



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-10498
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro Se*

October 30, 2009

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 15, 2009, the Defense Office of Hearings and Appeals (DOHA) 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on July 8, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 28,

2009. DOHA issued a notice of hearing on August 4, 2009, scheduling the hearing for August 19, 2009. The case was reassigned to me on August 12, 2009. The hearing was convened as scheduled. The government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through O, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted 13 pages of documents, which were marked AE P through V and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on September 8, 2009.

### **Procedural Rulings**

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

### **Findings of Fact**

Applicant is a 37-year-old employee of a defense contractor. He is seeking to renew his security clearance. He served in the military from 1992 through 2001, and was honorably discharged. He has worked for his current employer since December 2007. He has been steadily employed since he discharged from the military. He was married from 1999 until his divorce in 2000. He married again in 2003, separated in 2004, and divorced in 2006. He married again in 2007. He has primary joint custody of his six-year-old child from his second marriage.<sup>1</sup>

Applicant attributed his financial problems to his second wife's spending, his separation and divorce, her failure to pay her share of the marital debt, and the costly legal fees incident to a protracted custody battle. While they were married, he agreed to cosign loans for two new cars for her, even though he had two older cars and a motorcycle that were owned outright. One of his older cars was being restored and was inoperable, and the other car had mechanical problems. She wanted to have an extra car available for his use in case his older cars broke down. She did not want him borrowing her car. She took both cars in the divorce, and both cars ended up being repossessed.<sup>2</sup>

The SOR alleges 13 delinquent debts, which includes two debts reduced to judgments. The debts were listed on credit reports dated July 22, 2008, and May 13, 2009. Applicant admitted owing the debt alleged in SOR ¶ 1.c. He admitted in part and denied in part the debts alleged in SOR ¶¶ 1.i, 1.j, and 1.k. He denied owing the remaining debts.<sup>3</sup> Individual debts are addressed below.

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<sup>1</sup> Tr. at 25-26, 31, 40-42; GE 1, 2; AE L-N.

<sup>2</sup> Tr. at 25-35, 39-40; Applicant's response to SOR; GE 2; AE L-N.

<sup>3</sup> Applicant's response to SOR; GE 1-4.

Applicant denied owing the delinquent debt of \$19,473 alleged in SOR ¶ 1.a. The debt was for the deficiency owed on a car loan after the car was repossessed. This was one of the car loans that he cosigned for his second wife. Applicant stated that he plans on including this and his other debts in a Chapter 13 bankruptcy, as discussed below.<sup>4</sup>

SOR ¶ 1.b alleges an unpaid judgment awarded against Applicant on behalf of an insurance company in the amount of \$22,000. Applicant did not deny that a judgment was awarded against him. He was in a car accident. He stated the driver of the other car slammed on her brakes when her dog jumped in her lap. He hit her car when she cut him off. He provided the information to his insurance company, which stated they were denying the other driver's claim. Applicant stated he was sued by her insurance company while he was out of town. A default judgment was awarded against him for \$22,000. In June 2009, the balance on the judgment, counting interest and fees, was \$23,932.<sup>5</sup>

Applicant admitted owing the unpaid judgment of \$1,302 to a law firm, as alleged in SOR ¶ 1.c. He stated this debt was for the attorney handling his divorce. He was dissatisfied with his representation and disputed the bill. The balance on the judgment was \$1,539 in June 2009.<sup>6</sup>

SOR ¶¶ 1.d and 1.e allege past-due debts of \$465 and \$567 owed to the same credit card company. Applicant testified that both debts were "current and paid off in full." After the hearing, he submitted his account statements from August 2009. One account listed a balance of \$420, which was above the credit limit of \$300, and included a late fee of \$29. The second account listed a balance of \$559, which was above the credit limit of \$400, and included a return item charge of \$25, an over limit fee of \$25, and a late fee of \$25.<sup>7</sup>

SOR ¶ 1.f alleges a past-due auto loan with a balance of \$11,000. The May 13, 2009 credit report lists the debt as \$414 past due. Applicant admitted that he fell behind on the debt, but he contacted the creditor and worked out a plan to bring the loan current. He submitted a letter from the creditor dated August 21, 2009. The letter stated that his account balance was \$10,470 and "[t]he account has a present due date of 8/01/09."<sup>8</sup>

In June 2009, Applicant paid the delinquent debt of \$299 owed to a credit union. This debt was alleged in SOR ¶ 1.g.<sup>9</sup>

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<sup>4</sup> Tr. at 26-28, 32-33, 46; Applicant's response to SOR; AE 1, 2.

<sup>5</sup> Tr. at 46-50; Applicant's response to SOR; GE 2; AE I.

<sup>6</sup> Tr. at 46; Applicant's response to SOR; GE 2; AE J

<sup>7</sup> Tr. at 43-44; Applicant's response to SOR; AE S, T.

<sup>8</sup> Tr. at 42-43; Applicant's response to SOR; AE V.

<sup>9</sup> Tr. at 44; Applicant's response to SOR; AE G.

SOR ¶ 1.h alleges a delinquent debt of \$396 to a collection company. Applicant submitted a letter from the collection company indicating that a debt being collected on behalf of a telecommunications company had been settled. SOR ¶ 1.i alleges a delinquent debt of \$76 to the same telecommunications company. There is insufficient evidence for a determination that these represent two distinct debts.<sup>10</sup>

Applicant admitted and denied the debts of \$7,265, \$4,152, and \$980, as alleged in SOR ¶¶ 1.i, 1.j, and 1.k. He admitted owing the two credit card debts of \$7,265 and \$4,152. He denied the two allegations because he stated his second wife was supposed to pay the debts. He plans on including these debts in his Chapter 13 bankruptcy. He admitted owing the \$980 cell phone bill. He denied the allegation because he stated his second wife's mother ran the bill up. His second wife agreed to pay the bill but did not. He stated that he had an agreement with the creditor to settle the debt, and he made one payment of about \$176. He stopped making payments on the settlement because his bankruptcy attorney advised him to leave the debt for his bankruptcy plan. Applicant was asked to provide proof of the payment in his post-hearing submission, but no proof of that payment was provided.<sup>11</sup>

SOR ¶ 1.m alleges a delinquent debt of \$295 owed to a collection company on behalf of a cable television and internet provider company. Applicant submitted letters from the collection company and the cable company indicating the account was paid in 2005. The cable company noted that "the monetary balance on the account was due to an incorrect disconnect date on [company's] part." The collection company "investigated [his] dispute." Based upon their investigation, the company closed the account and notified the credit bureaus to delete the account from his credit report.<sup>12</sup>

A judgment of \$10,377 was awarded against Applicant and his second wife on behalf of an automobile finance company in 2005. The judgment was for the deficiency owed on a car loan after the car was repossessed. This was the second car loan that Applicant cosigned for his second wife. The balance on the judgment was \$16,257 in June 2009. This debt was not alleged in the SOR.<sup>13</sup>

To summarize Applicant's debts, he paid or settled two debts totaling \$695 (¶¶ 1.g and 1.h); he successfully disputed a \$295 debt that was paid in 2005 (¶ 1.m); he disputed a \$76 debt as a duplicate debt(¶ 1.i); he is paying three debts with balances

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<sup>10</sup> Tr. at 36, 44-45; Applicant's response to SOR; AE B, H.

<sup>11</sup> Tr. at 45, 51; Applicant's response to SOR.

<sup>12</sup> Applicant's response to SOR; AE A, C-F.

<sup>13</sup> Tr. at 26-28, 32-35; AE K. This judgment will not be used for disqualification purposes. It will be considered in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

totaling \$11,449, which were past-due at some point (¶¶ 1.d, 1.e, and 1.f); and he did not provide proof of payments on the remaining six unpaid judgments and delinquent debts totaling \$57,341 (¶¶ 1.a, 1.b, 1.c, 1.i, 1.j, and 1.k). He also has an unpaid judgment of \$16,257 that was not alleged in the SOR. Applicant's total debt, which includes debts that may not be past due and a debt that was not alleged, is approximately \$85,000.

Applicant contracted with an attorney in June 2009, to file a Chapter 13 bankruptcy on his behalf. Applicant submitted a Chapter 13 plan worksheet. The worksheet listed \$2,600 in attorney fees and the total amount of non-priority unsecured debt at \$55,862. The worksheet did not list individual creditors. The worksheet proposed alternate plans in which Applicant would either pay \$210 per month for 13 months, followed by payments of \$7 per month for 47 months, or he would pay \$210 per month for 15 months. The worksheet called for \$200 per month for 13 months, or \$2,600, would be paid to his attorney. It called for \$300 to be paid to his non-priority unsecured debt. The monthly car loan payment of \$420 to the creditor in SOR ¶ 1.f would be paid outside his plan. The plan has not been approved by the bankruptcy court. Applicant completed the financial counseling required by the bankruptcy court.<sup>14</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 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 avoided drawing 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, the applicant is

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<sup>14</sup> Tr. at 36-39; Applicant's response to SOR; AE O, U.

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 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 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* Executive Order 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 conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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 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 paid, settled, disputed, or brought current several debts. He retained an attorney to file a Chapter 13 bankruptcy on his behalf, but the plan has not been approved by the bankruptcy court. He still owes more than \$57,000 in unpaid judgments and delinquent debts. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributed his financial problems to his second wife's spending, his separation and divorce, her failure to pay her share of the marital debt, and the costly legal fees incident to a protracted custody battle. These all qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant cosigned for two car loans when he was married, even though he had two older cars and a motorcycle for his use. That is not responsible conduct. He paid two of the debts listed in the SOR, totaling \$695. Another debt was successfully disputed as paid in 2005. He is in the process of filing Chapter 13 bankruptcy, which is a legal means of addressing one's burdensome debt. The plan has not been approved, and he has not started the payments to the trustee. He has not submitted sufficient information for a determination that his actions regarding his finances have been completely responsible. AG ¶ 20(b) is partially applicable.

Applicant has received some financial counseling. His Chapter 13 bankruptcy plan has not been approved by the court, and he has not established a track record of payments to the trustee. It is too early in the process for a determination that his financial problems are resolved or under control. AG ¶ 20(c) is partially applicable.

Applicant paid two debts. Three debts that were listed as past due are being paid. AG ¶ 20(d) is applicable to those five debts. Those payments do not support a finding that he made a good-faith effort to pay or resolve all his delinquent debts.<sup>15</sup> AG ¶ 20(d) is not applicable to the unpaid debts.

Applicant successfully disputed the debt in SOR ¶ 1.m. The debt in ¶ 1.l is a duplicate of another debt that was paid. AG ¶ 20(e) is applicable to those two debts.

In sum, I conclude that financial concerns are still present despite the presence of some mitigation.

### **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 have incorporated my comments

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<sup>15</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).



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 Applicant's honorable military service and his steady employment record. Many of his delinquent debts can be traced to his second wife and their extended custody battle. He paid two debts totaling \$695 and is in the process of filing Chapter 13 bankruptcy. His bankruptcy plan has not been approved by the court, and he has not begun making payments to the trustee. He still owes more than \$57,000 in unpaid judgments and delinquent debts. I am also concerned about how Applicant handled his past-due debts. He testified that his debts of \$465 and \$567 were "current and paid off in full." The account statements submitted after the hearing showed both accounts with balances over the credit limit and included late fees, a return item charge, and an over limit fee. Applicant has not established a track record of financially responsible conduct.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge