



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-02214
	)	
Applicant for Security Clearance	)	

**Appearances**

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

04/06/2015

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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 July 10, 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 August 4, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 27, 2015. I convened the hearing as scheduled on March 18, 2015. The

Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through G, which were admitted into evidence without objection. The record was held open until March 23, 2015, to allow Applicant to submit additional documents. He submitted AE H, which was admitted without objection and the record closed.<sup>1</sup> DOHA received the hearing transcript (Tr.) on March 26, 2015.

### **Findings of Fact**

Applicant admitted the allegation in SOR ¶ 1.a and denied the remaining allegations. His admission is incorporated in the findings of fact. After a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 49 years old. He earned a bachelor's degree in 1993. He served on active duty in the Marines from 1985 to 1990 and with the Marine Reserves from 1990 to 2007, when he retired as an E-7. He served in combat in 2003, during Operation Iraqi Freedom. While serving in the Marine Corps, Applicant was awarded a Meritorious Service Medal, the Navy-Marine Corps Commendation Medal (three awards) and the Navy-Marine Corps Achievement Medal (three awards). He was married from 1990 to 2009. He has two children, ages 20 and 12, who reside with him. He has worked for a federal contractor since 2006 and with his current employer since 2013. He has held a security clearance since approximately 1986.<sup>2</sup>

Applicant testified that while he was married he went to work, and his wife paid the bills. He did not pay much attention to the finances until his wife told him they did not have money to pay their bills. She had been spending beyond their means and was using credit cards to pay other credit cards. Applicant stated that during their marriage they had moved and sold houses and made a profit, but there was no money left. He admitted he was neglectful in not being more involved in the management of their finances.<sup>3</sup>

The debt in SOR ¶ 1.a (\$380) was a corporate credit card. Applicant kept a separate account to pay his business expenses. He had arranged that when his travel claim was paid the money would be deposited directly into this account, thereby ensuring the money deposited would be used to pay this credit card bill. When Applicant separated from his wife in 2008, the bills for this credit card continued to go to the marital home where he was no longer living. He was unaware that his wife had not paid the bill until it was brought to his attention during his background investigation. Upon

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<sup>1</sup> Hearing Exhibit I is a memorandum from Department Counsel forwarding Applicant's exhibits and noting the Government had no objections.

<sup>2</sup> Tr. 10, 23-26; AE B.

<sup>3</sup> Tr. 27.

learning of the debt, Applicant contacted the creditor and paid the debt. The debt is resolved.<sup>4</sup>

The debt in SOR ¶ 1.b (\$9,016) is for a student loan. In approximately January 2007, Applicant's wife went back to school. She was not credit worthy, and in order for her to obtain a student loan Applicant cosigned for it. When they divorced each party was responsible for their own debts. He believed his wife was responsible for this debt. He testified that during the pre-divorce discussions between his attorney and his wife's attorney it was agreed that the student loan was his wife's debt. The credit report supports that after the divorce for at least 17 of a 24-month period payments toward this debt were made by his ex-wife. At some point, his wife stopped making payments. Applicant stated he was never notified by the creditor that the debt was delinquent.<sup>5</sup>

Pertinent parts of the divorce decree state:

Each party shall be solely responsible for all debts in his or her own name with the exception of the bill due to [X] Law Firm Debt Consolidation the balance is \$56,607 and the monthly payment is \$614. Each party shall pay ½ directly to the Creditor until paid in full.

\* \* \*

The Husband shall deliver to the Wife promptly any credit cards in his possession for any charge accounts maintained in the name of the Wife. The Wife shall deliver to the Husband promptly any credit cards in her possession for any charge accounts maintained in the Husband's name.

\* \* \*

Should either party attempt to file for bankruptcy protection to attempt to discharge the above obligations to or on behalf of the other party, the parties acknowledge that any and all balances unpaid are considered a domestic support obligation such that they shall be exempt from dischargeability pursuant to 11 U.S.C. § 523(a)(5).<sup>6</sup>

In approximately 2007, Applicant and his wife contracted with a law firm to assist them in consolidating their debts, negotiate settlements, and resolve their debts. Applicant stated that all of their delinquent debts were for credit cards and the total owed was about \$56,000. They would make monthly payments to X law firm. They would occasionally receive a notice from X law firm that an account was either paid or

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<sup>4</sup> Tr. 28-30. The Government stipulated there was proper documentation to support the debt was resolved.

<sup>5</sup> Tr. 30-35.

<sup>6</sup> AE F.

written-off. Applicant believed the debt in SOR ¶ 1.c (\$12,680), which is a debt for a joint credit card, was included in this plan. Applicant provided a spreadsheet showing that in accordance with the divorce decree he and his wife were both required to continue to pay one-half of the \$614 monthly payment to the law firm to resolve the balance of the consolidated debt. Each was to deposit their half of the payment into an account and then the monthly payment would be made from that account automatically. Applicant continued to pay his half of the payment until he learned that his ex-wife stopped making her half of the payment because she filed bankruptcy. He learned that the bank account was being charged for nonsufficient funds due to his ex-wife's failure to make her deposit so the account did not have the required funds to make the automatic payment. Applicant estimated that he stopped making deposits into the account when his wife filed bankruptcy sometime in February or March 2012. He stated that when the account was no longer making automatic payments, he assumed that the debt was resolved through his ex-wife's bankruptcy.<sup>7</sup>

Applicant did not have any documentation from the law firm that the debt in SOR ¶ 1.c was resolved. He stated that he attempted to locate the firm, but was unable. He researched via the Internet to find an address or telephone number but was unsuccessful. He knows there is a large file that has documents pertaining to the marital debts and correspondence from the law firm, but his ex-wife had it, and he is unable to locate her. He now resides in the marital residence, but has not received any new correspondence from the law firm. The debt no longer appears on Applicant's credit report.<sup>8</sup>

Applicant's ex-wife was initially awarded custody of their children, and Applicant was to pay child support. In 2010, their daughter moved in with Applicant. He continued to pay his ex-wife the full amount of child support for the two children. Sometime in 2012, Applicant's wife wanted to move to a new state and take their son. They went back to court to settle the custody dispute, and his wife failed to show for the hearing. Applicant was awarded sole custody of the children at that time and his ex-wife was to pay child support. Applicant's ex-wife has had no contact with him or their daughter. She occasionally will call the son on his cell phone. She has never paid the court-ordered child support. Applicant lives within his means and pays his bills on time. He is supporting his son and is paying his daughter's college expenses.<sup>9</sup>

Applicant's commander during combat operations in 2003 provided a character letter. He described Applicant as "one of our best Staff Non-Commissioned Officers." He believes Applicant is a man of integrity. He described Applicant as the consummate battalion level operations staff non-commissioned officer and "go to" senior enlisted Marine. He was instrumental in ensuring all of the command's junior Marines were

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<sup>7</sup> Tr. 35-48; AE G.

<sup>8</sup> Tr. 41-42, 49-53; AE H.

<sup>9</sup> Tr. 59-68.

prepared in the high tempo environment of combat. He repeatedly exercised sound judgment and was essential to the mission's success. His loyalty, initiative, courage under enemy fire, caring leadership style, and organizational ability were without peer.<sup>10</sup>

A character letter was provided by Applicant's current senior reporting official. He described Applicant as an "intelligent self-starting individual" who is a person of integrity and dependability, both personally and professionally.<sup>11</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

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<sup>10</sup> AE A.

<sup>11</sup> AE A.

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 cosigned on a student loan for his wife that became delinquent and had two delinquent credit card accounts totaling approximately \$13,080. 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was married from 1990 to 2009. His wife handled the finances until 2007 when he learned that she was spending beyond their financial means. They contracted with X law firm to consolidate and help resolve their delinquent debts. When Applicant and his wife divorced they were both required to continue to pay one-half of the payment to the X law firm to continue resolving their debts. Applicant continued to make his payments, but his ex-wife stopped when she filed bankruptcy. Applicant credibly testified that although he cosigned for his ex-wife's student loan, she was required to make the payments after their divorce, and apparently did for 17 months and then stopped when she filed bankruptcy. Applicant was unaware that the credit card debt in SOR ¶ 1.a was unpaid. When he learned it was delinquent he paid it. The circumstances that impacted Applicant's finances are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. Applicant is actively managing his finances, and he is no longer married. He is living within his means. AG ¶ 20(a) applies.

Applicant's divorce and his ex-wife's failure to continue her student loan payments and payments to X law firm were beyond his control. AG ¶ 20(b) partially applies to the facts. He admittedly was neglectful in not monitoring the familial finances while he was married. This was within his control. For the full application of the mitigating condition, Applicant must have acted responsibly under the circumstances. He paid the corporate credit card and made payments to X law firm until his ex-wife stopped paying her half. He attempted to contact X law firm, but was unable to locate it. He does not know where his ex-wife is living, and he was unable to retrieve the paperwork regarding X law firm. Under the circumstances, Applicant acted responsibly. AG ¶ 20(b) applies.

Applicant paid the corporate credit card alleged. Although he made payments on the other credit card in SOR ¶ 1.c, once he learned his ex-wife was no longer paying her half he stopped payments. The debt no longer appears on his credit report. It appears his ex-wife was responsible for paying the student loan debt and did until she filed bankruptcy. Applicant is living within his means and taking care of his children, without receiving the court-ordered child support from his ex-wife. Applicant's financial problems are under control. AG ¶ 20(c) applies. He paid his corporate credit card. AG ¶ 20(d) applies to that debt.

## 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 49 years old. He is a retired Marine who served in combat and receives high praise from his former commander and current supervisor. He admitted that while he was married his wife took care of their finances. She spent money beyond their means, and when he learned of the problems they were already deep in debt. They initiated a consolidation program to settle and resolve their debts. They abided by the monthly payment schedule even after they divorced until his ex-wife stopped making her share of the payment. The student loan debt was for Applicant's ex-wife, and she paid it after their divorce until she apparently stopped when she filed bankruptcy. Applicant appears to have his finances in order. Although there is some question as to the current status of the debt in SOR ¶ 1.c, it is no longer listed on his current credit report. Applicant is caring for his children without the benefit of child support that was court-ordered. He does not have other delinquent debts. 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.c:	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