



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



In the matter of: )  
)  
) ISCR Case No. 14-01003  
)  
Applicant for Security Clearance )

**Appearances**

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

09/15/2014

**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 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 DOD on September 1, 2006.

Applicant answered the SOR on May 23, 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 20, 2014. The Government offered

exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit (AE) A through J, which were admitted into evidence without objection. The record was held open until August 27, 2014, to allow Applicant to submit additional documents. He did not submit any additional documents and the record closed. DOHA received the hearing transcript (Tr.) on August 28, 2014.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.e-1.i, 1.l-1.n and 1.t. 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 46 years old. He has taken college courses since 2004. He earned an associate's degree and needs 49 credits to earn his bachelor's degree. He is currently enrolled in courses. He was married from 1991 to 1995. He remarried in 2003. He has a 17-year-old stepdaughter and a 9-year-old son. Applicant served in the Navy from January 2003 to January 2008 and was honorably discharged in the pay grade E-5. He has been employed by a defense contractor since February 2009.<sup>1</sup>

When Applicant was 35 years old he decided to join the Navy because he was unhappy with his career. He met his wife while on active duty. He took advantage of the educational opportunities. He was stationed on an aircraft carrier and deployed. He gave his wife power of attorney to handle their finances while he was deployed. His wife was suffering from postpartum depression after the birth of their son, and it was exacerbated by the deployment. His wife's sister offered to live with her while Applicant was deployed. His sister-in-law was unemployed at the time. He thought it was a nice gesture. He later learned that his sister-in-law manipulated his wife into making unnecessary purchases that were beyond their means. Applicant was unaware of the purchases until he began receiving notices from collection companies or bills that were past due. By the time he became aware of the purchases, he and his wife had an insurmountable amount of debt. This prompted him to file bankruptcy in January 2007, and his debts were discharged in April 2007.<sup>2</sup> Applicant stated that included in the \$86,000 discharged was a loan for a vehicle that was purchased while he was deployed (SOR ¶ 1.a). He had the vehicle repossessed. He did not have possession of the vehicle. It was recovered at his sister-in-law's address.<sup>3</sup> He and his wife have had no contact with her sister for five years. They did not trust her. His wife has resumed minimal contact recently through social media.

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<sup>1</sup> Tr. 32.

<sup>2</sup> Tr. 23-26.

<sup>3</sup> Tr. 34-36.

Applicant's wife was on medication for her depression. Due to the strength and longevity of it, she is now being weaned off of it. She is unable to work. His stepdaughter suffers from seizures. Applicant is the sole provider for the family. Due to his family's medical issues, he believed the deployments were too stressful, and he chose to not reenlist in the Navy. In 2008, he began working in the private sector and had no health insurance for six months. His daughter had a seizure during this time, and her medication cost between \$500 and \$700 a month. He had other out-of-pocket expenses associated with her medical conditions that were not completely covered by insurance.

Around the same time Applicant was dealing with his stepdaughter's condition, the company he was working for lost its government contract in the location where he lived. He continued his employment with the company, but had to relocate to a new state. His stepdaughter's seizures continued. After seeing a child neurologist, they learned her seizures were triggered by altitude. They were advised that she could be prescribed medication, but its success was not guaranteed, or he could move his stepdaughter to a location where the altitude was not harmful to her health. Applicant requested a transfer from his employer. Within two weeks he moved his family, but he was responsible for the \$6,000 it cost to move.<sup>4</sup>

Applicant was unaware of all of the delinquent debts on his credit report because he believed he had taken care of many of his debts, and they should have been removed from his credit report.

The debt in SOR ¶ 1.b (\$1,344) is a state tax lien. Applicant credibly denied owing the taxes because he was on active duty and his home of record was not the state that imposed the lien. He was unaware of the lien. He found the process to dispute the lien too cumbersome, so he paid it.<sup>5</sup>

Applicant's sister gave him \$3,600 so he can resolve some of his delinquent debts. He intends to reimburse her, but his sister considers it a gift.<sup>6</sup>

Applicant admitted he and his wife had a joint account with the creditor listed in SOR ¶ 1.c (\$644). He was unaware the debt was reduced to a judgment. He stated he moved from the state and was never served process. He has not contacted the creditor. He is not ignoring the debt and intends to pay it.<sup>7</sup>

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<sup>4</sup> Tr. 26-30.

<sup>5</sup> Tr. 36-37; AE A.

<sup>6</sup> Tr. 45-46, 84-85; AE I.

<sup>7</sup> Tr. 38-41.

The debt in SOR ¶ 1.d (\$2,512) was a judgment that was reaffirmed during Applicant's bankruptcy. He paid the debt through a payment plan and completed the plan in December 2011.<sup>8</sup>

Applicant was unable to pay the debt in SOR ¶ 1.e (\$466-utility bill) when he moved because he did not have the money. The debt in SOR ¶ 1.f (\$87-medical) is a bill for his stepdaughter's doctor. The debts have been consolidated by the collection company. Applicant arranged a payment plan to pay \$83 a month for the debts beginning on August 29, 2014.<sup>9</sup>

The debt in SOR ¶ 1.g (\$979) was for gas services to his home before he moved. Applicant does not dispute he owes the debt, but does dispute the amount. He has not contacted the creditor. He believed his account was up to date, but the amount may be attributed to late fees. He intends to pay the debt.<sup>10</sup>

Applicant disputed the debt for medical services in SOR ¶ 1.h (\$1,309) on his credit report. He has attempted to contact the creditor twice by telephone and each time he is disconnected. He is unable to resolve it at this time because he is unable to contact the creditor.<sup>11</sup>

The debt in SOR ¶ 1.i (\$315) is for cable services. Applicant settled the debt for \$150. He did not provide evidence of the payment.<sup>12</sup>

The debts in SOR ¶ 1.j (\$50) and ¶ 1.k (\$50) are deductibles for medical debts. The bills were originally mailed to an incorrect address. They have been paid.<sup>13</sup>

The debt in SOR ¶1.l (\$250) was a payday loan Applicant obtained when he lived in a different state. He attempted to contact the creditor six times in the past two months and has been unsuccessful. He sent emails to the online address, but has not received a reply. The telephone number for the creditor on the credit report does not exist. He attempted to contact the branch where he originally received the loan, but it is closed.<sup>14</sup>

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<sup>8</sup> Tr. 41; AE B.

<sup>9</sup> Tr. 41-43; AE C.

<sup>10</sup> Tr. 43-48.

<sup>11</sup> Tr. 48-49; GE 3.

<sup>12</sup> Tr. 49-52.

<sup>13</sup> Tr. 52-53; AE D.

<sup>14</sup> Tr. 53-55.

The debt in SOR ¶ 1.m (\$438) is a credit card debt. Applicant has contacted the creditor. It remains unpaid.<sup>15</sup>

The debt in SOR ¶ 1.n (\$373) is a credit card debt. Applicant stated that when he received the credit card he was inappropriately charged large fees. He never used the card and contacted the creditor to cancel it, but it refused to do so unless he paid the fees. Applicant provided documents that the creditor was sued by the Federal Trade Commission. It settled the case. Applicant believed the creditor was required to delete the balance owed and to contact the three credit bureaus. Applicant filed a complaint with the Consumer Financial Protection Bureau (CFPB) when the creditor failed to do so. CFPB is pursuing the complaint on behalf of Applicant.<sup>16</sup>

The debt in SOR ¶ 1.o (\$753) is a credit card debt Applicant settled for \$154.<sup>17</sup> The debts in SOR ¶ 1.p (\$521) and ¶ 1.q (\$702) are for communication services. Applicant believes the debts are duplicates. He indicated he never received correspondence from the creditor. He contacted the creditor and asked for proof of what he owes. He believes he satisfied the terms of the contract and does not owe a balance. He indicated he sent a letter to the creditor. He did not provide a copy of the letter.<sup>18</sup>

The debt in SOR ¶ 1.r (\$3,417) is the deficiency owed on a vehicle loan after the vehicle was voluntarily repossessed. Applicant indicated on his security clearance application that he had a payment arrangement to pay the deficiency amount. He testified that he paid the total deficiency amount of the debt. His consolidated credit report under one credit bureau lists the debt with a zero balance, and another credit bureau lists the debt as still delinquent. Applicant intended to have the credit report updated. He did not provide proof that he paid the debt.<sup>19</sup>

The debt in SOR ¶ 1.s (\$1,239) is the amount past due on a vehicle loan. Applicant stated he is now up to date on the loan. He provided proof of his payment.<sup>20</sup>

The debt in SOR ¶ 1.t (\$180) is a utility bill. Applicant testified he made a payment plan with the creditor to pay \$60 a month beginning in July 2014, and he made the first payment. He did not provide proof of the payment.<sup>21</sup>

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<sup>15</sup> Tr. 55-56.

<sup>16</sup> Tr. 56-61; AE E.

<sup>17</sup> AE F.

<sup>18</sup> Tr. 62-67.

<sup>19</sup> Tr. 67-70; AE J.

<sup>20</sup> Tr. 70-71; AE G.

<sup>21</sup> Tr. 72-73.

The debt in SOR ¶ 1.u (\$45) was for a returned check for school pictures. He provided proof that he satisfied the debt.<sup>22</sup>

The debts in SOR ¶ 1.v (\$235) and ¶ 1.w (\$332) were originally from a retail store and are now with a collection company. Applicant disputes the debts stating he has never held an account with this creditor and never made any purchases at the store. He sent a letter to the creditor and has had no reply. He tried contacting the creditor, but the telephone disconnects. He intends on disputing the debts on his credit report. The accounts were opened in November 2007 while Applicant was on deployment.<sup>23</sup>

Applicant receives \$130 monthly in veteran's benefits and also receives between a \$300 and \$500 stipend as part of educational benefits, depending on how many classes he takes. His stepdaughter does not receive child support from her biological father. The only financial counseling Applicant received was when he went through bankruptcy. He had been warned about debt consolidation companies and their sometimes unscrupulous practices, so he has not sought their assistance. He admitted he lives paycheck to paycheck. He is committed to paying all of his delinquent debts and is confident with the money his sister gave him that he can pay the remaining debts.<sup>24</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 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

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<sup>22</sup> Tr. 73-74; AE H.

<sup>23</sup> Tr. 74-76; GE 3 page 13.

<sup>24</sup> Tr. 79-84.

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 filed bankruptcy in 2007. He had an additional 22 delinquent debts totaling more than \$16,200 that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

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 debts 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 paid some of his delinquent debts and has payment plans for others. Because he still owes some creditors and is still resolving his delinquent debts, his debts are recent, and AG ¶ 20(a) does not apply.

Applicant left a promising career in the Navy due to his wife's medical condition. While he was deployed his sister-in-law took advantage of his wife and made purchases that were beyond their means. This resulted in him filing bankruptcy. His stepdaughter had a seizure when he was without health insurance. Her medical condition required them to move, and he incurred \$6,000 in expenses that were not reimbursable. There was an error made regarding Applicant's home of record while he was in the Navy, which caused a tax lien to be imposed. He paid the lien rather than dispute it. All of these events were beyond Applicant's control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant paid or has payment plans for eleven of the delinquent debts. He has tried to contact two creditors but their telephones numbers were disconnected. He sent emails or letters to other creditors in an attempt to resolve the debts. He disputes some debts as not belonging to



him or the amounts alleged. I find he has acted responsibly under the circumstances, and AG ¶ 20(b) applies.

AG ¶ 20(c) applies because Applicant is actively resolving his debts. He was given a gift by his sister to pay the remaining debts owed, and he intends to do so. There are clear indications his financial problems are being resolved and are under control.

Applicant paid, settled or resolved the debts in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, 1.i, 1.j, 1.k, 1.o, 1.s, 1.t, and 1.u. Applicant stated he paid the deficiency debt owed in SOR ¶ 1.r. Based on his assertions in his SCA from October 2013 and the inconsistency of his consolidated credit report that shows one credit bureau reporting a zero balance and another with a past-due amount, I find his statement credible that the debt is resolved. He attempted to contact the creditors in SOR ¶ 1.h and 1.l, but their telephones were disconnected. Applicant has not contacted the creditors in SOR ¶¶ 1.c and 1.g. He has contacted the creditor in SOR ¶ 1.m, but has not paid the debt. These debts are unresolved. AG ¶ 20(d) applies.

Applicant disputes the debt in SOR ¶ 1.n. It is accepted that the creditor was sued in a class action lawsuit, and Applicant is no longer responsible for that debt. He also disputes the debts in SOR ¶¶ 1.p and 1.q as being duplicates and has contacted the creditor requesting proof of the debts. He did not provide documentary proof of his actions. Applicant was deployed when the accounts in SOR ¶¶ 1.v and 1.w were opened. He attempted to contact the creditor, but the telephone is disconnected. He has made a good-faith effort to resolve the above debts, but was unable. Applicant credibly testified about his efforts to contact the creditors to resolve the debts. He is still responsible for resolving the debts and should continue to take action to do so. I find 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 46 years old. He enlisted in the Navy and had a successful career until his wife had medical problems and the deployments were too stressful for her. His sister-in-law took advantage of his wife and put his family in debt. His stepdaughter had medical issues when he did not have medical insurance. To improve her health he had to move his family and incurred moving expenses. Applicant paid some of his delinquent debts before he received the SOR. He has overcome some difficult family issues and has not ignored his obligations. With the help of the monetary gift from his sister he should be able to resolve the remaining financial issues. 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.w:	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