



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-06075
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

February 25, 2011

**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.

On August 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on September 5, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government’s File of Relevant Material (FORM) on December 6, 2010. The FORM was mailed to Applicant and it was received on December 13, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.

Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on February 1, 2011.

### Findings of Fact

Applicant admitted all of the SOR allegations, except ¶ 1.g, which he denied. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 60 years old. He has been married since 1971 and has five children. He served honorably in the Army from 1967 to 1978. Since 1997 he has been self-employed as the president and chief executive officer of his own business. He also receives tax-free Veteran's Affairs monthly disability payments of \$3,159. His wife receives monthly payments of \$1,800 tax-free Social Security disability payments. Their annual tax-free household income is approximately \$59,508. They also receive business income.

The SOR alleged that Applicant owes six delinquent debts totaling \$45,017. The alleged debts include two voluntary repossessions of automobiles and two judgments. Also included in the allegations is a 1999 Chapter 7 bankruptcy discharge.

Applicant has operated his current business, Company X, since 1997, after turning over his prior business, Company Y, to his wife.<sup>1</sup> Applicant stated in his answer to the SOR dated September 5, 2010, that: [Company X] is making money each month, which stays in the firm for growth and dividends to the stockholders."<sup>2</sup> He owns 98% of the stock of the company and receives profits in the form of dividends.<sup>3</sup> In Applicant's personal subject interview which he certified as correct on March 30, 2010, he stated that the "reason for [his] financial issues were due to the business he owns and operates having little to no business since 2005."<sup>4</sup> Applicant did not provide any documentary evidence about his business or personal financial status.

In 1998, Applicant filed for Chapter 7 bankruptcy (SOR ¶ 1.a), a year after his current business began. The bankruptcy was discharged in 1999. Applicant stated in his answer that he was forced to file for bankruptcy because his accountant embezzled \$900,000 from him. Applicant did not provide any documentary evidence, such as police reports, tax records, or other documents to support his position.

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<sup>1</sup> There is no evidence available as to the current status of Company Y.

<sup>2</sup> Item 4.

<sup>3</sup> *Id.*

<sup>4</sup> Item 6.

In 1994, the Internal Revenue Service (IRS) filed Federal Tax Liens against Applicant and seven lawsuits were filed resulting in judgments against him in 1998. In 1999 and 2000, State Z obtained civil judgments against Applicant.<sup>5</sup>

On April 24, 1984, Applicant made a sworn statement explaining his financial problems began in 1983.<sup>6</sup> In January 1996, he made another statement and discussed that his company had a longstanding contract in December 1993, which caused a financial hardship on his company and him personally.<sup>7</sup> At that time he estimated his total financial liabilities, including money owed to the IRS to be approximately \$265,000. However, in a statement made in April 1996, as part of a security clearance investigation, he claimed that 1995 was a year of recovery for the company and it had doubled its revenue since October 1995, and there were early indications that 1996 was going to be a prosperous year and the future looked bright.<sup>8</sup>

In Applicant's current security clearance application (SCA) he noted some of his past due debts and stated: "I got behind on a lot of my bills due to my wife's loss of income. Everything is now current."<sup>9</sup>

In 2008, a judgment was entered against Applicant (SOR ¶ 1.b, \$13,583). This was the result of a voluntary repossession by Applicant when he returned a leased vehicle to the creditor. He admitted the debt in the SOR, but claimed that because he was not told the date the vehicle would go to auction he does not owe the debt. He claims this is required by state law. The debt resulted in a lawsuit that Applicant did not attend and a judgment was entered against him. He refuses to pay the judgment. In Applicant's answer to the SOR he stated that he relinquished the vehicle to the creditor because he and his wife lost their jobs and their only source of income was their disability payments. Applicant was self-employed at the time.<sup>10</sup>

SOR ¶ 1.f (\$9,635) alleged another voluntary repossession of a vehicle. In his answer to the SOR, Applicant stated he could not make the payments because "my wife and I lost our jobs due to our disabilities." Again his position is that because he was not invited to the vehicle auction he does not owe the debt to the creditor, and he has no intention of paying it. Applicant did not report on his SCA any periods of unemployment. He did not provide financial documents supporting his position. He did not provide any

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<sup>5</sup> Item 9. I have not considered for disqualifying purposes any debts that were not alleged in the SOR. However, I have considered them when analyzing his financial history, credibility, and for purposes of mitigation, and analyzing the "whole-person."

<sup>6</sup> Item 14.

<sup>7</sup> Item 15.

<sup>8</sup> Item 16. I have considered these statements in analyzing Applicant's credibility and as part of his financial history.

<sup>9</sup> Item 5.

<sup>10</sup> Items 4, 6.

evidence or information as to how both he and his wife lost their jobs due to disabilities, or how they were limited in their ability to operate their own business. Applicant and his wife continued to receive monthly tax-free disability benefits during this time.<sup>11</sup>

Applicant admitted the debt in SOR ¶ 1.c (\$1,127) but disputes the amount. He provided no documentary evidence to support his dispute nor did he provide proof of payments toward the debt.<sup>12</sup>

Applicant admitted the debt in SOR ¶ 1.d (\$12,620). He provided documents to show he agreed to a settlement offer in August 2010 to pay a total of \$3,786.06, by making monthly payments of \$273. Applicant provided some handwritten notes on the settlement offer documents, but failed to produce evidence that he has been making the payments.<sup>13</sup>

Applicant admitted the debt in SOR ¶ 1.e (\$2,919). He provided documentation from the collection agency that holds the debt, acknowledging in August 2010 that they were in receipt of a post-dated check for \$65. The current balance noted on the document was \$1,621. The debt is unresolved.

Applicant denied the debt in SOR ¶ 1.g (\$5,133) which is a judgment entered in 2000. The judgment is owed to Applicant's bankruptcy attorney. Applicant claims he paid the debt in July 2006, but he failed to provide any documentary proof that it was paid or released.

Applicant sought credit counseling in the 1990s. There is no evidence of recent financial counseling.

## **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 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 ¶

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<sup>11</sup> In 1984 Applicant reported on his SCA that he relinquished another vehicle for repossession and owed \$6,500. He disputed the amount of the debt and indicated that he would pursue the matter in court or through consumer credit counselors' assistance. See Item 14.

<sup>12</sup> Item 4.

<sup>13</sup> *Id.*

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, 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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and the following are potentially applicable:

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

Applicant had his debts discharged in a Chapter 7 bankruptcy in 1999. He has six delinquent debts, which include two judgments totaling approximately \$45,017, that are unpaid and unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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;
- (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's delinquent debts are not paid and therefore remain current. Insufficient credible evidence was produced to establish that the debts occurred under circumstances that are unlikely to recur. His lack of action to resolve the delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment.

Applicant failed to provide evidence that his financial problems were beyond his control. The record showed he made inconsistent statements regarding his business and his employment status. He did not provide evidence to support his claim that he and his wife lost their jobs due to their disabilities. He failed to provide evidence that if the conditions were beyond his control, how he acted responsibly under the circumstances. I find AG ¶¶ 20(a) and 20(b) do not apply. Applicant offered no evidence that he received recent financial counseling. Applicant refuses to pay a judgment and a delinquent debt on two cars that he returned to the creditors when he could not afford to pay for them. He claims under a state law he should have been notified of the date of the auction. He failed to provide documentary evidence to support he has a reasonable basis to dispute the legitimacy of the debts, including other debts he disputes. He has not provided evidence of his actions to resolve the debt. He did not indicate why he did not go to court to contest the claim before a judgment was entered. Applicant failed to provide evidence that he is making consistent payments towards resolving the remaining debts. I find AG ¶¶ 20(c), 20(d), and 20(e) do not 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 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 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 60 years old. He served in the Army and receives VA disability payments. He has a significant history of financial problems. He provided statements about the current SOR allegations and the record included statements about past financial difficulties he had. Applicant refused to pay a legal judgment and another debt for a repossessed vehicle. Moreover, he has not taken action to resolve the debt through proper channels. He did not provide credible documented proof that he is paying his other delinquent debts.

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to meet his burden of persuasion and mitigate the security concerns arising under the guideline for Financial Considerations.

### **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.g:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge