



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



In the matter of: )  
)  
) ISCR Case No. 14-00418  
)  
Applicant for Security Clearance )

**Appearances**

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

09/09/2014

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On April 11, 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 May 1, 2014, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014. I convened the hearing as scheduled on August 21, 2014. The Government offered

exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified on his own behalf. He offered Applicant's Exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 2, 2014.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶¶ 1.c, 1.e, and 1.g. He denied the remaining allegations. 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 did not graduate from high school, but earned his general equivalency diploma in 1987. He served in the Navy from 1988 to 2009 and retired honorably in the pay grade E-6. He married in 1991 and separated from his wife in 2001. They divorced in 2011. He has three adult daughters.

Applicant has cohabitated with his fiancée since 2007. He pays all of the household expenses. She does not contribute financially to the living expenses except for expenses associated with her children. The youngest is the only one who currently lives with them.<sup>1</sup>

Applicant was a volunteer firefighter and became a career firefighter in October 2008. After retiring from the Navy, he worked as a firefighter full-time and earned about \$1,600 a month net pay. He began working with his present employer in October 2010. His earnings tripled. He estimated with his retirement pay he grossed \$78,000 and his net pay was about \$48,000. He estimated after paying all of his expenses, including repaying debts, he has about \$400 remaining at the end of the month.<sup>2</sup>

Applicant indicated that he went through a lengthy divorce proceeding that lasted ten years. He paid child support throughout this period. Applicant disputes several of the debts that are alleged in the SOR. He hired a law firm in January 2014, prior to receiving the SOR, to assist him in disputing and resolving certain debts.<sup>3</sup>

Applicant was served with a summons in 2008 regarding the delinquent debt in SOR ¶ 1.a (\$1,147). His stepson at the time signed for the summons, but never notified Applicant of service. A default judgment was entered against Applicant. He disputed the debt belonged to him, but it was paid in full through garnishment in November 2013. He provided proof the debt is resolved.<sup>4</sup>

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<sup>1</sup> Tr. 60-61.

<sup>2</sup> Tr. 49, 60-63, 72.

<sup>3</sup> Tr. 53, 67.

<sup>4</sup> Tr. 29-33; AE A.

The debt in SOR ¶ 1.b (\$312) is for telephone services. Applicant disputed the debt with the credit bureau and it was deleted.<sup>5</sup>

The debt in SOR ¶ 1.c (\$8,722) was for a vehicle Applicant purchased before he retired from the Navy. After he retired, he was working as a firefighter and was making approximately \$9.35 an hour along with his retirement pay. He fell behind in his payments and attempted to negotiate a payment plan with the creditor. The creditor refused. Applicant could no longer afford to make the loan payments and allowed the vehicle to be repossessed. He did not make payment arrangement on the deficiency balance until April 2014, after receiving the SOR. He is now paying \$100 a month on the debt. He has made three payments.<sup>6</sup>

The debt in SOR ¶ 1.d (\$1,418) is on a credit card account. Applicant disputes this debt. He testified he has not had a credit card since 1987. He contacted the fraud department of the bank and the debt is being investigated. It was opened in May 2009. He requested the bank provide a copy of a signature card. The bank sold the debt to a collection company listed in the SOR. He has not received verification of the legitimacy of the debt. He intends to have the law firm dispute this debt.<sup>7</sup>

The debt in SOR ¶ 1.e (\$7,996) is for a military credit card account. Applicant testified that his wife made the charges associated with this card. In June 2011, he contacted the creditor and closed the account. At that time, he set up an allotment to make monthly payments from his retirement pay. He pays \$60 each month toward the debt. He provided proof of his actions.<sup>8</sup>

The debt in SOR ¶ 1.f (\$57) is for an account with a credit union that Applicant testified he never belonged to. He contacted the credit union and was informed the account was opened online. He requested the creditor provide a signature card. It was not provided. He decided it was easier to pay it, so he did. He provided proof it was paid.<sup>9</sup>

The debt in SOR ¶ 1.g (\$3,015) is for a car loan Applicant signed for his fiancée's son approximately five years ago. The son totaled the car three weeks after he purchased it. His fiancée made a few payments then stopped. He was advised by the creditor that the balance owed is \$2,763. The son is in and out of jail and has not made

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<sup>5</sup> Tr. 44.

<sup>6</sup> Tr. 38-42, 69; AE B.

<sup>7</sup> Tr. 45-48.

<sup>8</sup> Tr. 27-29; AE C.

<sup>9</sup> Tr. 25-26; AE D.

payments. Applicant was offered a settlement agreement of \$2,763, but has not acted on it. He intends to resolve it.<sup>10</sup>

The debt in SOR ¶ 1.h (\$76) is for telephone services. Applicant disputed the debt on his credit report. He testified that he never contracted for these services. The debt was removed from his credit report.<sup>11</sup>

The debt in SOR ¶ 1.i (\$1,174) is for a store credit card. Applicant disputed this debt with the credit bureau and it was confirmed. He contacted the creditor directly, and it had no record of his phone number, Social Security number, or address. The creditor is investigating the debt. The law firm is also sending the creditor a dispute letter. Applicant testified he never had this store's credit card.<sup>12</sup>

Applicant disputed the debt in SOR ¶ 1.j (\$4,625). The creditor is a computer company. Applicant stated he never owned that brand of computer. He contacted the creditor, and the debt was investigated and deleted from Applicant's credit report. He provided a letter from the company verifying the debt was deleted.<sup>13</sup>

Applicant retrieved a copy of his credit report when he was preparing his security clearance application in September 2013. He had never retrieved a credit report before then. Applicant indicated that once he retrieved a copy of his credit report he started to research debts that he believed did not belong to him. In some instances the debts were incurred in the location where his ex-wife is living. Applicant believes she may have opened accounts in his name without his permission. Applicant intends to resolve all of his debts regardless of the outcome of his security clearance determination.<sup>14</sup>

Applicant continues to help his children financially even though he no longer pays child support. He pays his monthly expenses on time and lives within his means.<sup>15</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.

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<sup>10</sup> Tr. 33-37, 68; GE 3 page 9.

<sup>11</sup> Tr. 44-45.

<sup>12</sup> Tr. 42-44.

<sup>13</sup> Tr. 23-24; AE E.

<sup>14</sup> Tr. 63-66, 78-79.

<sup>15</sup> Tr. 65-66.

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 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 delinquent debts that were not paid for a period. I find there is sufficient evidence to raise the above disqualifying condition.

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;
- (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 action to resolve the issue.

Applicant had debts listed on his credit report that did not belong to him. He hired a law firm to help him dispute and resolve his debts. Some of the debts that did not belong to him were removed. Applicant has paid some debts and has payment plans for

others. However, the debt he incurred when he cosigned for a vehicle for his girlfriend's son has not been resolved.

AG ¶ 20(a) does not apply because Applicant is still resolving some of his remaining debts. After retiring from the Navy, Applicant was underemployed. He had difficulty paying a vehicle loan, and the vehicle was repossessed. He now has a repayment plan with the creditor. Applicant's underemployment and lengthy divorce were conditions beyond his control. When he learned that there were many debts on his credit report that did not belong to him, he disputed them, and they were removed. He paid other debts, and he is using a law firm to help him investigate and resolve the remaining debts. Applicant still needs to address the defaulted car loan from his fiancée's son, but credibly testified he intended to resolve all of his delinquent debts regardless of whether he receives a favorable determination. Applicant has acted responsibly under the circumstances. AG ¶¶ 20(b), 20(c), and 20(d) apply. Applicant has a reasonable basis to dispute the legitimacy of certain debts and has provided documented proof to substantiate the basis of his dispute. AG ¶ 20(e) applies.

### **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. After retiring from the Navy he was underemployed. He also endured a lengthy divorce. Both factors affected his financial stability. He has addressed some of his debts and disputed those he believed were the basis of fraud. He continues to investigate the validity of some debts through a law firm he hired.

Applicant began addressing some of his financial problems before he received the SOR. He still needs to resolve one large debt, but credibly testified that he intended to address all of the concerns even if he does not receive a favorable determination. Overall, the record evidence leaves me no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

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

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Carol G. Ricciardello  
Administrative Judge