



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



In the matter of: )  
)  
) ISCR Case No. 14-00620  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

12/18/2014

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On April 22, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 24, 2014, and requested a hearing before an administrative judge. The case was assigned to me on October 24, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 10, 2014, scheduling the hearing for December 2, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in

evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through M, which were admitted without objection. The record was held open until December 15, 2014, for Applicant to submit additional information. He submitted documents that were marked AE N through P and admitted without objection. DOHA received the hearing transcript (Tr.) on December 10, 2014.

### Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has an associate's degree with additional college credits. He is married with a stepchild and an adult child from a previous relationship.<sup>1</sup>

Applicant worked overseas for a defense contractor from 2007 to November 2011. He was unemployed until he was hired by his current employer in October 2012. He was unable to pay all his bills while he was unemployed, and a number of debts became delinquent. He could not pass a physical for his overseas assignment, and he was on medical leave from December 2013 through March 2014.<sup>2</sup>

The SOR alleges six delinquent medical debts with balances totaling about \$17,000 and seven miscellaneous delinquent debts totaling about \$13,285. Applicant admitted owing the \$4,897 debt alleged in SOR ¶ 1.a. He denied owing the remaining debts, either because he paid the debts or because they were not his debts.

Applicant had a delinquent loan and a delinquent credit card account with the credit union identified in SOR ¶ 1.a. The unpaid \$4,897 loan was alleged in SOR ¶ 1.a. The delinquent credit card debt of \$4,548 was not alleged in the SOR. The first seven numbers of the accounts are identical, so it is difficult to differentiate the two accounts. Applicant paid the credit union \$2,338 in December 2013, \$1,556 in May 2014, and \$2,048 on December 1, 2014. The \$2,048 payment was in settlement of the \$4,897 loan alleged in SOR ¶ 1.a. The \$1,556 payment went toward the credit card. It is unclear what account was credited with the \$2,338 payment.<sup>3</sup>

Applicant settled the \$719 debt alleged in SOR ¶ 1.b in December 2014. He settled the \$540 credit card debt alleged in SOR ¶ 1.d for \$243 in May 2014. He settled the \$2,475 debt alleged in SOR ¶ 1.f for \$991 in May 2014.<sup>4</sup>

In May and June 2014, Applicant paid or settled the medical debts alleged in SOR ¶¶ 1.i (\$820), 1.k (\$469), 1.l (\$260), and 1.m (\$217).<sup>5</sup>

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<sup>1</sup> Tr. at 30-33, 58-59; GE 1.

<sup>2</sup> Tr. at 23-25, 28-30, 33-34; Applicant's response to SOR; GE 1, 4.

<sup>3</sup> Tr. at 23, 34-36; Applicant's response to SOR; GE 2-4; AE F, G, J, M.

<sup>4</sup> Tr. at 36-44, 47; Applicant's response to SOR; GE 2-4; AE A, C, I, K, M, O.

<sup>5</sup> Tr. at 51-54; Applicant's response to SOR; GE 2-4; AE D, E, H, L, M.

Applicant denied owing the remaining debts. SOR ¶ 1.c alleges an \$808 debt to a credit card company. SOR ¶ 1.h alleges an \$833 debt to a collection company on behalf of a bank. These are the same debts because the credit card company acquired the credit card holdings of the bank in 2012.<sup>6</sup> The debt to the credit card company is listed on the June 2013 credit report. It is listed on the December 2013 and November 2014 credit reports, but the reports list the debt as being in dispute with a zero balance. The debt to the collection company on behalf of the bank is listed on the December 2013 credit report as in dispute with an investigation in process. It is not listed on the November 2014 credit report.<sup>7</sup>

Applicant denied owing the \$3,013 department store credit card account alleged in SOR ¶ 1.e. The debt is listed on the December 2013 credit report as in dispute with an investigation in process. It also reported that the account was transferred, and it had a zero balance. The debt does not appear on the November 2014 credit report.<sup>8</sup>

Applicant stated that he paid the \$581 medical debt alleged in SOR ¶ 1.j. He denied responsibility for the \$14,656 medical debt alleged in SOR ¶ 1.g. The debts are listed on the 2013 credit reports. The \$14,656 debt is listed as in dispute with an investigation in process. Neither debt appears on the November 2014 credit report.<sup>9</sup>

Applicant testified that his finances have greatly improved. He owes the IRS about \$2,500 for tax year 2012. He credibly testified that he will pay his taxes. He is working overseas again making enough money to pay all his bills, including his taxes. He has not received formal financial counseling.<sup>10</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 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, administrative judges apply the guidelines 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

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<sup>6</sup> See <http://www.bloomberg.com/news/2012-05-02/hsbc-gets-31-3-billion-in-cash-for-u-s-card-and-retail-sale.html>.

<sup>7</sup> Tr. at 42-46, 49-50; Applicant's response to SOR; GE 2-4; AE M.

<sup>8</sup> Tr. at 46-48; Applicant's response to SOR; GE 2-4; AE M.

<sup>9</sup> Tr. at 48-49, 52-53; Applicant's response to SOR; GE 2-4; AE M.

<sup>10</sup> Tr. at 23-24, 30-31, 57-64; GE 4.

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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant 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 EO 10865 provides that adverse 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 under AG ¶ 19. The following are potentially applicable:

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

Applicant accumulated delinquent debts and was unable to pay his financial obligations. The above disqualifying conditions are applicable.

The debt alleged in SOR ¶ 1.h is a duplicate of the debt alleged in SOR ¶ 1.c. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶ 1.h is concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 actions to resolve the issue.

Applicant worked overseas for a defense contractor from 2007 to November 2011. He was unemployed for almost a year until he was hired by his current employer in October 2012. He could not pass a physical for his overseas assignment, and he was on medical leave from December 2013 through March 2014. These events were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has resolved all the debts alleged in the SOR. He paid or settled eight debts, and he successfully disputed the remaining debts. His finances are not perfect because he still owes the IRS. He credibly testified that he will pay his taxes.

I find that Applicant made a good-faith effort to pay his debts. His financial problems occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. AG ¶ 20(a) is not completely applicable because Applicant still has his tax debt to be resolved. AG ¶ 20(e) is applicable to the successfully-disputed 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 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.

I considered the events that contributed to Applicant's financial problems, and the steps he has taken to resolve those problems. I am convinced his finances are sufficiently stable to warrant a security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

## **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.m:	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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Edward W. Loughran  
Administrative Judge