



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



In the matter of: )  
)  
) ISCR Case No. 13-01304  
)  
Applicant for Security Clearance )

**Appearances**

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

07/23/2014

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On March 7, 2014, 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 April 12, 2014, and requested a hearing before an administrative judge. The case was assigned to me on May 19, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 29, 2014. I convened the hearing as scheduled on June 26, 2014. The Government offered exhibits

(GE) 1 through 3, and they were admitted into evidence without objection. Applicant and one witness testified. Applicant did not offer any documents. DOHA received the hearing transcript (Tr.) on July 7, 2014.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR with explanations, except SOR ¶ 1.I. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He has an associate's degree he earned in 2004 and has several IT network certifications. He was in the Army Reserve from 1988 to 1992. He married in 2001 and has a ten-year-old son.<sup>1</sup>

Applicant worked in the software development industry from 2003 to 2007. Due to the economy, he and his wife began researching small business opportunities. They found a business they were interested in that had a 27-year financial history and had been in the same location for the same period. They hired an accountant to review the bills, expenses, taxes, and other financial considerations. They also hired an attorney to review the legal aspects of the business. After considering the business model, they decided it was a sound business, and they purchased it. They took out a \$90,000 second mortgage on their home to pay for it.<sup>2</sup>

After a period of time, the sales figures for the business did not correspond with what Applicant's research had shown. There was a significant difference in the amount of income earned. Applicant decided to expand the business into another market to increase income. About the same time, there was a fire inspection by the city on the building where the business was located. The building failed miserably, and the cost to bring the building up to code was estimated to be between \$60,000 and \$80,000. Applicant did not have the resources to pay the costs. The terms of his lease did not provide for the landlord to incur the expenses.<sup>3</sup>

Applicant weighed his options and decided to move to a different unit. He found one across the street so he could maintain the business in the same area. He remodeled and opened the business. Because it was a new business, he stated that he could not get a business loan and used his personal credit cards to get the business operating. He used the credit cards to pay for all things related to his business. He signed personal guarantees for the credit cards he used for his business. The credit cards were in his name and the name of the business.<sup>4</sup>

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<sup>1</sup> Tr. 30-32.

<sup>2</sup> Tr. 32-35.

<sup>3</sup> Tr. 36-38, 57-61, 64.

<sup>4</sup> Tr. 38-40, 62.

During 2007, shortly after purchasing the business, Applicant and his wife separated and lived in different locations. He became acquainted with the former owner of the business. He discussed with her that the business was not making money. She told him that her husband at the time had another business that he was using to put cash back into the business they sold to Applicant. He would use the cash from the second business and ring up sales to the business Applicant bought, so it would show an inflated value of the store. Applicant began researching the specifics of the sales made before he purchased the business and saw there were payments made, but no corresponding orders. He did not learn of the fraud until August 2008. The terms of the purchase contract provided for a one-year period to raise concerns and the year had expired. Applicant believed that the one-year period also included fraud.<sup>5</sup>

The business continued to lose money, and Applicant had difficulty making the credit card payments. He was taking cash advances on his credit cards. He could not consolidate the credit card debts because he exceeded his credit limit. In September 2008, he decided to close the business. He sought legal advice on how to close it. He was advised to stop paying the bills and file bankruptcy. His last payment on his credit card debts was in October 2008. He liquidated everything in the store to pay what he could.<sup>6</sup>

Applicant discussed with his attorney whether to file bankruptcy. He was advised if he filed Chapter 7 Bankruptcy then all of his debts would be discharged, including his personal debts. His other option was to ignore the business debts and continue to pay his personal debts. Applicant decided it was not in his best interest to file bankruptcy. He decided to not pay the debts he associated with his business, but to pay his personal debts.<sup>7</sup>

Applicant testified that all of the delinquent debt alleged in the SOR (totaling approximately \$113,230), except ¶ 1.I was incurred as part of his business. He paid the debt in SOR ¶ 1.I and it is resolved.<sup>8</sup> He acknowledged that he personally guaranteed the credit cards he used for his business, but he feels that these are business debts that he should not have to pay, regardless of his personal guarantee. He testified that he understood that he was obtaining credit based on his personal guarantee to repay the debts, even though he was using it for his business. He indicated that in the state where he incurred the credit card debts, there is a statute of limitations that prohibits the creditor from suing him for payment after four years and that time has run. He testified that he does not intend to repay the credit card debts he attributes to his failed business

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<sup>5</sup> Tr. 40-43.

<sup>6</sup> Tr. 43-49, 68.

<sup>7</sup> Tr. 45-50, 54-55, 95.

<sup>8</sup> Answer to SOR, exhibit I.

even though he personally guaranteed them. He stated that even if he had the money he would not repay the debts.<sup>9</sup>

In 2008, Applicant's house was foreclosed and sold. The first mortgage was paid and \$14,000 of the \$90,000 second mortgage was paid, leaving a \$76,000 deficiency. The deficiency was forgiven as part of a federal debt relief program.<sup>10</sup>

Applicant and his wife reconciled. He currently earns \$72,000, and she earns approximately \$42,000. They rent a house from Applicant's parents and pay approximately \$450 in rent, which is an amount that covers the taxes. Applicant has been working for his current employer since October 2013. He was unemployed all of 2009 and part of 2010. He was then employed in temporary positions until 2013. Applicant testified that he and his wife have stable finances and are able to pay all of their bills.<sup>11</sup>

Applicant's spouse testified on his behalf. She has known him since 1999. He is a good father and has always provided for his family even when business was bad. They do not live beyond their means.<sup>12</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 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

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<sup>9</sup> Tr. 47-55, 76-77.

<sup>10</sup> Tr. 68-71. I have not considered this information for disqualifying purposes, but will consider it when determining credibility and in analyzing the whole person.

<sup>11</sup> Tr. 50, 71-75, 78-79.

<sup>12</sup> Tr. 104-110.

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 has eleven delinquent credit cards debts totaling over \$113,230 that he is unwilling 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 incurred credit card debts that he used for his business, but personally guaranteed. He has not made any payments to resolve the debts. He acknowledges the debts are legitimate, but were used for his business and therefore should not be required to repay them and his actions should not be held against him. He testified that even if he had the money he would not repay these debts. He indicated that the statute of limitations has run on these debts, and the creditors can no longer sue him for payment.

AG ¶ 20(a) does not apply because Applicant has numerous delinquent debts that he has not paid. Although he may have incurred them under circumstances that are unlikely to recur, his inaction to resolve these legitimate debts casts doubt on his reliability, trustworthiness, and good judgment.

Applicant's financial problems are largely attributed to his failed business. There were unique circumstances surrounding the failure of his business that were beyond Applicant's control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant readily acknowledges that he personally guaranteed the credit cards he used for his business and has over \$113,000 of delinquent debt from those credit cards. Yet, he has decided because he used them for his business he should not have to repay the debts. Although he may consider these business debts, he personally promised his creditors that he would pay them. Based on

that promise he received money that he now refuses to pay. I find he has not acted responsibly under the circumstances, and AG ¶ 20(b) only partially applies.

AG ¶ 20(c) partially applies because Applicant sought advice from an attorney, but has chosen not to file for bankruptcy. There are not clear indications the problem is being resolved or is under control because Applicant has indicated his intention not to repay these debts. AG ¶ 20(d) 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 44 years old. He is a good husband and father. He earnestly attempted to start a business, but despite his best effort and due to conditions beyond his control, it failed. Applicant personally guaranteed that he would pay the debts incurred from the credit cards he used. He has decided that he does not have to honor those personal guarantees because he used the credit cards for his business. This is counter to his promise. 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 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.k:	Against Applicant
Subparagraph 1.l:	For 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