



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



In the matter of: )  
)  
) ISCR Case No. 14-01300  
)  
Applicant for Security Clearance )

**Appearances**

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

11/03/2014

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On May 16, 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 June 11, 2014. Department Counsel requested a hearing before an administrative judge. The case was assigned to me on August 18, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014. I convened the hearing as scheduled on October 16, 2014.

The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on October 27, 2014.

### **Findings of Fact**

Applicant admitted the allegations in the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. He graduated from college in 2004. He is not married and has no children. He has worked for his present employer, a federal contractor, since May 2013.<sup>1</sup>

After graduating from college, Applicant worked from 2005 to 2008 for a technology business. In April 2008, he decided to open his own business with a family member. The business was successful for about six to eight months, but then the downturn in the economy affected it. He could no longer afford the rent payments so he moved the business to a more affordable location. Applicant had three credit cards. One was a personal credit card and the two others were business credit cards that he personally guaranteed. He also used his personal credit card for business. He understood he was personally responsible for the payments. None of the credit cards included his partner's name. He was making minimal payments on the cards until he stopped paying them completely at the end of 2010.<sup>2</sup>

Applicant confirmed that he has not made any attempt to pay the credit cards because he was unable to do so. In 2010, he contacted the creditor in SOR ¶ 1.a (\$18,066) to negotiate a settlement, but he was unsuccessful. He has had no further contact with the creditor. The creditor is the same for SOR ¶¶ 1.b (\$11,748) and 1.c (\$14,954). He has not contacted this creditor.<sup>3</sup>

Applicant worked in his family's business from January 2011 until May 2013. There were periods when he was not compensated. He lived with his parents and did part-time work in the technology field. He currently earns approximately \$80,000 annually. He continues to live at home rent-free. He estimated he has about \$25,000 in savings. He owns a condominium that he purchased for \$69,900 in 2008 with the help of his father. Applicant contributed about \$10,000 to the purchase price and his father gave him the rest. Applicant is the sole owner of the property and has no obligation to

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<sup>1</sup> Tr. 18-20.

<sup>2</sup> Tr. 21-24, 32, 40-45.

<sup>3</sup> Tr. 24-26, 30-31, 36; GE 3 and 4.

repay his father. The condominium is rented. Applicant receives about \$8,000 in profit annually from the rental. The value of the property is approximately \$85,000.<sup>4</sup>

Applicant stated he does not intend to repay the debts alleged in the SOR because he does not believe paying them will help his situation. He stated he does not want to pay the debts.<sup>5</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 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

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<sup>4</sup> Tr. 26-27, 31, 36-40.

<sup>5</sup> Tr. 28-31; 45-46.

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 three delinquent credit card debts totaling more than \$44,760 that he is 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 admitted he owes all three credit card debts. Although he attributed the debts to a failed business venture, he also used one card for personal expenses. Applicant has the resources to repay his delinquent debts, but refuses to do so. He understood that he personally guaranteed the credit cards. I find none of the above mitigating conditions apply.

### **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 32 years old. He is a college graduate. He started a business in 2008 that failed in 2010. He used credit cards for personal use and to pay business expenses. He has a well-paying job, rental income, and substantial savings. He does not intend to repay the debts he owes. He has chosen to walk away from his financial obligations. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge