



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00496
	)	
Applicant for Security Clearance	)	

**Appearances**

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

09/04/2014

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**Decision**

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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 March 24, 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 8, 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 3, and they were admitted into evidence without objection. Applicant testified on his own behalf. He offered Applicant's Exhibit (AE) A through C, which were admitted into evidence without objection. The record was left open until August 28, 2014, to allow Applicant to submit additional documents, which he did. They were marked AE D and E and were admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on September 2, 2014.

### **Findings of Fact**

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

Applicant is 46 years old. He graduated from high school and served in the Navy from 1989 to 1996 and was honorably discharged. He married in 1991 and divorced in February 1999. He has one child from the marriage who is 21 years old. He remarried in December 1999 and separated from his wife in April 2013. He has filed for divorce and it is pending. He has three children from the marriage, ages 13, 10 and 6. The eldest child has lived with him since approximately April 2014, and he anticipates the second child will come to live with him soon.<sup>2</sup>

Throughout Applicant's marriage, his wife has handled all of the financial matters, including making payments on their first and second mortgages and paying all of their other bills. SOR ¶ 1.b (\$36,250) is the second mortgage and ¶ 1.c (\$56,566) is the first mortgage. His wife did not work outside of the home. From March 2005 to May 2012, Applicant believed his wife was making their monthly mortgage payments. In May 2012 he received a telephone call from the creditor holding his first mortgage advising him he was nine months delinquent in paying the mortgage. Applicant then learned his wife was not paying either mortgage payments. Despite extensive discussion with her, he could not determine where she spent the money that was intended for the family expenses. In August 2012, Applicant sought assistance from Consumer Credit Counseling Services (CCCS). No additional payments were made on the two debts.<sup>3</sup>

Applicant's wife had weight-loss surgery in November 2012 and sometime after that he learned she had been having a long-term relationship with Applicant's friend and neighbor. Applicant indicated his wife completely gave up on their marriage and ignored their finances. He was unaware that she was no longer paying their bills and the money was being spent elsewhere.<sup>4</sup>

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<sup>1</sup> Hearing Exhibit I is Department Counsel's email stating he had no objection to the exhibits.

<sup>2</sup> Tr. 28, 33-34.

<sup>3</sup> Tr. 22-25, 35, 38-47, 50; Answer to the SOR.

<sup>4</sup> Answer to SOR.

In April 2013, Applicant and his wife separated. Applicant attempted to resolve the mortgage debts through a short-sale but was unsuccessful. He remained in the house for two months after their separation and moved out in June 2013 when the house was foreclosed. The property was sold in August 2013, and there was a \$34,000 deficiency. The creditor contacted Applicant and advised him that it has elected to write-off the deficiency and hold all obligors harmless of the deficiency balance. It also advised him there may be tax implications. Applicant is aware that he may have to pay additional taxes due to this write-off.<sup>5</sup>

Applicant also provided correspondence from the counselor he has been working with at CCCS regarding the second mortgage. He has been working with her since August 2012 and they have attempted to communicate with the creditor of the second mortgage, but have been unsuccessful. Applicant, through the assistance of his counselor, continues to attempt to resolve this debt.<sup>6</sup>

The debt in SOR ¶ 1.a (\$50) is a medical debt incurred for an emergency room visit for Applicant's son. Applicant was unaware of the debt. He contacted the creditor and paid the debt.<sup>7</sup>

The debt in SOR ¶ 1.d (\$762) is a credit card debt incurred by his wife. She was the only one who used the card. He has contacted the creditor. He has filed for divorce and has an attorney. Part of the divorce settlement will be allocating liabilities. Once a decision is made, if he is responsible to pay this debt, he intends to do so.<sup>8</sup>

After Applicant's separation, he spent about \$1,000 to move his wife and their children into an apartment. He also spent approximately \$3,600 to purchase her a car. He paid \$1,000 a month in child support, which he continues to do. He provided proof of his consistent child support payments. He does not have any credit cards. He drives a 1998 vehicle. He lives in an affordable trailer. He is current on his other debts. He credibly testified that he has been working hard to pay all of his debts and do the right thing. If he does not have the funds, he will not make a purchase.<sup>9</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

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<sup>5</sup> Tr. 38-47; Answer to SOR.

<sup>6</sup> Tr. 38-47; Answer to SOR.

<sup>7</sup> Tr. 25-26; Answer to SOR.

<sup>8</sup> Tr. 26, 48-49; GE 3 page 6; Answer to SOR.

<sup>9</sup> Tr. 34-37, 52, 56; AE D, E.

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 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 is potentially applicable:

(a) inability or unwillingness to satisfy debts.

Applicant incurred delinquent debts when unbeknownst to him his wife stopped paying the family expenses and diverted the funds elsewhere. 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.

Throughout his marriage, Applicant relied on his wife to handle their finances. She did not work outside of the home, and she was responsible for paying the bills.

Applicant learned that she had not paid their mortgages for nine months and was diverting the funds elsewhere. When he learned about the delinquent debts he sought assistance from CCCS and has been working with a counselor since then to resolve his financial problems. His home was foreclosed and the deficiency has been written off. He understands there may be tax consequences. He and his CCCS counselor have attempted to communicate with the creditor for the second mortgage, but have been unsuccessful. He intends to resolve the credit card debt after his divorce allocates a division of assets and liabilities.

Applicant's financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. His financial problems were the result of his wife failing to pay the family bills and diverting the resources elsewhere. Applicant had no history of financial problems before this occurred. He sought financial counseling shortly after becoming aware of the problems and continues to work with a counselor to resolve the remaining issues. Applicant's financial problems were beyond his control, and he acted responsibly under the circumstances. Although the debts in SOR ¶¶ 1.b and 1.d have not yet been resolved, Applicant has not ignored them. AG ¶¶ 20(a), 20(b) and 20(c) apply. Applicant has only paid one debt at this juncture. AG ¶ 20(d) does not apply. Applicant does not dispute the debts, so AG ¶ 20(e) was not raised.

### **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 46 years old. He was married for almost 14 years when he learned of his wife's infidelity and that she had not paid the family bills for approximately nine months. The house he lived in with his family was foreclosed. He sought financial counseling before he received the SOR, so he could resolve his financial problems. To ensure his children's care, he set his wife up in an apartment. He has consistently paid child support and currently has custody of one of the children. He hopes to have custody of a second child soon. Applicant is willing to pay the remaining debts, but one creditor has been uncommunicative and the other was a debt incurred by his wife. He is waiting for his divorce order to determine who should pay that debt. Through no fault of his own, Applicant found himself in financial distress and has worked hard to do the best he could. He has a meager lifestyle and only buys what he can afford. Overall, the record evidence leaves me with 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.d: 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