after paying his bills. His wife also works. He stated he intends to take care of his financial issues. He does not have a budget. He has not had financial counseling. In his post-hearing submission he stated he intended to seek credit counseling and budgeting classes.<sup>13</sup>

Applicant's post-hearing submission stated his financial problems were caused by "family situations, illnesses, and the economy." He did not elaborate and provide specific information. He indicated his wife has suffered from an illness that put a strain on them financially; the latest was a medical procedure she had a couple of years ago. Health insurance and medical expenses have had a major impact on their finances.<sup>14</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.

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<sup>9</sup> Tr. 40-45; GE 2, 6; AE B.

<sup>10</sup> Tr. 46; GE 2.

<sup>11</sup> Tr. 47-48; GE 5, 6.

<sup>12</sup> Tr. 49-51; GE 4.

<sup>13</sup> Tr. 54-64.

<sup>14</sup> AE B.

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. 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 three are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has delinquent debts that are unpaid or unresolved. He failed to file his 2014 federal income tax return. He filed bankruptcy twice. The first was dismissed because he missed a payment. The second, a Chapter 13 payment plan, he completed, and his debts were discharged in 2009. Shortly after those debts were discharged, he again failed to pay his mortgage payments. The above disqualifying conditions apply.

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.

Applicant has not provided sufficient evidence to conclude he has taken appropriate action to contact creditors to resolve or pay the debts alleged in the SOR. He was made aware, in his 2012 interview, that his delinquent debts were a security concern. He did not contact these creditors prior to this hearing. After his hearing, he indicated he contacted the creditor in SOR ¶ 1.b, to dispute the debt, but did not provide documentation or the basis of the dispute. Applicant failed to file his 2014 federal income tax returns. His tax obligations did not occur under unique circumstances that are unlikely to recur. Applicant's inaction in addressing his failure to file his 2014 tax returns and resolve other debts is ongoing, recent, and casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant repeatedly had difficulty paying his mortgage. After completing a Chapter 13 bankruptcy payment plan and having his debts discharged in 2009, during the same year he again failed to make his mortgage payments. His last mortgage payment was in September 2009, yet he continued to live in the house until 2011. Although he transferred the property as part of a deed in lieu of foreclosure, he was in arrears on his payments, and the debt was eventually charged off. He attributed his financial problems to family situations, illness, and the economy. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He failed to explain why he was delinquent on his mortgage payments shortly after he had his debts discharged in bankruptcy. Applicant has been steadily employed by the same employer for 19 years. He did not provide specifics regarding his family situations or illnesses, but did indicate he had significant medical expenses. Applicant has been on notice about his delinquent debts since 2012 and failed to provide proof he has paid or resolved them. I find he did not act responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant has not provided sufficient evidence that his financial problems are being resolved or are under control. There is insufficient evidence that he initiated a good-faith effort to repay the creditors or otherwise resolve the debts. Applicant did not provide evidence that he filed his 2014 federal income tax returns. AG ¶¶ 20(c) and 20(d) do not apply. Applicant failed to provide documented proof for the basis of his disputes with creditors or documented evidence regarding the actions he has taken to resolve them. 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 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 49 years old. He began having financial difficulty in 2003 when he failed to pay his mortgage. He has a history of trying to save his house from foreclosure. After completing a Chapter 13 bankruptcy payment plan in 2009, he was again delinquent on his mortgage payments. His last payment was September 2009. He moved out of the house in 2011. The mortgage was eventually resolved through a deed in lieu of foreclosure, and the debt is reflected as charged off on his credit report. Applicant failed to show he has resolved the smaller debts that were alleged, even though he has been aware of them since his background interview in 2012. Applicant failed to file his 2014 federal income tax return. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. 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.

### **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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f-1.i:	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