



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-08012
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

August 31, 2010

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 29, 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. 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 on June 3, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 12, 2010. DOHA issued a notice of hearing on July 28, 2010, and the hearing was convened as scheduled on August 17, 2010. The Government offered Exhibits (GE) 1 through 7, which were

received without objection. Applicant testified and submitted Exhibits (AE) A through I, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 25, 2010.

### **Findings of Fact**

Applicant is a 40-year-old engineer employed by a defense contractor. He has worked for his current employer since 2001. He seeks to retain the security clearance that he has held since about 2004. He has a bachelor's degree and attended post-graduate courses, but he has not earned a master's degree. He was married and divorced before he married his current wife in 2006. He has two adult children, a teenage stepchild, and his wife gave birth to triplets last year.<sup>1</sup>

The SOR alleges 12 delinquent debts with balances totaling about \$133,151, and that Applicant filed Chapter 13 bankruptcy in March 2010. Applicant admitted all the allegations.

Applicant had a clean financial record for many years, as documented in a credit report from 2004 that showed no delinquent accounts. The balances on his revolving accounts were a little high but were always paid on time. In 2008, a series of events led to serious financial difficulties. In mid-2008, it was discovered that a water leak in Applicant's house caused mold to grow inside the walls. The mold had been making his wife ill. Applicant and his family rented a condominium for a year while the house was repaired and renovated. Applicant's credit card balances rose because of the house renovations and the expense of paying rent in addition to his mortgage payments, but he was able to make all the payments on time.<sup>2</sup>

Applicant had health insurance for his family through his employer. His wife's employer offered health insurance through the same carrier for less money. They changed to his wife's health insurance in January 2009. Applicant and his wife discovered that she was pregnant with triplets in February 2009. She was in her late thirties. Her doctor diagnosed it as a difficult pregnancy and placed her on bed rest. She immediately went on disability from her full-time job that she had held for about 20 years. Her disability payments were a fraction of her former salary.<sup>3</sup>

In March 2009, Applicant and his wife were notified by her health insurance carrier that their policy was cancelled because she had not been enrolled in the plan for 60 days before she went on disability. She was eligible for Consolidated Omnibus Budget Reconciliation Act (COBRA) insurance coverage and accepted it, but it cost \$1,500 per month. The triplets were born prematurely in mid-2009. They were in intensive care for several weeks. The medical expenses related to the birth and care of the triplets were well over \$200,000. The insurance carrier initially denied most of their

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<sup>1</sup> Tr. at 30, 32, 36, 56-57; GE 1; AE B.

<sup>2</sup> Tr. at 20-21, 33-38; GE 2, 7.

<sup>3</sup> Tr. at 20; GE 2.

claims, requiring many phone calls. After many months of quarreling over the coverage, the carrier recently paid all the bills. Applicant estimated that he paid about \$6,700 in medical bills for deductibles and co-payments.<sup>4</sup>

Applicant and his wife spent their savings. He paid his first and second mortgage payments, rent, and the loans for his cars, but he was unable to maintain the payments on his credit cards. He called the credit card companies and attempted to work out a plan for smaller payments for a period. The credit card companies were unwilling to modify their agreements.<sup>5</sup>

In July 2009, Applicant submitted a financial difficulties form to his company's security officer notifying the Department of Defense that he had debts that were 90 days delinquent.<sup>6</sup>

Applicant's lease for the condominium expired at the end of August 2009. The repairs on his house were completed, and they were preparing to move home. In early August 2009, a fire started in one of the condominium units and spread to other units, including Applicant's. Most of his family's personal property was destroyed. Insurance eventually covered most of their losses.<sup>7</sup>

Applicant consulted a credit counseling company. He was advised that, because of the extent of his debts and the pending medical bills of over \$200,000, his best recourse was to file bankruptcy. He consulted an attorney who gave him the same advice. He was advised to wait until after he received the insurance check from the fire to file bankruptcy.<sup>8</sup>

Applicant and his wife filed Chapter 13 bankruptcy in October 2009. They received financial counseling as required for the bankruptcy. They received on-line counseling, and they also attended a live session because Applicant thought it would be beneficial as they progress in the bankruptcy. A plan was approved by the court. The plan called for four monthly payments to the trustee of \$370 from April through July 2010, followed by 56 monthly payments of \$489 from August 2010 through March 2015. Applicant made the first four monthly payments as required. He is also required to pay his mortgages and car loans outside the plan.<sup>9</sup>

Applicant stated that he is able to make the monthly payments to the trustee and have some left over each month for savings and contingencies. His wife has returned to

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<sup>4</sup> Tr. at 20-26, 53-55; GE 2; AE B-D.

<sup>5</sup> Tr. at 24-25; GE 2.

<sup>6</sup> Tr. at 25-28; AE A.

<sup>7</sup> Tr. at 21; GE 2; AE E.

<sup>8</sup> Tr. at 25-27, 38-39; GE 2.

<sup>9</sup> Tr. at 28-29, 56-57; GE 2, 3; AE E, F.

work. The triplets are now healthy. There are no child care expenses because he and his wife work different shifts, and his father-in-law watches the children during the period that they are both gone. One of his vehicle loans is almost paid, which will free up an additional \$289 each month. His other vehicle loan still has a few years left, but the monthly payments are a manageable \$251 per month. He is also able to make the monthly mortgage payments of \$1,288 for his first mortgage and \$233 for his second mortgage. Applicant and his wife have simplified their lifestyle and are not accruing new debt. He credibly testified that he is committed to completing the bankruptcy plan and resolving his financial problems.<sup>10</sup>

Applicant submitted performance appraisals from his company that reflected solid job performance.<sup>11</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.

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 security decision.

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<sup>10</sup> Tr. at 29-30, 40-52, 57; GE 2; AE H.

<sup>11</sup> AE I.

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 of 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* 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 over-extended 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. The evidence raises the above disqualifying conditions.

Four 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.

Applicant filed Chapter 13 bankruptcy. His plan was confirmed by the court, and he made the first four monthly payments. However, he is still early in the plan. His financial issues are recent and ongoing. AG ¶ 20(a) is not yet applicable.

Mold was discovered in Applicant's house in 2008, requiring extensive renovations. Applicant's family was forced to move into a condominium for a year while the house was renovated. Applicant and his wife changed medical insurance to the insurance offered by her wife's company because the premiums were lower. She became pregnant with triplets causing her to go on disability. Their policy was cancelled because she had not been enrolled in the plan for 60 days before she went on disability. They utilized their COBRA insurance coverage, but it cost \$1,500 per month. The insurance company initially denied most of their claims. They lost most of their personal belongings in a fire at the condominium. 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 notified his company that he was having financial problems. He paid his first and second mortgage payments, rent, and the loans for his cars, but he was unable to maintain the payments on his credit cards. He contacted the credit card companies, but they were unwilling to work with him or modify their agreements. He finally filed Chapter 13 bankruptcy to pay his debts in accordance with a court-approved plan. I find that he has acted responsibly under the circumstances. AG ¶ 20(b) is applicable.

Applicant has received the financial counseling required for his bankruptcy. He made the first four monthly payments to the bankruptcy plan. There are clear indications that the problem is being resolved and is under control. AG ¶ 20(c) is applicable.

A Chapter 13 bankruptcy involves a structured payment plan approved by the court and monitored by a trustee. A Chapter 7 bankruptcy would not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>12</sup> However, payments

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<sup>12</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 [good-faith mitigating condition], 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

through a Chapter 13 bankruptcy may constitute a good-faith effort to repay overdue creditors or otherwise resolve debts, depending upon the circumstances. The four payments to the trustee are not yet sufficient to qualify as a good-faith effort to pay or resolve his debts. AG ¶ 20(d) is not applicable.

### **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.

Applicant is not attempting to absolve himself of excessive debt caused by frivolous or irresponsible spending. He is taking the legal remedy of bankruptcy to rectify a situation that was beyond his ability to control. I am convinced that he will follow through with his Chapter 13 bankruptcy and that he is on the right track financially.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

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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 [good-faith mitigating condition].

(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. Jun. 4, 2001)).

### **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.m:                      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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge