



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-06088
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

June 4, 2011

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On March 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 3, 2010, and requested a hearing before an administrative judge. The case was assigned to me on January 18, 2011. DOHA issued a notice of hearing on January 20, 2011, and the hearing was convened as scheduled on February 14, 2010, but because of a work-related issue, Applicant was

unable to attend the hearing. Subsequently, Applicant requested and I granted a continuance. A second notice of hearing was then issued on March 2, 2011,<sup>1</sup> rescheduling the hearing for March 24, 2011, by video teleconference. The hearing was held as rescheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A and B that were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted one document, which was marked AE C and admitted without objection. DOHA received the hearing transcript (Tr.) on March 31, 2011.

### **Findings of Fact**

Applicant is a 48-year-old former employee of a defense contractor. He is currently employed driving a truck. From September 2001 until June 2010, he worked as a systems engineer for a defense contractor. He was terminated from that position when a program for which he was responsible produced incorrect information. He was unemployed from July to August 2010. He has an associate's degree. He is married and has four children, including two stepchildren, living at home. He does not have any military service. He currently holds a secret clearance.<sup>2</sup>

The SOR alleges 11 delinquent debts in the amount of about \$27,000 and the misuse of a company credit card. The debts were listed on credit reports obtained on August 21, 2009, January 26, 2010, and February 9, 2011. Applicant admitted owing the debts alleged in SOR ¶¶ 1.b, 1.d, 1.f, 1.h, 1.j, and 1.k., and misusing his company credit card as alleged in SOR ¶ 1.l. He disputes the debts alleged in SOR ¶¶ 1.a, 1.c, 1.e, 1.g, and 1.i.

Applicant attributes his financial delinquencies to a period of unemployment and a divorce in March 2007. Applicant had a well-paying position with a defense contractor for about eight years until he was terminated for a performance problem in June 2010. After his termination, he was unemployed for several months and sought other employment. He collected unemployment during this time. In September 2010, he took a job driving a truck at a significantly reduced pay rate.<sup>3</sup>

Applicant divorced his first wife in March 2007. Under the terms of the divorce, he was required to pay child and spousal support of about \$1,600 per month. That amount

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<sup>1</sup> Applicant received the March 2, 2011, notice of hearing on March 8, 2011, which he acknowledged by email (See Hearing Exhibit (HE) I).

<sup>2</sup> Tr. at 7, 9, 38, 50; GE 1; Inquiry was made of Department Counsel about whether there was a jurisdictional issue since Applicant no longer worked for the company that sponsored his clearance. Department Counsel produced no evidence that indicated Applicant's clearance was unsponsored. Applicant also stated that he had a job offer from a defense contractor that wanted to sponsor him for a security clearance. Based upon all the foregoing, I determined that DOHA had jurisdiction to hear the case (See discussion Tr. at 79-80, 82-83).

<sup>3</sup> Tr. at 49-51.

was taken out of his pay through a garnishment action. The record is unclear when his support obligations ceased, but he is no longer required to make support payments. He tried selling the marital home after the divorce, but was unable to do so until 2008. When he finally sold the home, he believed he lost about \$150,000 worth of equity because of the nationwide housing crisis.<sup>4</sup>

The debt alleged in SOR ¶ 1.a is a judgment in the amount of \$6,541 that has been satisfied through a garnishment of Applicant's wages. This debt resulted when he cosigned a loan with his stepson for a car that was later repossessed. This debt is resolved.<sup>5</sup>

The debt alleged in SOR ¶ 1.b is a state tax lien in the amount of \$287. Applicant claims he has contacted the state to work out a payment arrangement, but nothing has developed. This debt remains unpaid with no repayment agreement in place.<sup>6</sup>

The debt alleged in SOR ¶ 1.c is a medical debt for \$567. Applicant contacted the creditor but no payment plan was implemented. This debt is unresolved.<sup>7</sup>

The debt alleged in SOR ¶ 1.d is a telephone service debt for \$66. Applicant contacted the creditor but no payment plan was implemented. This debt is unresolved.<sup>8</sup>

The debt alleged in SOR ¶ 1.e is a duplicate of the debt listed in SOR ¶ 1.a, which was paid. This debt is resolved.<sup>9</sup>

The debt alleged in SOR ¶ 1.f is a medical debt for \$327. Applicant contacted the creditor but no payment plan was implemented. This debt is unresolved.<sup>10</sup>

The debt alleged in SOR ¶ 1.g is a consumer debt for \$6,827. Applicant claimed he was making \$250 monthly payments of this debt for a period of time, but he could not provide receipts showing these payments. This debt is unresolved.<sup>11</sup>

The debt alleged in SOR ¶ 1.h is a consumer debt for \$2,593. Applicant contacted the creditor but no payment plan was implemented. This debt is unresolved.<sup>12</sup>

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<sup>4</sup> Tr. at 30-31; GE 3.

<sup>5</sup> Tr. at 55; GE 5.

<sup>6</sup> Tr. at 56; GE 2, 4, 5.

<sup>7</sup> Tr. at 58; GE 2, 4, 5.

<sup>8</sup> Tr. at 58; GE 2, 4, 5.

<sup>9</sup> Tr. at 60.

<sup>10</sup> Tr. at 61; GE 2, 4, 5.

<sup>11</sup> Tr. at 61; GE 2, 4, 5.

The debt alleged in SOR ¶ 1.i is a past-due mortgage in the amount of \$8,297 on a loan balance of \$209,000. The property is going through foreclosure. He has sought a loan modification agreement, but no completed modification was introduced into the record. Additionally, he testified he planned to use money from his old 401(K) retirement account, approximately \$28,000, to get current on his mortgage payments. He did not produce evidence that he carried through with this plan. This debt is unresolved.<sup>13</sup>

The debts alleged in SOR ¶¶ 1.j and 1.k are consumer debts for \$8,315 and \$5,162. Applicant contacted the creditors, but no payment plan resulted. These debts are unresolved.<sup>14</sup>

Regarding the final allegation (SOR ¶ 1.l), Applicant admitted misusing his company credit card when he was working for the defense contractor. He was on vacation and an emergency came up where he did not have sufficient funds available, so he used the company card. The company cancelled his card and he was required to pay the amount back to the company out of his wages. No disciplinary action occurred.<sup>15</sup>

Applicant presented payoff information on two loans not alleged in the SOR. He wanted to show that he has made an effort to pay what he could despite having a reduced income. He has contacted financial counselors in the past, but rather than paying their fees to settle his debts, he uses the information from them to settle the debts on his own.<sup>16</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 that 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

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<sup>12</sup> Tr. at 62; GE 2, 4, 5.

<sup>13</sup> Tr. at 76, 87; GE 2, 4, 5.

<sup>14</sup> Tr. at 65; GE 2, 4, 5.

<sup>15</sup> Tr. at 66-67.

<sup>16</sup> Tr. at 36-37, 78; AE A, B.

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 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 about 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;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant accumulated a number of delinquent debts including a delinquent mortgage pending foreclosure and was unable or unwilling to satisfy his obligations. He also misused a company credit card by using it for personal business. The evidence is sufficient to raise the above disqualifying conditions.

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

Except for the two paid debts (SOR ¶¶ 1.a and 1.e), Applicant still owes on the remainder of the many debts listed in the SOR with no payment plan in place. His financial issues are recent and ongoing. However, Applicant's use of a company credit card was a onetime occurrence and since he no longer works for that company, a recurrence is unlikely. Paying back the amount owed on the card goes toward showing his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is applicable to SOR ¶ 1.I, but not to the remaining SOR allegations.

Applicant's financial difficulties were partly caused by his divorce, the downturn in the real estate market, and his period of unemployment. 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 by securing another job, however, his failure to establish any repayment plans with creditors was not responsible action. Overall, I am unable to determine that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling. He clearly can benefit from more counseling and advice on how to manage his money. However, at this point, his finances are not being resolved and are not under control. His limited payments on two debts are insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are only applicable to the debts listed at SOR ¶¶ 1.a and 1.e. 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 relevant 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 service to his last employer and his effort to secure his present employment. I also found Applicant to be candid about his finances. However, Applicant testified that he would use money from his retirement account to pay his past-due mortgage and his other debts. He was given an opportunity to provide evidence of those payment post-hearing. He failed to produce any such evidence. He is not currently in a position to make his mortgage payments, much less the payments on numerous other debts. His past financial track record does not inspire confidence that he will resolve his debts in the foreseeable future.

Overall, the record evidence leaves me with questions and doubts about 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f - 1.k:	Against Applicant
Subparagraph 1.l:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge