



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00113
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/20/2014

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**Decision**

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HOWE, Philip S., Administrative Judge:

On June 26, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On February 28, 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on or about March 1, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 1, 2014, and I received the case assignment on May 5, 2014. DOHA issued a Notice of Hearing on June 6, 2014, and I convened the hearing as scheduled on July 2, 2014. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on July 11, 2014. Based

upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted all the factual allegations the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 51 years old. He is married and had two children. His daughter died sometime after 2004 and before 2010, but he did not disclose the specific date. Applicant works for a defense contractor. He has had a security clearance since March 2006. His original security clearance was issued in 1988. Applicant has not had any violations of his security clearances while he held them. Applicant's wife works as a registered nurse. (Tr. 10, 19, 22-26, 33; Exhibit 1)

Applicant owes about \$108,000 between two delinquent debts. The first debt is \$26,574 owed to a credit card company. The second debt is for \$81,899 owed to a bank. These debts are related to his family home mortgage and credit card purchases Applicant made. (Tr. 32-41; Exhibits 2-4, A, B)

Applicant moved from one state to another with a job transfer in 2004. He purchased a larger, more expensive house in his new state, with the intent that his parents would move into the "in-law" portion of the house and share the expense of the mortgages. However, Applicant's father died and his mother moved to a different state. She is self-supporting and he does not give her money, or any other financial support. After he moved, his daughter died and his wife stopped working to grieve that death. The national economy started to decline at approximately the same time. Applicant tried to get relief of some sort from his mortgage lender, but was refused because he was paying on time and in full. He then tried to sell the house. It took over a year to sell it for \$390,000, after he had purchased it for \$525,000. The primary mortgage holder was paid. The secondary mortgage holder was listed in Subparagraph 1.b of the SOR. That mortgage lender has now been paid. Applicant purchased his present home for \$293,000. (Tr. 20, 28, 29, 32, 33, 43, 58, 68, 73; Exhibit B)

The second mortgage holder was being paid automatically \$70 per month. Then it stopped taking the money out of his account and demanded the full amount owed. Applicant could not pay it, so finally a settlement occurred. The settlement was for \$28,615.74 on the \$81,800 debt. The settlement payment was made June 17, 2014, as documented in Exhibit B. The bank charged off \$54,000 of the debt and Applicant will get an IRS Form 1099c from the lender bank. (Tr. 32-36; Exhibits 5 and B)

The credit card listed in Subparagraph 1.a of the SOR finally settled for \$16,000 on a \$26,000 debt. Applicant was paying the creditor \$33 monthly. The settlement occurred on March 6, 2014. Applicant worked out the agreement after he received the SOR and focused his efforts to settle the debt. (Tr. 37-41; Exhibits A, E)

Applicant contends he always made some payment on each of these debts, although not the amount which he was obligated to pay. Applicant paid these debts recently by withdrawing money from his retirement account to make the payments. He withdrew \$83,550.22 on March 10, 2014, and netted \$68,992.56 after taxes were withheld. Applicant paid off the two debts listed in the SOR. He had \$24,236.84 remaining. He put \$8,000 into a savings account. He paid another credit card bill in full. He also used that sum of money to repay other debts, except for his car loans, his student loan used to obtain a master's degree (currently \$4,000), and his mortgage that is \$2,338 monthly on his current house. He does not have a second mortgage on the present house. Applicant is repaying two Section 401k loans used to reduce the mortgage on his current home. Those payments are \$247.81 and \$237.72. They are five year loans starting in 2010 and are in good standing, being automatically deducted from his paycheck. (Tr. 17, 30, 33, 42-44; Exhibit C)

Applicant tried to reduce his expenditures from 2008 to the present. Selling his house was one cost reduction measure. He also reduced his Christmas spending from around \$2,000 to \$600. He has no credit cards currently except his corporate card used for business purposes. He has not used the credit card listed in Subparagraph 1.a of the SOR for two years. Applicant uses a debit card for his ordinary expenses. He does his best to live according to his budget. His wife has a department store credit card but Applicant has no access to it. They are current on all debts. He and his wife earn about \$145,000 annually. (Tr. 21, 23, 28, 32, 38, 47, 65, 66)

Applicant sought financial counseling about four years ago. He attended a Dave Ramsey course on debt freedom and followed its precepts and advice. He paid off his credit cards using that program. Applicant has a month's expenses set aside as an emergency fund. He is not currently taking any financial counseling courses. Applicant adheres to his budget on a monthly basis. (Tr. 21, 27, 51, 54; Exhibit 1)

Applicant submitted his employee evaluation for 2013. His supervisor rated him as meeting or exceeding expectations. Applicant worked well in the office environment and displayed high ethical standards. (Exhibit D)

### **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 useful 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 (AG ¶ 2(a)). 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$108,000 in delinquent debt from 2008 to the present time that remained unpaid at the time of the SOR in February 2014. Applicant has two delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Five conditions may be 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant purchased a house in 2004 on the basis that his parents would live with his family and contribute to the mortgage payments. That house cost \$525,000 and was large. His father died and his mother moved to another state before that arrangement could be effectuated. Therefore, a financial difficulty resulted in Applicant's inability to pay the first and second mortgages when his daughter died, resulting in his wife quitting her job for a time to grieve that death. Then the national economy slowed from 2008 onward and it had some effect on Applicant. Applicant tried for over a year to sell the house. He was finally able to do so in 2010 for \$390,000 and moved into a smaller

house. He cut his monthly mortgage payments in half. He paid the first mortgage holder and had only the second mortgage holder to pay. He did that in 2014 by withdrawing money from his Section 401k retirement account to pay the second mortgage holder in a settlement. The unique combination of events happened more than four years ago, occurred only once and is unlikely to happen again because of the reduced cost of his present home and his wife resuming her nursing career. These circumstances do not reflect adversely on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20 (a) applies.

The death of his daughter and father, the move of his mother to another state, and the decline of the economy coupled with his wife ceasing to work, were largely beyond Applicant's control. He acted responsibly at the time by trying to sell his larger and more expensive house, taking financial counseling courses, and paying all his other debts during the last few years. AG ¶ 20 (b) applies.

Applicant paid his two SOR debts in an orderly manner by settling them for lump sums, and taking money from his retirement account to pay those amounts. He had continued during the intervening years to pay some amounts on each of these debts, though quite small. He obtained financial counseling so that he could learn how to repay his debts in a structured manner. He accomplished that goal. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and have been resolved based on the financial counseling he took. AG ¶ 20 (c) applies.

Applicant was able to negotiate settlements for the two SOR debts and pay them in 2014. He has all his debts paid except for the \$4,000 student loan, his mortgage, and his car loan. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts, in which he succeeded.

AG ¶ 20 (f) applies because the large sum of money Applicant used to repay the two debts, \$44,000, came from his retirement funds. He withdrew them and paid the debts, then used the remaining amount from the \$68,000 he netted from the withdrawal, to establish an emergency account, pay other debts, and make a bigger down payment on his present house. This affluence came from a legitimate source.

The mitigating conditions AG ¶ 20 (e) do not apply because Applicant did not contest the legitimacy of the debts before repaying them.

### **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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. When these problems first began, Applicant was employed in a professional position. His wife was employed. He had plans for his parents to live with them. Then, his father died and his mother moved out of state. Next, his daughter died, and his wife quit working to grieve her death. The financial burdens of living on one income, with two mortgages and increasing credit card debt caused the two delinquent debts listed in the SOR. Applicant had other debts. Recognizing he needed to change his life and financial style, he undertook financial counseling classes, reduced expenses, sold his house and purchased a smaller and less expensive one, and settled the debts. He now manages his money in a responsible manner.

Applicant made permanent changes in his life designed to avoid financial dangers. He continued to pay his debts, although with small amounts, to show his good faith. There is no potential for pressure, coercion, exploitation, or duress because all Applicant's financial problems are resolved. For the same reason, there is no likelihood of continuation or recurrence. These matters are all resolved.

Applicant received a good employee evaluation from his defense contractor employer. During his years of employment since 1988, when he first received his security clearance, he has not had any violations of security regulations.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations. I conclude the whole person concept for Applicant.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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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PHILIP S. HOWE  
Administrative Judge