



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



In the matter of: )  
)  
) ISCR Case No. 12-12289  
)  
Applicant for Security Clearance )

**Appearances**

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

11/03/2014

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On November 18, 2013, 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.

Applicant answered the SOR on December 11, 2013, and requested a hearing before an administrative judge. The case was assigned to me on August 18, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014. I convened the hearing as scheduled on October 15, 2014. The

Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified on his own behalf. He offered Applicant's Exhibit (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 24, 2014.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. His admissions have been incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. He immigrated to the United States in 1981 at age 19 and became a naturalized citizen in 1996. He is a high school and college graduate. He is twice married. He has three children from his first marriage, ages 28, 25 and 22. He has two children from his present marriage, ages nine and eight. The older children are all college graduates who financed their own education without their parents' assistance.<sup>1</sup>

From 1999 to 2002 Applicant owned a business. He sold the business and moved to a different state. From 2003 to 2004 he worked part-time in the physical security business. From March 2004 to August 2006 he worked in a technical field. The company had financial difficulties and he was laid off. He worked at a sandwich shop from August 2006 to September 2008, but was underemployed. He worked from September 2008 to November 2009 for an industrial cleaning company. He was laid off. In 2010 he worked in the real estate/construction field on new home construction. He was earning about \$30,000, until he was laid off. The industry was suffering due to the economic downturn and he decided to change career fields. He has been unemployed for periods of time and underemployed. He is working three part-time jobs to meet his monthly expenses. His wife did not work when the children were smaller. She now works in the medical field and earns about \$22,000 annually.<sup>2</sup>

In 2002 Applicant purchased a home. In 2005 Applicant obtained a home equity loan. He made payments on his mortgage until he was unable to continue sometime in 2010, due to his underemployment and unemployment. He used his savings to pay the mortgage when he was not working, until it was exhausted. Applicant attempted to work with the mortgage company to get a loan modification. He submitted the paperwork four times. He considered a Chapter 13 bankruptcy, but did not pursue it. He attempted to do a short sale on his house in 2013, but was unsuccessful. Twice the house was to be sold at a foreclosure sale that was subsequently canceled by the mortgage company. He has been diligently working with the mortgage company to obtain a loan modification. There are now more programs available to help him get a loan modification for his mortgage. He was previously denied because he did not earn enough. He believes with his wife now working and the new programs available the

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<sup>1</sup> Tr. 19-23, 47-48.

<sup>2</sup> Tr. 23, 40-42, 45-47.

modification is more likely. He intends to include the delinquent payments for his mortgage in the modified loan. He has not yet been approved for a modified loan. The debt in SOR ¶ 1.d (\$35,847) reflects the delinquent mortgage.<sup>3</sup>

The debt in SOR ¶ 1.a (\$1,663) was settled in full in April 2009. Unfortunately, it continues to appear on Applicant's credit report.<sup>4</sup> The debts in SOR ¶ 1.b (\$1,243)<sup>5</sup>, ¶ 1.c (\$223),<sup>6</sup> ¶ 1.e (\$898),<sup>7</sup> and ¶ 1.f (\$135),<sup>8</sup> are all medical debts that were paid in December 2013. The debt in SOR ¶ 1.g (\$261) is also a medical debt that was initially investigated for its validity. It is now paid and has been reported to the credit bureau.<sup>9</sup>

Applicant does not have any consumer debt. He does not have any credit cards. He is not supporting any extended family members. His older children are self-sufficient. He has completed credit counseling.<sup>10</sup>

Applicant provided character letters that describe him as a person with a strong work ethic who is dependable, professional, trustworthy, reliable, responsible, dedicated and well-respected by family and friends.<sup>11</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

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<sup>3</sup> Tr. 25-26, 30-39, 42-44, 49-52; Answer to SOR attachments F-J.

<sup>4</sup> Tr. 26; Answer to SOR attachments A and B.

<sup>5</sup> Tr. 26; Answer to SOR attachment E.

<sup>6</sup> Tr. 26; Answer to SOR attachment D.

<sup>7</sup> Tr. 27; Answer to SOR attachment C.

<sup>8</sup> Tr. 27; Answer to SOR attachment C.

<sup>9</sup> Tr. 27-30.

<sup>10</sup> Tr. 55-56; Answer to SOR attachment K.

<sup>11</sup> Answer to SOR attachments O-T; AE E.

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 two are potentially applicable:

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

Applicant had delinquent debts that he was unable to pay. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has had periods of unemployment and underemployment. He works three jobs to make ends meet. The SOR alleged seven delinquent debts, five of which were for medical accounts. He had one consumer debt that was paid in 2009, but was not deleted from his credit report. He paid all of the medical debts. The only remaining debt is for his mortgage loan. Due to his unemployment and underemployment he was not able to make his mortgage payments. He attempted to obtain a loan modification, but because he did not earn enough, he did not qualify. He believes now that his wife is working he will qualify for a modification. He has been diligently working with the mortgage company to modify his loan. The mortgage debt is not resolved. AG ¶ 20(a) does not apply.

The conditions noted above were beyond Applicant's control. He was laid off from jobs and was working in the real estate/construction field during the economic downturn. Despite his meager earnings, he has paid all of the alleged debts except his

mortgage. He has not abandoned that debt, but rather has been attempting to work with the lender to modify the loan. He is confident with the new programs available, his wife's income, and as his earning power increases he will be able to resolve the remaining debt. AG ¶ 20(b) applies.

Applicant paid all of his debts except his mortgage. He is living within his means. His older children are self-sufficient. His wife works, and he is working three jobs. He has not ignored his financial obligations, but rather has worked hard to address all of them. There are clear indications his financial problems are being resolved. He has completed credit counseling. I find AG ¶ 20(c) applies. Applicant made a good-faith effort to resolve his debts and has been successful except for his mortgage loan. AG ¶ 20(d) 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 50 years old. He has been unemployed and underemployed for several years. He is working three jobs to pay his expenses. His wife is also working full-time. He has no consumer debt. Five of the debts alleged were for medical accounts that he has paid. The only remaining financial issue is his delinquent mortgage loan. He has been actively attempting to resolve this debt through a loan modification, but to date has been unsuccessful. I found his testimony credible that he is continuing to work with the mortgage company. He understands the importance of resolving this remaining debt. He is not living beyond his means. I have considered all of the character evidence

presented and conclude that despite having this remaining debt to resolve, I do not believe it rises to the level of a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	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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Carol G. Ricciardello  
Administrative Judge