



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 14-06350
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*  
11/20/2015

**Decision**

---

HOGAN, Erin C., Administrative Judge:

On February 4, 2015, 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 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 Department of Defense after September 1, 2006.

On March 2, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 1, 2015. I was assigned the case on July 28, 2015. On September 11, 2015, a Notice of Hearing was issued, scheduling the hearing for October 6, 2015. The hearing was held as scheduled. During the hearing, the Government offered eight exhibits which were admitted as Government Exhibits (Gov) 1 – 8. Applicant testified, called one witness and offered eight exhibits which were admitted as Applicant Exhibits (AE) A – H. The record was held open until October 20, 2015, to allow Applicant to submit additional exhibits. He timely offered two exhibits which were marked and admitted as AE I – AE J. Department Counsel's e-mail indicating no objection to AE I - AE J is marked as HE I. The transcript (Tr.) was received on October 14, 2015. Based upon a review of the

pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his response to the SOR, Applicant admits the SOR allegations.

Applicant is an employee of a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since July 2010. His highest level of education is an Associate's Degree. He is married and has a step-daughter, age 26, and two daughters, ages 19 and 16. His 19-year-old daughter is a college student. His 16-year-old daughter lives with him and his wife. He served on active duty in the United States Navy from October 1995 to October 1999. (Tr. at 18-19, 21-23; Gov 1; Gov 2; AE G)

Applicant's security clearance background investigation revealed three delinquent debts. They include a \$25,000 delinquent student loan account (SOR ¶ 1.a: Gov 8 at 4); a \$5,757 judgment entered against Applicant for a delinquent credit card (SOR ¶ 1.b: Gov 3 at 4; Gov 4 at 3; Gov 8 at 3); and a \$38 medical bill placed for collection. (SOR ¶ 1.c: Gov 4 at 11).

From 2007 to 2009, Applicant worked for another firm. He also did freelance work on the weekends in order to earn extra money. He was fired when the company discovered he was doing freelance work. It was against company policy for employees to do freelance work on the side. Applicant was aware it was against company policy. He was unemployed from May 2009 to September 2009. From September 2009 to May 2010, he worked for another company. He was laid off from May 2010 to July 2010. He was hired by his current employer in July 2010. (Tr. 19-21; Gov 6 at 1; Gov 7 at 1-2)

Applicant's wife was laid off from her full-time position in April 2012. She currently works ten hours a week in a part-time job. (Tr. 23) In mid-2013, Applicant's wife had a stroke. She was hospitalized for two to three months. (Tr. 43) Applicant has worked to keep up with his financial responsibilities over the past four years. He is now the main breadwinner for the family. His wife's unemployment and illness had an adverse impact on the family finances. He is still recovering from these events. He also has a daughter who is now in college. (Tr. 28. 42-44)

Applicant has taken steps to prevent his debt from increasing. He sold all of his cars and motorcycles except one and is focusing on eliminating his existing debt. He took a loan out from his 401(k) to pay for debts that were not alleged in the SOR. (See Gov 6 at 4-5; Gov 7 at 4) He rents the upper floor of his house to earn extra income. He receives \$1,000 a month in rent from the renters. (Tr. 42, 52)

The status of the SOR debts is as follows:

SOR ¶ 1.a: \$25,000 delinquent student loan account owed to a credit union. He was making payments of between \$500 to \$600 monthly on the account, but was unable to keep up with the payments after he lost his job in 2010, then his wife lost her job in 2012. His financial problems built up and Applicant was not making adequate income to catch up on all of his bills. The loan went to judgment and a law firm is now collecting the judgment. Applicant has been making payments towards the account over the last four years. The current balance on the account is \$24,582. The balance remains high because of accruing interest on the loan. He was told the only way to get rid of the accruing interest is to pay the loan off through settlement. Applicant says he does not have the funds to pay a sufficient settlement. (Tr. 26-29)

Applicant provided a payment history from the law firm that is collecting on the debt alleged in SOR ¶ 1.a. As of October 2, 2015, Applicant paid \$4,485.01 towards the debt. As of October 2, 2015, the accrued interest on the debt is \$6,015.01. The current balance on the debt is \$24,582.23. From June 2013 to March 2014, Applicant was also making payments towards the debt to the local Sheriff's Office. (AE C and AE D) Applicant made six payments in 2012. In 2013, Applicant made eight payments. In 2014, Applicant only made two payments. In 2015, Applicant made six payments. Applicant admits he missed several payments. His most recent payments were in September 2015 and October 2015. (Tr. 38-42; AE C at 2; AE F)

SOR ¶ 1.b: \$5,757 judgment for a credit card, entered in 2012. Applicant provided a payment history from the law firm that is collecting on the judgment alleged in SOR ¶ 1.b. As of October 2, 2015, Applicant paid \$1,771 towards the judgment. As of October 2, 2015, the accrued interest on the debt is \$1,517.80. The current balance is \$5,704.26. He occasionally missed payments. Applicant made three payments in 2012, two payments in 2013, four payments in 2014, and six payments in 2015. His most recent payments were in September 2015 and October 2015. (AE B; AE F)

SOR ¶ 1.c: \$38 medical account placed for collection. The debt is paid. (AE I)

During the hearing, Applicant estimated that his net monthly income is \$4,500. He receives \$1,000 from his renters. His total monthly income is \$5,500. His mortgage is \$2,800. His car payment is \$222. The family cell phone plan is \$200. Cable is \$130. Additional bills are groceries and electric. He spends his money on essentials. They do not go on vacations. The medical expenses for his wife's stroke resulted in a total of \$15,000 in medical bills not covered by insurance. They are making payments and have paid \$3,000 so far towards the medical bill. Applicant comes out even every month after expenses. The record was held open, in part, to allow him to submit a more detailed budget. He did not provide a more detailed budget. (Tr. 44-52)

Applicant's tax refund last year was \$6,700. The state kept the money because he owed taxes from the previous year. He will owe taxes this year because of a loan he took out of his 401(k) in order to help pay his daughter's college tuition. (Tr. 49-50) He is

not aware of owing any other taxes. He is current on his remaining bills. He is trying his best, based on running a household on one income. (Tr. 49-50, 58 – 59; 63; Gov 8)

When asked how he intended to resolve his two remaining delinquent debts, Applicant was thinking of getting a second mortgage on the house at the end of the year. He has \$300,000 in equity in his house. His house is worth \$600,000. The current balance in his 401(k) is \$40,000. (Tr. 58-59)

### **Whole-person Factors**

Applicant's supervisor testified during the hearing. She also provided a written statement. She has worked with Applicant for five years. Their office is responsible for providing computer security for several government agencies. She testified that she trusts Applicant. He is very reliable. Applicant has not had any security incidents while working for her. Applicant is a family man. He is a good husband and father who is there for his family. (Tr. 66-74).

The Deputy Project Manager of the agency where Applicant works met Applicant in 2010. He works closely with him. He states that Applicant's technical expertise and his efforts ensure that the daily operations run smoothly. He also knows him on a personal basis. He states Applicant is a consummate family man who is proud of his children and is engaged in their daily lives. The Deputy Project Manager testified that "[Applicant] carries out his assignments with honesty, integrity, and a high moral standard that is expected of all employees assigned to the [agency]." (AE A)

A Senior Regional Security Officer states that Applicant is a self-starter and a strong worker. Applicant keeps the mission running smoothly. (AE J)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has

encountered financial problems since 2009 after he was laid off. Two judgments have been filed against him for a delinquent student loan and credit card. He has been unable to satisfy these debts over the past several years.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with their creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage their finances in such a way as to meet their financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

AG ¶ 20(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) applies because while Applicant is still paying on the two judgments, he has taken steps to minimize his overall debt. He has demonstrated that he is attempting to resolve his debts. However, as the principal breadwinner in the household, he has endured several financial challenges over the past several years, which has prevented him from making consistent payments towards his two remaining debts. However, he makes payments when he can. He has consistently made payments towards both debts over the past two months. Applicant's financial problems do not cast doubt on his reliability, trustworthiness, or good judgment.

AG ¶ 20(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) applies. Applicant's financial problems were the results of several periods of unemployment. He was unemployed for four months in 2009, and for three months in 2010. His wife was laid off from her full-time position in April 2012. In mid-2013, his wife suffered a stroke and was hospitalized for several months. She endured several months of rehabilitation. He was unable to keep up with the household debts based on his income. As a result, Applicant took out a loan

against his 401(k) to pay other debts that were not listed in the SOR. He sold all of his cars and motorcycles except one. He and his wife rent the second floor of their home for extra income. While not always consistent, he has been making payments towards both judgments alleged in SOR ¶¶ 1.a and 1.b. Considering all of the unexpected circumstances to befall Applicant over the past six years, he has acted responsibly in attempting to manage his debts.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant paid the debt alleged in SOR ¶ 1.c. He is making payments towards the judgments alleged in SOR ¶¶ 1.a and 1.b. He paid off other debts not alleged in the SOR.

### **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 the 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 considered the favorable recommendations of Applicant's supervisors and co-workers. I considered that Applicant's financial problems are caused by circumstances beyond his control including his and his wife's periods of unemployment in 2009, 2010, and 2012, and his wife's stroke in the summer 2013. While not always consistent with his payments towards the two remaining judgments, Applicant is doing his best and intends to pay them off.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an

applicant is not required as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Since 2009, Applicant has experienced several events that have had an adverse impact on his financial situation. He has resolved other debts not alleged in the SOR. The only debts that remain are the judgments alleged in SOR ¶¶ 1.a and 1.b. He is making payments towards these accounts. While not always consistent, considering the number of financial challenges he has had, periods of unemployment, his wife's illness, and her inability to find a full-time job, Applicant has made a good-faith effort to resolve his delinquent accounts. His favorable character references show that Applicant can be trusted with access to classified information. Security concerns under financial considerations are mitigated.

### **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 eligibility for a security clearance. Eligibility for access to classified information is granted.

---

ERIN C. HOGAN  
Administrative Judge