



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



In the matter of: )  
)  
) ISCR Case No. 13-01229  
)  
Applicant for Security Clearance )

**Appearances**

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

04/08/2014

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits in this case, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 14, 2012. On December 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD acted 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 for SORs issued after September 1, 2006.

On January 15, 2014, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on February 10, 2014. I convened a

hearing on March 12, 2014, 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 two exhibits, which were marked Ex. 1 and Ex. 2 and entered in the record without objection. Applicant testified, called no witnesses, and introduced five exhibits, which were identified, marked, and entered without objection in the record as Applicant's Ex. A through Ex. E. At the conclusion of the hearing, I left the record open until March 19, 2014, so that Applicant could, if he wished, provide additional information. Applicant timely filed one additional exhibit. Department Counsel filed a memorandum stating that the Government did not object to the admission of Applicant's post-hearing submission. Accordingly, I marked Applicant's post-hearing submission as Ex. F and entered it in the record. I marked Department Counsel's memorandum as Hearing Exhibit (HE) 1 and entered it in the record. DOHA received the hearing transcript (Tr.) on March 20, 2014.

### **Findings of Fact**

The SOR contains five allegations of financial conduct that raise security concerns under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.e.). In his Answer to the SOR, Applicant admitted the allegations at ¶¶ 1.a. through 1.d. He denied the allegation at SOR ¶ 1.e. Applicant's admissions are entered as findings of fact. (Answer to SOR.)

Applicant is 45 years old. In 1986, he earned a high school diploma. He attended a university from September 1986 until May 1989, but he did not earn a degree. From 1986 until 1994, he served in the U.S. military as an active reservist. From 1994 through 1997, he served in the inactive reserve. In December 1997, he received an honorable discharge. (Ex. 1; Tr. 29.)

Since about 2007, Applicant has been employed by several companies as a federal contractor. He first received a security clearance in 2008. In March 2012, Applicant was terminated from a position as a federal contractor for accepting an emergency medical telephone call from his wife. Subsequently, he was unemployed for five months. In August 2012, he accepted a full-time position with his current employer. He also has a stand-by, part-time job but reports that he does not received much work from that employment. He seeks renewal of his security clearance. (Ex. 1; Tr. 31-32.)

Applicant has been married three times. He married his current wife in May 2011. He has three children and one-stepchild. Two of Applicant's children are adults. He pays child support<sup>1</sup> for an eight-year-old daughter, and he is in the process of adopting his seven-year-old stepson. (Tr. 30, 50-51.)

Between 2003 and 2005, Applicant and his second wife purchased three rental properties together. When their marriage ended and they decided to divorce, they sold

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<sup>1</sup> Applicant testified that he is current on his child support payments. (Tr. 30.)

the properties. The SOR alleges at ¶ 1.e. that Applicant owes a mortgage lender approximately \$24,573 on a charged-off account. In his Answer to the SOR, Applicant denied the debt. At his hearing, he explained that he and his former wife sold the property that was the subject of the alleged mortgage deficiency. He explained that the property was sold in a short sale. As a post-hearing submission, he provided documentation from the lender, dated May 4, 2009, reciting that the subject property sold for \$95,500. Further, the lender stated that it would accept \$2,500 from the sale of the property to settle Applicant's mortgage debt. The account number on the lender's letter was the same as the account number on Applicant's credit report identifying the charged-off debt. (Answer to SOR; Ex. 2; Ex. F; Tr. 22-25, 38-39.)

The SOR alleges at ¶ 1.a. that Applicant owes a credit union \$4,249 on a charged-off debt. Applicant admitted the debt and identified it as a signature loan that he and his second wife took out to purchase an automobile. He conceded that he and his wife failed to make arrangements when they divorced to settle and pay their marital debts. He stated that he had made some payments on the debt in the past. At his hearing, Applicant provided documentation establishing that he had entered into a payment agreement with the lender in January 2014 to make monthly payments of \$25 to pay the debt. He provided a print-out of his bank records for January and February 2014 showing that he had made two payments on the debt alleged at SOR ¶ 1.a. (Ex. A; Ex. E; Tr. 33-35.)

The SOR alleges at ¶ 1.b. that Applicant owes \$7,354 to a credit card company on a charged-off account. Applicant admitted the debt and identified it as a debt from his second marriage. He reported he had made payments on the debt in the past that reduced it to approximately \$6,204. In his answer to the SOR, he stated that he had contacted the creditor and had made arrangements to reactivate the account and make monthly payments of \$50. However, at his hearing he reported that he had recently received a cancellation of debt notice and a Form 1099-C from the creditor. He provided a copy of the Form 1099-C as an exhibit and stated he would be obliged to report the amount cancelled as income on his 2013 federal income tax return. (Ex. D; Tr. 20-21, 35.)

The SOR alleges at ¶ 1.c. that Applicant owes \$1,149 to a credit card company on a charged-off account. Applicant admitted the debt and stated that it arose during his unemployment in 2012. He further explained that he applied for and used the credit card when he was unemployed. When he obtained employment, he began making payments on the account. At his hearing, Applicant provided documentation from the creditor, dated January 14, 2014, showing that he had made arrangements to pay \$25 each month by post-dated check. He provided a print-out of his bank records for January and February 2014 showing that he had made two payments on the debt alleged at SOR ¶ 1.c. (Ex. B; Ex. E; Tr. 21-22, 35-37.)

The SOR alleges at ¶ 1.d. that Applicant owes a medical creditor on a charged-off debt of \$813. Applicant admitted the debt and said it was incurred for medical services to his wife. Applicant provided documentation establishing that he had a

payment arrangement with the creditor's agent and had authorized a monthly deduction of approximately \$57 until the debt was satisfied. He provided a print-out of his bank records for January and February 2014 showing he had made two payments on the debt alleged at SOR ¶ 1.d. (Ex. C; Ex. E; Tr. 37-38.)

Applicant stated that he designated monthly payments of \$25 for two of his outstanding debts because that was the amount he was comfortable paying. He further stated that if he earned additional overtime income, he would increase the amounts he paid in the future. (Tr. 34-35.)

Applicant reported a net monthly family income \$5,860. He reported the following monthly expenses: rent, \$1,389; groceries, \$300; clothing, \$40; utilities, \$40; car payment, \$461; gasoline, \$320; car insurance, \$75; child support, \$606; cable, \$125; cellphones, \$135; existing credit card debt, \$20; and payments on debts alleged on the SOR, \$108. Applicant's monthly living expenses total \$3,619. His net monthly remainder is \$2,241. (Tr. 46-54.)

Applicant reported that he has \$7,500 in his 401(k) account and approximately \$450 in a newly-opened Roth Individual Retirement Account. (Tr. 40-42.)

### **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 an 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 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 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**

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. After his second divorce, Applicant did not address his outstanding marital debts. Later, in 2012, when he was unemployed for about five months, Applicant incurred additional debt that has not been resolved. This evidence is sufficient to raise these 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 admitted a history of financial difficulties that arose after his second divorce and his five-month period of unemployment in 2012. He denied a \$24,573 delinquent mortgage debt, alleged at SOR ¶ 1.e., and he provided documentation corroborating his assertion that the debt had been resolved by a short sale of a rental property. As a result, the creditor holding the mortgage waived its right to pursue further collection after collecting \$2,500 of the sale price.

Applicant’s loss of employment in 2012 and his second divorce were conditions not within his control. However, for a time, Applicant did not act responsibly to cure his financial delinquencies. In January 2014, Applicant took control of his financial responsibilities and initiated payment plans for three of his delinquent debts.

When Applicant approached a fourth creditor to request a payment plan, the creditor initially agreed. Later, however, the creditor sent Applicant a notice that it had cancelled the debt, and it provided him with a 1099-C, making Applicant responsible for paying federal income tax on the amount of the cancelled debt.

While it is true that not all of Applicant's delinquent debts have been fully satisfied, DOHA's Appeal Board has explained that an individual's good-faith partial payment of debts need not be a bar to access to classified information:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant appears now to have sufficient resources to pay his delinquent debts. His delinquencies arose when he divorced and became unemployed. I conclude that the circumstances which gave rise to Applicant's financial delinquencies are not likely to recur in the future. He has acted in good faith to pay or settle his delinquent debts, and although he has not satisfied them fully, he has displayed a determination to satisfy his debt obligations in the future.

While it could be hoped that he had started sooner to address his debts and committed more of his current resources to resolving them, I conclude that Applicant has acted responsibly in addressing his financial delinquencies. By his actions, he has demonstrated that he is serious about satisfying his creditors and avoiding future debt. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are all applicable in mitigation in this case.

### **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 45 years. His financial problems began when he divorced and was later unemployed for a five-month period. Applicant provided documentation showing that he is systematically addressing his financial delinquencies. He has a plan and sufficient financial resources to resolve the debts alleged on the SOR.

Overall, the record evidence persuades me that Applicant is mature, trustworthy, and capable of being entrusted with access to classified information. I conclude Applicant mitigated 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:           FOR APPLICANT

Subparagraphs 1.a. - 1.e.:       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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Joan Caton Anthony  
Administrative Judge