



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



In the matter of: )  
)  
) ISCR Case No. 14-00362  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

09/02/2014

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 4, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order (EO) 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 9, 2014, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on April 30, 2014. The FORM was mailed to Applicant who

received it on May 25, 2014. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted exhibits (AE) A through K, which were admitted into the record without objection. The case was assigned to me on August 28, 2014.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 55 years old. He is married and has three children. He has worked for his current employer, a defense contractor, since September 2013. He worked for this same employer from October 2010 until May 2011, when he lost his job after returning home from a deployment to Afghanistan. He was unemployed until he was rehired in September 2013. His wife lost her job during this time and was also unemployed for about 18 months. Between 2001 and 2010, he worked for several defense contractors and was deployed to Iraq and Afghanistan for a combined total of about six years. He served on active duty in the Air Force from 1976 to 1978 and was honorably discharged for medical reasons.<sup>1</sup>

The SOR lists 14 delinquent debts that total approximately \$41,211. These debts are supported by credit reports from October 2006, May 2007, March 2010, and November 2013.<sup>2</sup>

Applicant's financial difficulties began when he returned from a deployment to Afghanistan in 2011 and lost his job. Three months later, his wife was laid off her job. They both remained unemployed for about 18 months. They received unemployment benefits for about one year before they ceased. The debts listed in the SOR became delinquent during this period of time. Recently, Applicant has been able to make payments on many of the debts and is exploring the possibility of selling his home to pay the remaining debts. The federal tax debt accrued when he used funds from his 401(k) account to pay bills when he was unemployed. The status of the debts is as follows:<sup>3</sup>

#### **SOR ¶ 1.a:**

This is a debt owed on family property in the amount of \$2,906. Applicant presented documentation showing he made these payments: December 2013--\$299;

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<sup>1</sup> Items 2-3.

<sup>2</sup> Items 1, 5-8.

<sup>3</sup> Item 2; AE A.

January 2014--\$1,215; March 2014--\$1,060; June 2014--\$604; July 2014--\$299. This debt is being resolved.<sup>4</sup>

**SOR ¶ 1.b:**

This judgment against Applicant is in the amount of \$12,140. He recently reached an agreement with the judgment holder to make monthly payments in the amount of \$400 beginning in July 2014. He provided correspondence to the judgment holder indicating that he sent the first payment from Afghanistan on July 22, 2014. This debt is being resolved.<sup>5</sup>

**SOR ¶ 1.c:**

This is a debt resulting from the repossession of Applicant's car in the amount of \$7,781. This debt was charged off in January 2012. Applicant is unable to pay at this time. He stated that once he pays some of the other bills he will begin paying this debt. This debt is not currently being resolved.<sup>6</sup>

**SOR ¶ 1.d:**

This is a debt resulting from the repossession of Applicant's truck in the amount of \$7,393. The last action on this debt was in January 2012. Applicant presented documentation showing he reached a payment arrangement with the creditor where he will pay \$500 monthly beginning August 15, 2014. This debt is being resolved.<sup>7</sup>

**SOR ¶ 1.e:**

This is a debt resulting from Applicant's joint account with his daughter in the amount of \$74. He presented documentation showing the debt was paid in July 2014. This debt is resolved.<sup>8</sup>

**SOR ¶ 1.f:**

This is a debt in the amount of \$828 that Applicant admitted in his answer, but now he disputes owing the debt. The dispute concerns whether he returned cable TV equipment to the original creditor. This debt is not currently being resolved.<sup>9</sup>

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<sup>4</sup> Item 4; AE A-B.

<sup>5</sup> Item 4; AE A, C.

<sup>6</sup> Items 4, 8; AE A.

<sup>7</sup> Items 4, 8; AE A, D.

<sup>8</sup> Items 4, 8; AE A, E.

<sup>9</sup> Items 4, 8; AE A.

**SOR ¶ 1.g:**

This is a telecommunications debt in the amount of \$1,197. This account was closed in June 2009. Applicant did not address this account in his response to the FORM. This debt is not resolved.<sup>10</sup>

**SOR ¶¶ 1.h-1.i:**

Applicant presented documentary evidence showing that these debts in the amounts of: \$309, \$187, \$182, \$144, and \$70 have all been paid. These debts are resolved.<sup>11</sup>

**SOR ¶¶ 1.m-1.n:**

Applicant set up a payment plan to pay his state tax debt in the amount of \$2,000. He provided documentary evidence showing he has made \$100 monthly payments toward this debt from December 2013 through May 2014. His federal tax debt listed in the SOR is \$6,000. He provided documentation showing that he received a refund from the Internal Revenue Service (IRS) for tax year 2013 in the amount of \$4,131 deposited directly into his bank account. If Applicant still owed the IRS for back tax amount, any refund would have been seized and applied to the outstanding debt. Since his 2013 refund was not seized, I can reasonably infer from these facts that Applicant does not owe the IRS. The state tax debt is being resolved and the federal tax debt is resolved.<sup>12</sup>

Applicant's answer to the SOR included as attachments several certificates and awards he received as a result of his service supporting U.S. forces in Iraq and Afghanistan.<sup>13</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

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<sup>10</sup> Items 4, 8; AE A.

<sup>11</sup> Items 4, 8; AE A, F-H, K.

<sup>12</sup> Items 2-3; AE A, I-J.

<sup>13</sup> Item 2.

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, 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 that an applicant may deliberately or inadvertently fail to 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**

AG ¶ 18 expresses the security concern for financial considerations:

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 them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

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

- (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.

The delinquent debts attributed to Applicant were recent. He has paid six debts, set up payment plans on three accounts, resolved his federal tax debt, and is making monthly payments on his state tax debt. These efforts to repair his financial position make it reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant became indebted when he returned from an overseas deployment only to lose his position. He remained unemployed for about 18 months, during which time his wife was also unemployed. Once he obtained full-time employment again in September 2013, he began resolving his delinquent debt. He and his wife's unemployment were conditions beyond his control and once he was able to do so, he acted responsibly by paying the smaller debts, setting up payment plans for the larger debts, and resolving his tax issues. AG ¶ 20(b) applies.

There are clear indications that some debts have been resolved through payment or are being resolved through a settlement plan. Applicant made good-faith efforts to resolve most the debts listed on the SOR. He supplied documentary evidence showing the payments were made and the settlement plans established. AG ¶ 20(c) and ¶ 20(d) apply. He did not present documented proof concerning his dispute of SOR ¶ 1.f, so AG ¶ 20(e) does not apply.

His payment plan did not address two debts listed in the SOR, however, a security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There is also no requirement that an applicant pay every debt listed in the SOR, only that he remove concerns about his reliability and trustworthiness raised by those debts. See ISCR Case No. 14-00504 at 3 (App. Bd. August 4, 2014). Applicant has taken significant action to implement the plan to resolve his debts.

### **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 guideline 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 considered Applicant's past military service, his civilian service, and his numerous deployments to Iraq and Afghanistan supporting U.S. forces where he was recognized for his outstanding contributions. I also considered the period of unemployment for both he and his wife. The evidence supports his showing that he is back on track toward financial stability. He paid several debts, set up payment plans for other debts, and resolved his federal tax debts. The record contains sufficient evidence to mitigate the security concerns.

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 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:	FOR APPLICANT
Subparagraphs 1.a – 1.n:	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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Robert E. Coacher  
Administrative Judge