



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-03770
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

April 30, 2010

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 7, 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 (EO) 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).

Applicant answered the SOR in an undated response and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 2, 2010, and reassigned to me on February 25, 2010. DOHA issued a notice of hearing on February 18, 2010, and the hearing was convened as scheduled on

March 10, 2010. The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A(1) through A(7) and B through G, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE H through M and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on March 18, 2010.

### **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 55-year-old employee of a defense contractor. He has worked for his current employer since 1986. He is seeking to retain his security clearance. He has a bachelor's degree. He is married with one child in college and two adult stepchildren.<sup>1</sup>

Applicant and his wife started relying on credit cards in the 1990s. He testified that his wife opened credit card accounts and accumulated large balances without his knowledge. He also indicated that his employer lost work after the 9/11 attacks. He did not lose his job, but he was unable to work the overtime hours he had come to rely upon. By 2003, they had accumulated more than \$90,000 in consumer debt.<sup>2</sup>

Applicant rejected filing bankruptcy, and he contracted with a debt management company in August 2003 to assist in resolving his debts. The company told him to stop paying all his debts. He agreed to pay the company \$2,501 in service fees through his monthly payments, plus \$25 per month in maintenance fees. Applicant assigned 18 debts to the company for negotiation. Eleven of the debts were in Applicant's name and seven were in his wife's name. The total amount owed on the 18 debts was \$97,070. Applicant agreed to send the company \$1,500 each month to be used to settle his debts. The company would negotiate settlements with his creditors and pay the settlement out of the accrued funds. The company would receive an additional fee of 25% of the difference between the creditor's claim and the amount the creditor agreed to accept as settlement of the debt. Applicant continued in the program through 2007 and settled a number of debts. He stated that a few creditors would not negotiate with the debt management company and they have not been paid. He ended his contract in March 2007. His car broke down, and he had to buy a new one. He could not afford to make the car loan payments and pay \$1,500 to the debt management company.<sup>3</sup>

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<sup>1</sup> Tr. at 25, 50; GE 1.

<sup>2</sup> Tr. at 19-20, 23-24; Applicant's response to SOR; GE 2.

<sup>3</sup> Tr. at 20-21; Applicant's response to SOR; GE 1, 2; AE A(1), G, I.

The SOR alleges six delinquent debts, with balances totaling about \$68,893. The debts were listed on credit reports obtained on January 30, 2009 and September 30, 2009. Applicant admitted owing the original creditors alleged in SOR ¶¶ 1.a to 1.d, but he questioned the amount owed. He denied owing the debts alleged in SOR ¶¶ 1.e and 1.f, stating the debts had been settled. The status of the debts alleged in the SOR is addressed below.

SOR ¶ 1.a alleges a delinquent debt of \$11,623 owed to a collection company, collecting on behalf of a bank's credit card account. Applicant admitted having an account with the bank. He submitted a copy of a credit card statement from August 2003 showing a balance of \$4,611. Applicant complained that the debt more than doubled. The statement showed an annual interest rate of 9.24%, but it also indicated that in case of default, the interest rate would increase to a rate that could be as high as the prime rate plus 23.99%. Applicant stated that after the judgment alleged in SOR ¶ 1.c is paid, he will work with the collection company to address the debt. The debt is scheduled to continue on Applicant's credit report until May 2010.<sup>4</sup>

The creditor alleged in SOR ¶ 1.b obtained a judgment of \$8,341 against Applicant in June 2006. Applicant admitted having an account with the creditor that obtained the judgment. He stated the balance on the account was \$5,984 when he stopped paying the account in September 2003. Applicant stated that he attempted to contact the law firm representing the creditor by calling the two numbers listed on the judgment, but he was told the numbers were disconnected. He researched the law firm and stated it was taken over by another law firm. He stated that law firm does not answer their phones. He also found a connection to a collection company, but he indicated the collection company is in bankruptcy. He contacted the bank that purchased the financial institution that obtained the judgment. The bank indicated it would check with their attorneys. Applicant was finally placed in contact with the collection company currently handling this debt. Applicant offered to make monthly payments, but the company required 10% of the debt as a down payment before it would accept monthly payments. Applicant did not have that much available.<sup>5</sup>

The same collection company that is collecting the debt alleged in SOR ¶ 1.a obtained a judgment of about \$5,888 against Applicant in May 2006. The judgment is for a different account than was alleged in SOR ¶ 1.a. The judgment is alleged in SOR ¶ 1.c. Applicant agreed in February 2010 to pay the judgment with monthly payments of \$250 per month.<sup>6</sup>

Applicant admitted having an account with the creditor that transferred the debt to the collection company collecting the \$27,757 debt alleged in SOR ¶ 1.d. The balance due on the debt was \$8,722 in August 2003. The interest rate on the credit card was not listed on the page Applicant submitted from the card's August 2003 statement.

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<sup>4</sup> Tr. at 22, 26-27; Applicant's response to SOR; GE 2-4; AE A(1), A(2), C, G.

<sup>5</sup> Tr. at 22, 27-29; Applicant's response to SOR; GE 2-4; AE A(1), A(3), C, G, H, M.

<sup>6</sup> Tr. at 21-22, 29-32; Applicant's response to SOR; GE 2-4; AE A(1), A(4), B, C, G, K.

Applicant indicated that he is willing to settle the account, but he has been unable to contact the collection company. The debt is scheduled to continue on Applicant's credit report until August 2010.<sup>7</sup>

Applicant submitted sufficient documentation to establish that the \$9,108 debt alleged in SOR ¶ 1.e was settled for \$4,800 through his debt management company in February 2005. The \$6,176 debt alleged in SOR ¶ 1.f was settled for \$3,415 in July 2006.<sup>8</sup>

Applicant has not received financial counseling other than the limited advice provided by the debt management company. The current economic situation has impacted his earnings as he has been unable to work overtime. With the exception of his delinquent debts from 2003, his current finances are in order in that he is not incurring new delinquent debt.<sup>9</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 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 responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

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<sup>7</sup> Tr. at 23, 32; Applicant's response to SOR; GE 2-4; AE A(1), A(5), C, G.

<sup>8</sup> Tr. at 34-44; Applicant's response to SOR; GE 2-4; AE A(1), A(6), A(7), C-E, G-I.

<sup>9</sup> Tr. at 23-24, 46-55.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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. 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 realized his finances were out of control in 2003. He and his wife relied on credit cards and accumulated large balances. He contracted with a debt management company to assist in resolving his debts. Applicant asked the company to assist him with 18 debts totaling \$97,070. He paid the company \$1,500 each month for about three and a half years. A number of debts were settled, including the two debts alleged in SOR ¶¶ 1.e and 1.f. Applicant ended his association with the debt management company in March 2007. He bought a new car after his old car broke down. He could not afford to pay both the \$1,500 to the debt management company and the car loan. The four debts alleged in SOR ¶¶ 1.a through 1.d were not settled. The total amount owed on those debts is about \$53,000, which, because of interest and fees, is substantially more than Applicant owed on the accounts when he stopped paying them in 2003. Two of the creditors obtained judgments against Applicant. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Applicant placed the blame on his finances on his wife who opened credit card accounts without his knowledge and accumulated large balances. The economy also impacted Applicant's finances because he was unable to work the overtime hours he had come to rely upon. These 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 acted responsibly when he addressed his debts through the debt management company. He stopped acting responsibly when he took no action on the remaining debts for almost three years. AG ¶ 20(b) is partially applicable.

Applicant did not receive what would normally be construed as financial counseling from his debt management company, but he did receive some advice on

resolving his debts. There were clear indications that the problem was being resolved and under control for the three and a half years he worked with the debt management company. Those indications ceased in March 2007 when he cancelled his agreement with the debt management company. He took no action on his debts for approximately three years. AG ¶ 20(c) is partially applicable.

The debts alleged in SOR ¶¶ 1.e and 1.f were settled in 2005 and 2006. AG ¶ 20(e) is applicable to those debts. A number of other debts were settled by the debt management company. Applicant made a good-faith effort to pay the debts that were settled. He agreed in February 2010 to pay the \$5,888 judgment alleged in SOR ¶ 1.c with monthly payments of \$250 per month. That is not yet sufficient to qualify as a good-faith effort to pay the debt. He has no current arrangement with any of the other creditors. He has not made a good-faith effort to pay or resolve the debts alleged in SOR ¶¶ 1.a through 1.d. AG ¶ 20(d) is not applicable to those debts.

At this point, Applicant's finances remain a concern 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 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.

I considered Applicant's long and stable employment history and his efforts between 2003 and 2007 to resolve his debts. Had Applicant continued with the debt management company or worked at addressing the debts on his own, Applicant's finances would not be an issue. However, he did nothing on the four remaining debts for

about three years, and he only recently started efforts at paying one of the debts. I am unable to determine at this time that his finances are in order.

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 the 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.d:	Against Applicant
Subparagraphs 1.e-1.f:	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