



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00869
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

12/12/2013

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 20, 2013. On August 22, 2013, 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 the Department of Defense for SORs issued after September 1, 2006.

On September 12, 2013, Applicant answered the SOR and elected to have a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 11, 2013. I convened a hearing on

November 4, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and entered in the record without objection. Applicant testified and called no other witnesses. He introduced three exhibits, which were marked as Applicant's Ex. A through Ex. C and entered in the record without objection. DOHA received the hearing transcript (Tr.) on November 13, 2013.

### **Findings of Fact**

The SOR contains four allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.d.). In his Answer to the SOR, Applicant admitted all four allegations, with explanation. Applicant's admissions are entered as findings of fact.

Applicant is 50 years old and employed as a manager by a government contractor. He holds a bachelor's degree in business administration. He seeks a security clearance for the first time. (Ex. 1; Tr. 48.)

In June 2009, Applicant's position was eliminated, and he was terminated from his employment. When he could not find a job immediately, he went into business for himself. He was self-employed until July 2010, when he accepted his current salaried position. (Ex. 1; Tr. 38-39.)

In 1988, Applicant married for the first time. Two children, now adults, were born to the marriage. Applicant and his first wife separated in 2010 and divorced in 2011. Applicant married his second wife in October 2012. (Ex. 1; Ex. C; Tr. 49-51.)

In 1995, Applicant and his first wife purchased a home for \$186,000. In 2007, they took out a second mortgage on the property for approximately the same amount as the purchase price. The amount of the second mortgage was determined by assessing the property's appreciated value. When Applicant and his wife decided to divorce in the summer of 2010, they elected to stop making their monthly mortgage payments of \$2,100 to the creditor identified at SOR ¶¶ 1.c. and 1.d. They planned to sell the house after their divorce and divide any profits equally. (Ex. 4; Tr. 37-38.)

By the time Applicant and his first wife divorced, the creditor had initiated foreclosure proceedings. The SOR alleges at ¶ 1.c. that Applicant owes the creditor approximately \$52,639 on a past-due mortgage, in foreclosure status, with a total balance of approximately \$173,000. The SOR alleges at ¶ 1.d. that Applicant owes the creditor approximately \$60,470 on a second past-due mortgage in foreclosure status. The total balance on the mortgage is approximately \$195,000. When he was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) in May 2013, Applicant stated that he did not intend to pay any

portion of the past-due amount to the creditor.<sup>1</sup> In his answer to the SOR, Applicant asserted that his first wife had not cooperated in helping him resolve the mortgage debts. At his hearing, Applicant reported that, to the best of his knowledge, the home was still in foreclosure status. He reported that he had been unable to acquire additional information on the status of the foreclosure or to resolve the debts. (Ex. 4; Ex. 5; Tr. 26-29, 35-37.)

The SOR also alleged that Applicant owed two delinquent credit card debts. The first debt, alleged at SOR ¶ 1.a., had been charged off in the approximate amount of \$9,806. The second debt, alleged at SOR ¶ 1.b., had been charged off in the approximate amount of \$567. In his answer to the SOR, Applicant stated that both debts arose from his former wife's use of the credit cards for household expenses. He acknowledged that he was being held responsible for the debts. At his hearing, he stated that the debts had not been resolved. He further stated that he intended to address his delinquent credit card debts after he resolved his mortgage debts. (Tr. 28, 33, 66.)

Applicant stated that he had resolved another delinquent credit card debt, not alleged on the SOR. He stated that the account was for approximately \$19,000, and he settled it for a lesser amount. He did not provide documentation supporting the resolution of the debt, but his two credit bureau reports confirmed that the debt had been satisfied. (Ex. 2; Ex. 3; Tr. 58-62.)

In July 2013, Applicant provided a personal financial statement. He reported that his monthly net income was \$4,732, and his second wife's net monthly income was \$4,201. Applicant reported fixed monthly living expenses of \$1,420. He stated that he paid the couple's living expenses, and his wife made a monthly mortgage payment of \$1,077 on their home, which she owned. Applicant's financial statement reflected a monthly net remainder of \$6,436. (Ex. 5; Tr. 53, 63.)

On his financial statement, Applicant reported real estate, bank savings, stocks and bonds, and personal property valued at \$1,172,000, belonging to his wife. He provided a separate document listing marital assets and a joint net worth of \$1,479,000. Documents supporting the net worth evaluation established that the majority of the assets were in Applicant's wife's name only. Applicant stated his wife brought substantial assets to their marriage, and he did not transfer any of his assets to her. He stated that his personal savings totaled approximately \$5,000 or \$6,000, he had about \$15,000 in a 401(k) retirement plan, and he had approximately \$2,400 in two checking accounts. Applicant stated that he had received financial credit counseling. (Ex. 2; Ex. C; Tr. 51- 56.)

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<sup>1</sup> At his OPM interview, Applicant stated that the estimated value of the home was \$325,000. The two mortgages equal \$368,000. (Ex. 4; Tr. 34-35.)

Applicant provided a recent performance evaluation which indicated he met or exceeded his employer's expectations. He also provided a letter of appreciation from a high-ranking customer. (Ex. B.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). 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, the administrative judge applies these 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." 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. In 2010, in anticipation of their divorce, Applicant and his first wife stopped paying their two home mortgages. After their divorce, they were unable to sell the property and divide any proceeds. The SOR alleges over \$112,000 in past-due payments on the two home mortgages, which have subsequently gone into foreclosure. Moreover, Applicant has not addressed or resolved over \$10,000 in delinquent credit card debt. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.”

(AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant’s job was eliminated in June 2009, and he was not employed in a salaried position for a year. In July 2010, however, he accepted his current position, where he has worked for over three years. In 2010, Applicant and his wife separated, and they divorced in 2011. The debts alleged on the SOR are marital debts from Applicant’s first marriage. He stated that his first wife was not cooperative in helping him address the two mortgage debts, and while this was unfortunate, it did not negate his responsibility to resolve these financial delinquencies.

Applicant failed to establish that his current inability to satisfy his delinquent debts resulted from unemployment or conditions over which he had no control. While his employment situation was difficult for a year, he has been steadily employed for the last three years. He admitted that the marital debts from his first marriage are his responsibility. Even so, over two years have passed since the divorce, and he has not addressed his financial delinquencies by seeking out his creditors and negotiating present or future payment plans. His financial statement suggested that he has some personal assets which could be used to resolve, in part, some of his delinquencies.

Applicant merits some credit for resolving a large credit card debt that was not alleged on the SOR. However, this is not sufficient to demonstrate a good-faith effort to address his delinquent debts or to mitigate his failure to seek out the creditors to whom he currently owes debts and negotiate payment plans or otherwise resolve his debts. Applicant’s current financial situation raises security concerns about his reliability, trustworthiness, and good judgment.

I conclude that AG ¶ 20(d) applies in part to Applicant’s case. However, his current financial delinquencies, as alleged in the SOR, remain unresolved. After carefully weighing the facts of Applicant’s case, I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not apply in mitigation.

### **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. Applicant is a mature person of 50 years. His performance evaluation and letter of customer appreciation reflect that he is hard-working and well-respected in the workplace. His financial problems began several years ago and are ongoing. Despite a steady income for at least three years, and substantial monthly remainders, he has failed to satisfy two credit card debts and address substantial mortgage delinquencies.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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.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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Joan Caton Anthony  
Administrative Judge