



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-01057
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

04/14/2014

**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 October 29, 2013, the Department of Defense (DOD) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 10, 2013. He elected to have his case decided on the written record. On February 14, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on February 28, 2014. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on March 14, 2014. The case was assigned to me on April 9, 2014.

### **Findings of Fact**

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

Applicant is 55 years old. He holds bachelor's and master's degrees. He served in the Army reserves from 1975 to 1982 and was honorably discharged. He first married in 1976 and divorced in 1990, and again married in 1995 and divorced in April 2013. He has three children, ages 29, 17, and 15. Applicant held prior security clearances in 1983, 1986, and 1993. He has been self-employed from 1993 to the present.<sup>1</sup>

Applicant worked in the defense industry in the late 1980s and early 1990s. He recognized its volatility especially after the fall of the Soviet Union. He started his own business in 1993. He was approached by foreign agents on three occasions. Each time he reported the contacts to the proper law enforcement agencies. He was aware that there were great income disparities in the defense industry, so he decided to diversify his "income streams." He took out a home equity loan and used the money to invest in oil and gas wells. He noted "this proved fruitful, and still pays us many years after purchase even today." The success of this investment drove him to find other investments that would produce equivalent returns in oil and gas interests. He viewed this as reducing his overall risk "by investing in several [places] since at the time credit was plentiful and we [had] been successful already in this area." Applicant stated that after due diligence he invested in an operation that he later learned was fraudulent. He stated he lost a significant amount of money. He did not provide any supporting documentation.<sup>2</sup>

Applicant stated that he took full responsibility for everything that happened. He stated that since 1993 he has not received steady income, instead he lived off of the "billings of projects that are contracted or from the final payments of product deliveries." He stated that "being a small business owner requires some risk taking, but also teaches to plan for more difficult times that can lie ahead."<sup>3</sup> He has not participated in

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<sup>1</sup> Item 5.

<sup>2</sup> Item 4. In Item 5, Applicant mentions losing over \$250,000 to \$400,000 due to loss of income, customers, and a poor investment. He does not provide a breakdown of what his investment losses were. He indicated that due to the fraudulent nature of the investment and associated criminal charges he did not receive restitution. However, he stated there were other lawsuits made against the oil drilling company and his law firm is attempting to recover his investment. He did not provide an update in his response to the FORM.

<sup>3</sup> Item 4.

credit counseling. He indicated that credit counseling was useful for those who lived beyond their means, but for a small business owner it was useless.<sup>4</sup>

Applicant secured a \$133,000 home equity loan in 2008 that was based on the value of his home, which was \$450,000. In the following years the house's value decreased significantly due to the economic situation in the country. He stated "we, like so many people, thought it was smart to remove some of the equity in the property to do other purchases. We never bought anything for ourselves, but tried to diversify our income streams as I already mentioned."<sup>5</sup>

Applicant stated that during the same period of time government contracts for his business reduced, and he and his family were living off of their gas well interest that remained profitable. His wife did not work. In 2011, he and his wife divorced, which also caused financial hardship. He maintained custody of the children. As part of the divorce settlement, Applicant retained all of the debt, and the oil and gas investment was split between them.<sup>6</sup>

Applicant stated he has lived within his means and does not spend frivolously. He does not accept any government assistance. He stated he home schools his son, and his daughter attends boarding school, with the assistance of his church. He did not provide information as to what his contribution is for the boarding school. He did not provide information as to how he manages to work and home school his son. Applicant stated his current income is between \$600 and \$800 a month.

The SOR alleges three debts totaling approximately \$155,926. The debt in SOR ¶ 1.a is a \$752 medical debt. Applicant stated that the debt belonged to his ex-wife and was incurred when they were separated. He was unaware of the debt. In a letter dated December 1, 2013, he made an offer to the creditor to settle the debt for \$100. In his response to the FORM dated March 14, 2014, he did not provide additional evidence that he has paid anything toward resolving the debt.

The debt in SOR ¶ 1.b is a federal tax lien for \$23,174 filed against Applicant in August 2013 for unpaid taxes from tax year 2011. Applicant provided an undated and unsigned copy of an "Offer in Compromise" to the Internal Revenue Service (IRS). He indicated that he offered to settle the debt for \$2,040. He stated in the offer that his income had declined; his home was in the process of being foreclosed; and the financial stress caused his recent divorce. He further indicated that the source of income for making payments to the IRS would come from monthly cash flow if his business began to grow again; selling assets; and borrowing from family and friends. In his response to the FORM, Applicant stated that he was "setting up a payment plan with the IRS . . ." Applicant failed to provide substantive evidence that the IRS had agreed to his offer or

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<sup>4</sup> Response to FORM.

<sup>5</sup> Item 4.

<sup>6</sup> Item 4.

that he has made any payments.<sup>7</sup> Applicant stated that small business owners have to balance cash flow for debt obligations and often pay past years debts with current years' earnings.

The debt in SOR ¶ 1.c is a \$133,000 home equity loan Applicant obtained in 2008. He used the loan to invest in oil and gas production wells. The investment was profitable and continues to provide payments to him. The success of this investment led Applicant to make other investments. He lost money in the new investments. He did not provide any documentary evidence to show that all of his investments were in the fraudulent enterprise. Applicant provided a letter dated March 6, 2013, to the creditor offering to settle the debt for \$6,000. He intended to borrow money from family and friends to pay the debt. He indicated in the letter that, in addition to this debt, he also had \$66,000 of other debts with no assets. There is no indication he has paid anything or that the creditor accepted his offer.<sup>8</sup>

Applicant provided character letters that describe him as superb, innovative, creative, reliable, honest, trustworthy, hardworking, decent, and law-abiding.<sup>9</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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, 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 avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>7</sup> Item 4.

<sup>8</sup> Item 4.

<sup>9</sup> Item 4.

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 as to obtaining 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 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. I have considered the following under AG ¶ 19:

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

Applicant owes three delinquent debts totaling approximately \$155,926. One debt is a \$23,174 federal tax lien owed from 2011. I find the above disqualifying conditions apply to these facts.

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

- (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 did not provide evidence that he has made any payment on any of his delinquent debts. The debts are recent and unpaid. He stated in his letter to the home equity loan creditor that in addition to the \$133,000 delinquent loan, he also had \$66,000 of other debt and no income. AG ¶ 20(a) does not apply because Applicant's debts are still owed. Under the circumstances, I cannot find future financial problems are unlikely to recur and that it does not cast doubt on his reliability, trustworthiness, and good judgment.

Applicant attributes his financial problems to a divorce, a fraudulent investment, and the downturn in business and the economy. These are conditions that were beyond Applicant's control. In order to fully apply AG ¶ 20(b), an individual must have acted responsibly under the circumstances. Applicant did not provide information as to whether there were other marital debts he was responsible for paying. There was no loss of spousal income because his wife did not work. He did not explain whether he pays his wife spousal support. His two younger children were teenagers when their parents divorced, so it is likely additional child care expenses were not involved. He did not provide information as to his contribution to his daughter's boarding school expenses.

Applicant attributes his tax lien to the downturn in business and the difficulty of cash flow output when running a small business. A tax debt is not a typical business debt as Applicant alludes to. Paying past years' debt obligations with current earnings may be an acceptable practice for a small business paying its expenses, but a tax debt is based on income that was previously earned. Applicant stated that when owning a small business one must be aware and prepared for the volatility, which requires planning. Applicant earned income that incurred more than \$23,000 in tax debt for 2011. He should have made payments on a quarterly basis to the IRS. His failure to pay it does not reflect a downturn in the business sector, but rather reflects a failure to pay what he owed when it was due.

Applicant obtained a home equity loan for \$133,000. He invested the money so he could have other avenues of income. One investment was profitable and he continues to receive revenue from it. Another investment was not profitable and he lost money. The decline in the value of his house does not negate the fact that he obtained \$133,000 in equity from it, used it for his benefit, and has not repaid it. In making an investment, obviously one hopes to make a profit, but it also comes with the risk that one may lose the investment. Applicant did not provide any documentation to show he made a fraudulent investment or that he has made any payments toward the home equity debt. I find Applicant has not acted responsibly under the circumstances and AG ¶ 20(b) only partially applies.

There is no evidence that Applicant received financial counseling. There are not clear indications that his financial problem is being resolved or is under control. Applicant provided information to the loan equity creditor that he had an additional \$66,000 in debt. This is approximately \$44,000 more than is alleged in the SOR.<sup>10</sup> Applicant provided letters he sent to the creditors offering settlements. He did not provide evidence the offers were accepted or that he has made any payments to resolve the debts. Applicant did not dispute the alleged debts. AG ¶¶ 20(c), 20(d) and 20(e) do not apply.

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<sup>10</sup> I have not considered that this additional debt is delinquent, only that it exists based on Applicant's statement in relation to whether any mitigation applies. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal board listed five circumstances in which conduct not alleged in an SOR may be considered:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)).

## 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 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 55 years old. He has been a small business owner since 1993. He served in the Army Reserve and was honorably discharged. His character evidence reflects an innovative, creative, and hardworking person.

Applicant obtained a home equity loan and used the money to make investments. One investment did well and continues to pay him revenue, another failed. Applicant attributes the failure due to a fraudulent scheme. Applicant has a \$23,000 federal income tax lien for unpaid taxes for 2011. He provided a copy of an unsigned offer of compromise to the IRS. No information was provided that the offer was accepted, and there is no proof Applicant has made any payments. He has made offers to settle his other two delinquent debts (\$133,000 and \$752), but has not made any payments to date.

Applicant failed to meet his burden of persuasion. 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

Subparagraphs 1.a-1.c:                   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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge