



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-01312
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

09/08/2014

**Decision**

WHITE, David M., Administrative Judge:

Applicant incurred substantial debts that he could not repay during the ten years following a family medical tragedy. He had more than \$346,000 of debt cancelled as uncollectible, and resolved about \$15,400 in other debts. About \$156,000 in debt remains unresolved. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on August 28, 2013.<sup>1</sup> On February 6, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial

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<sup>1</sup>Item 5.

Considerations).<sup>2</sup> 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on February 27, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on May 19, 2014. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on June 6, 2014. He submitted additional material in refutation, extenuation, and mitigation on July 1, 2014, within the 30-day period, and made no objection to consideration of any contents of the FORM. Department Counsel indicated no objection to the admissibility of Applicant's FORM Response (FR) in a memorandum dated July 7, 2014. I received the case assignment on July 17, 2014.

### **Findings of Fact**

Applicant is 67 years old, married, and has two adult children. A third child passed away in January 2006. Applicant earned a bachelor's degree and commission from the U.S. Naval Academy in 1970, and a master's degree from the Naval War College in 1989. He honorably retired after 26 years of service as a naval officer, and has worked as a program director for a defense contractor since June 1996. He held a security clearance, without incident, throughout his naval and post-naval careers in support of national defense.<sup>5</sup>

In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, and 1.g. He denied the remaining allegations in the SOR, with some explanations.<sup>6</sup> Applicant's admissions are incorporated into the following findings of fact.

Applicant admittedly filed for Chapter 13 bankruptcy relief in January 2010. His listed liabilities totaled about \$797,000. This bankruptcy proceeding was dismissed in

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<sup>2</sup>Item 1.

<sup>3</sup>Item 4.

<sup>4</sup>The Government submitted ten Items in support of the SOR allegations.

<sup>5</sup>Items 4 and 5.

<sup>6</sup>Item 4.

April 2010 because Applicant's debts were too high for him to qualify for bankruptcy relief under Chapter 13. His attorney informed him that his only other bankruptcy option would be under Chapter 11, but he could not afford the legal fees associated with such a proceeding.<sup>7</sup>

Applicant's SOR-listed debts break down into four groups. The first, involving only SOR ¶ 1.b, is the \$88,183 charged-off balance due on the second mortgage loan formerly secured by the home involved in Applicant's August 2011 short sale of that property. In two letters, dated June 28 and 29, 2011, the lender offered to release their lien on the property (with the reduced balance remaining due and payable) for a payment of \$11,300 from the short-sale proceeds, or to accept \$22,600 as settlement in full for the then-outstanding account balance of \$99,483. The lender received \$11,300 in the short-sale escrow settlement and released the lien, but Applicant was unwilling or unable to pay the additional \$11,300 to resolve the remaining \$88,183 balance. He states that the lender has made no further effort to collect this debt, but it has not been cancelled or otherwise forgiven and remains unresolved.<sup>8</sup>

The second group comprises four credit card account debts, totaling \$80,706 and owed to a credit union, alleged in SOR ¶¶ 1.c, 1.i, 1.j, and 1.k. Applicant provided a letter from a recovery specialist at the credit union dated June 23, 2014, stating, "there has been a payment received on each [of these] account[s] since September 2010 and there is a monthly payment arrangement in place to repay all the accounts."<sup>9</sup> Applicant provided documentation of some payments toward each of these accounts, as well as statements showing more recent balances below those alleged in the SOR. The most recent of these statements showed a \$4,600 reduction from the \$45,196 balance alleged in SOR ¶ 1.c; a \$1,443 reduction from the \$4,908 balance alleged in SOR ¶ 1.i; a \$721 reduction from the \$4,688 balance alleged in SOR ¶ 1.j; and a \$6,176 reduction in the \$25,914 balance alleged in SOR ¶ 1.k. Applicant's documentation demonstrates resolution of about 16% of these delinquent credit card debts over the past four years, but more than \$67,700 remains unresolved. Applicant states that he has agreed to make combined monthly payments of \$627 toward these four accounts, at which rate it will take nine years to resolve them if all such payments are made.<sup>10</sup>

The third group of delinquent debts, alleged in SOR ¶¶ 1.d through 1.g, involved two credit card accounts and two lines of credit with a major bank, totaling \$59,893. These accounts were all opened between April and August 2006. When Applicant was unable to make his agreed payments on these debts, he unsuccessfully "attempted to

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<sup>7</sup>Item 4; Item 6 at 19 of 44, 41 of 44, 47; FR Attch. 9.

<sup>8</sup>Item 4 at 3, 8; Item 9 at 2; FR at 2-3, Attch. 8.

<sup>9</sup>FR Attch. 4.

<sup>10</sup>Item 4; FR.

negotiate reasonable payments.”<sup>11</sup> His last payments toward the lines of credit were made in November 2008, and his last payments toward the credit cards were in May 2009. Eventually, the accounts were written off as losses by the lender, and Applicant received IRS Forms 1099-C reporting the cancelled debts as income. The two line of credit debts, totaling \$48,358, were cancelled in 2011. This total, as well as the \$286,462 in cancelled unsecured first mortgage debt resulting from the short sale of his home the same year, appeared on his 2011 Federal income tax return as excludable income on which taxes were not required to be paid due to his insolvency. The two cancelled credit card debts, totaling \$11,535, were cancelled in 2012, and Applicant paid Federal taxes on the resulting income. Applicant is no longer obligated to pay any of these cancelled debts. However, including the first mortgage deficiency forgiven in connection with his home’s short sale, he borrowed, spent, and failed to repay more than \$346,000 as promised during this period.<sup>12</sup>

The final group involves three allegations of delinquent debts totaling \$2,498 that are resolved. The charge account alleged in SOR ¶ 1.h was opened in April 2005 and reported to be delinquent in December 2009. Applicant’s May 2014 credit report reports this debt as a “paid charge off” with a zero balance due as of April 2011.<sup>13</sup> The debts alleged in SOR ¶¶ 1.l and 1.m involved final utility bills associated with Applicant’s move after selling his home in 2011. He provided documentation that these debts were erroneously reported and were satisfactorily resolved.<sup>14</sup>

Applicant’s son was diagnosed with cancer in 2004, at age 29. Applicant said that his financial problems arose due to lost income and payment of expenses that were above and beyond what was covered by his son’s medical insurance, which he voluntarily undertook on his son’s behalf. In email correspondence with the financial advisor he hired to help him try to renegotiate his mortgages before the short sale of his home, Applicant explained that he could not comply with his lender’s request to document or identify specific medical bills and expenses because they were mixed in with his general credit card and loan accounts. Applicant also did not provide either itemization or documentation of these claimed medical expenses in his responses to the SOR or FORM, so their impact on his financial situation cannot be accurately evaluated. As Department Counsel noted, Applicant’s son died in January 2006 and his financial records reflect that his delinquencies began in 2008 and worsened thereafter. A causal link between his son’s tragic medical situation and Applicant’s more recent financial issues is therefore difficult to discern based on the information he provided.<sup>15</sup>

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<sup>11</sup>Item 4 at 4, 5; FR at 1.

<sup>12</sup>Item 4; Items 7 through 9; FR.

<sup>13</sup>Item 9; See also Item 8.

<sup>14</sup>Item 4; Item 9 (showing report date of 7/11); FR Attch. 11.

<sup>15</sup>FORM; Item 4; FR.

Since his retirement from the Navy in 1996, Applicant has been continuously employed as a program director for a major defense contractor. His adjusted gross income, including retirement pay, was \$240,156 in 2011; and \$247,569 in 2012. In December 1997, he took out a first mortgage loan on his home for \$170,350. He took out a \$22,077 home equity loan in February 2000. In April 2000 he took out a \$91,220 second mortgage loan that he refinanced in August 2000 and April 2001 up to a total of \$157,866. Starting in June 2001, he took out another series of second mortgage loans with a different lender starting at \$27,000 and increasing to \$88,400 by September 2002. He then refinanced his first mortgage loan with this lender for \$172,307 in November 2002, and borrowed another \$19,000 in a second mortgage in January 2003. In December 2003, he refinanced his first mortgage loan up to \$322,700 and paid off his previous mortgages from those proceeds. In June 2004 he took out another second mortgage loan of \$35,000, then increased this loan to \$65,000 in November 2004. He again refinanced this second mortgage with a different lender in September 2005, increasing the total to \$163,475. Finally, in February 2006, he refinanced all of his mortgage debt with another different lender resulting in a first mortgage loan of \$500,000 and a second mortgage loan of \$100,000. These were the loans involved in the short-sale discussed above.<sup>16</sup>

Despite having borrowed these substantial sums and earning well over \$200,000 per year, Applicant's 2010 bankruptcy petition reported total assets of \$417,393; of which \$384,798 was the home on which he then owed over \$605,000 in mortgages. His only remaining assets were \$32,595 in personal property, of which \$11,000 was a pending tax refund; and \$13,450 was a car, on which he had an outstanding \$20,430 secured loan. His combined cash on hand, checking and savings account balances totaled \$175.<sup>17</sup>

There is no evidence that Applicant was requested to respond to financial interrogatories, or that he responded if such a request was made. He submitted no recent financial statement or budget that reflected his current income and expenditures. Applicant submitted no evidence of financial counseling except the internet and telephone session he completed on December 2, 2009, in order to comply with bankruptcy filing requirements. No debt repayment plan was prepared during that session.<sup>18</sup>

Applicant submitted letters from an impressive group of senior colleagues and supervisors who have known and worked with him for many years. All of them described his excellent character, integrity, important contributions to mission accomplishment, and flawless compliance with security procedures.<sup>19</sup>

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<sup>16</sup>Item 5; Item 7; FR Attch. 3.

<sup>17</sup>Item 6.

<sup>18</sup>Item 6.

<sup>19</sup>FR Attch. 13.

## 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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## Analysis

### Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's financial problems arose and worsened over the last ten years. Throughout that period he has earned substantial income from both his Navy retirement and his position as a program director at a major defense contractor. He also borrowed large sums against the equity in his former home, and through multiple credit card accounts and lines of credit. Unable to pay his debts, he attempted to obtain relief through a Chapter 13 bankruptcy. However, his excessive indebtedness made him ineligible for such relief. A large portion of his unsecured debt was cancelled and written off by creditors in 2011 and 2012. Although those debts are no longer outstanding, they remain part of his history of not meeting his financial obligations. He was unable to pay \$11,300 requested by his second mortgage holder to settle and resolve his outstanding \$88,183 debt to that lender, which remains outstanding with no prospective resolution. He also owes more than \$67,700 in delinquent credit card debts to a credit union, toward which he has agreed to pay relatively small monthly payments. This evidence raises security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's inability to live within his means or to satisfy several large, voluntarily incurred, financial obligations, is recent and ongoing. Some unsubstantiated amount of his delinquent debt resulted from his son's tragic terminal illness from 2004 to early 2006, but Applicant failed to demonstrate changed financial practices since that time that would support a finding that continuation or recurrence of such behavior is unlikely. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support significant mitigation under MC 20(b). He has been fully employed and well compensated during the entire time in question. From the record evidence, it is reasonable to infer that he earned well over \$2 million in salary and retirement payments over the past ten years. He also borrowed about \$500,000 over that period that he has been unable to repay. The record evidence demonstrates that he has few net assets. Other than general statements that he assumed financial responsibility for expenses that were not covered by his adult son's medical insurance between 2004 and January 2006, Applicant did not demonstrate where his funds went or that their expenditure was responsible under the circumstances.

Applicant offered minimal evidence of financial counseling, and did not establish clear indications that his financial problems are being resolved or are under control. He demonstrated no progress toward resolution of his \$88,183 second mortgage debt, and only minimal progress with respect to more than \$67,000 remaining in delinquent credit card accounts. He provided evidence of some payments toward those accounts that formerly totaled over \$80,000, but did not show that payments were consistently made as agreed. He resolved the three debts, totaling less than \$2,500, that were alleged in SOR ¶¶ 1.h, 1.l, and 1.m. However, he did not provide a budget or other evidence to demonstrate future solvency and ability to resolve remaining debts while avoiding future delinquencies. Accordingly, little mitigation under MC 20(c) and 20(d) was proven.

Applicant did not deny the existence or original validity of any SOR-listed debt. Accordingly, MC 20(e) is not applicable.



## **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 pertinent facts and circumstances surrounding this case. Applicant has a long and distinguished career in support of the national defense, and is highly regarded by a number of people whose opinions warrant significant weight and consideration. He is an experienced, mature, and accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His inability to meet substantial, voluntarily incurred, financial obligations is ongoing. Although large portions of his delinquent indebtedness were cancelled and written off by creditors, substantial debt remains which he did not demonstrate an ability to resolve within a reasonable period. The potential for pressure, coercion, and duress remains significant, and continuation or recurrence of financial irresponsibility was not shown to be unlikely. The evidence provided by Applicant was insufficient to mitigate the resulting security concerns.

Despite Applicant's outstanding history of service and reputation for integrity, the record evidence concerning his recent financial activities and circumstances generates substantial doubt as to his present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i through 1.k:	Against Applicant
Subparagraphs 1.l and 1.m:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge