



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-01496
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

July 15, 2011

**Decision**

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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 September 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 September 28, 2010, and requested a hearing before an administrative judge. The case was originally assigned to another judge on November 5, 2010. The case was reassigned to a second judge on January 3, 2011. DOHA issued a notice of hearing on January 6, 2011, setting the hearing for January

26, 2011. The hearing was cancelled and rescheduled for February 16, 2011. The hearing was held as rescheduled, but the Applicant requested a continuance to obtain counsel. The continuance was granted. The case was reassigned to me on March 2, 2011. DOHA issued a notice of hearing on March 10, 2011, scheduling the hearing for April 12, 2011. Because of the threat of a government-wide shutdown, the case was rescheduled for May 10, 2011. The hearing was held as rescheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted exhibits AE D through J, which were admitted without objection. Department Counsel's forwarding memorandum is marked as HE II. DOHA received the hearing transcript (Tr.) on May 18, 2011.

### **Findings of Fact**

Applicant is a 54-year-old employee of a defense contractor. For the past 12 years he has worked in telephone maintenance for his employer. He has a bachelor's degree in business administration. He is married and has one adult child. He served in the Air Force from 1975 to 1981 and was discharged with an honorable discharge in the pay grade of E-5.<sup>1</sup>

The SOR alleges nine delinquent debts in the amount of about \$42,000. The debts were listed on credit reports obtained on September 23, 2009, March 25, 2010, and November 3, 2010. Applicant admitted owing the debts alleged in SOR ¶¶ 1.b – 1.e and 1.g – 1.i. He disputes the debts alleged in SOR ¶¶ 1.a and 1.f.

In 2005, Applicant borrowed approximately \$100,000 from his in-laws. He needed this money to pay his existing debts and expenses. Under the terms of his agreement with his in-laws, he would pay approximately \$5,000 per month for two years. His in-laws acquired the money by taking out a loan from a bank. He eventually paid this loan approximately two years ago. He no longer owes anything to his in-laws and the underlying loan from the bank was also paid. However, as a result of Applicant using all of his resources to pay the in-laws' loan, he did not have the funds to pay his other obligations, including the SOR debts.<sup>2</sup>

In 2008, Applicant sought out the assistance of a debt management agency in an attempt to consolidate his debts. The debt management agency collected a monthly service fee for their assistance. The fee was in excess of \$5,000, and had to be paid in full before they would contact creditors. Applicant paid the fee for several months, but since his creditors were still seeking payment while he paid the debt management

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<sup>1</sup> Tr. at 5, 25-26; GE 1.

<sup>2</sup> Tr. at 27-28; GE 2.

agency's fee, he decided to forego their service and work directly with his creditors to settle his debts.<sup>3</sup>

The debt alleged in SOR ¶ 1.a is a judgment in the amount of \$2,499 that has been satisfied. This debt resulted from a consumer loan. This debt is resolved.<sup>4</sup>

The debt alleged in SOR ¶ 1.b is a credit card debt in the amount of \$1,253. Applicant claims he has contacted the creditor to work out a payment arrangement, but nothing has developed. This debt remains unpaid with no repayment agreement in place.<sup>5</sup>

The debt alleged in SOR ¶ 1.c is a credit card debt in the amount of \$4,053. This debt is unresolved.<sup>6</sup>

The debt alleged in SOR ¶ 1.d is a consumer debt in the amount of \$639. Applicant contacted the creditor but no payment plan was implemented. This debt is unresolved.<sup>7</sup>

The debt alleged in SOR ¶ 1.e is a consumer debt in the amount of \$2,432. Applicant contacted the creditor but no payment plan was implemented. This debt is unresolved.<sup>8</sup>

The debt alleged in SOR ¶ 1.f is a credit card debt in the amount of \$8,878. Applicant provided documentation showing this debt was paid. This debt is resolved.<sup>9</sup>

The debt alleged in SOR ¶ 1.g is a consumer debt in the amount of \$3,570. Applicant made one \$25 payment toward this debt on April 30, 2011. He provided no other payment information. This debt is unresolved.<sup>10</sup>

The debt alleged in SOR ¶ 1.h is a consumer debt in the amount of \$8,262. Applicant made a series of payments toward this debt. This debt is under control.<sup>11</sup>

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<sup>3</sup> GE 2; AE B.

<sup>4</sup> Tr. at 30-31; GE 2; AE A at p. 4.

<sup>5</sup> Tr. at 31-32; GE 2; AE A at p. 8.

<sup>6</sup> Tr. at 32; GE 2; AE A at p. 7.

<sup>7</sup> Tr. at 33; GE 2; AE A at p. 13.

<sup>8</sup> Tr. at 34; GE 2; AE A at 12.

<sup>9</sup> Tr. at 34-36; GE 2; AE A at pp. 5, 17-18, AE H.

<sup>10</sup> Tr. at 36-37; GE 3; AE G.

<sup>11</sup> Tr. at 38-44; GE 3; AE A at pp. 10-11, AE D-E.

The debt alleged in SOR ¶ 1.i is a consumer debt in the amount of \$10,499. Applicant reached a repayment arrangement with the creditor to pay \$100 per month for six months beginning on February 28, 2011. Applicant provided proof of three payments (February, March, and April) under this plan. This debt is under control.<sup>12</sup>

Applicant has not received any credit counseling recently, although he thought he received some counseling back in the early 1990's. He also stated that after paying all of his current monthly obligations, he has disposable income of about \$300 per month.<sup>13</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 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

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<sup>12</sup> Tr. at 44-45; GE 3; AE A at p. 9, AE F.

<sup>13</sup> Tr. at 51, 52, 54.

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; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy his obligations. 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.f), Applicant still owes on the remainder of the debts listed in the SOR. He has made some payments toward several of the outstanding debts. However, his financial issues are recent and ongoing and he failed to present evidence to show that these types of debts will not recur. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partly caused by a loan from his in-laws that he paid back instead of meeting his other obligations. He also used a debt management service to his detriment. Neither of these events qualifies as conditions that were outside his control. He chose his own course of action in each instance. AG ¶ 20(b) is not applicable.

Applicant has not received recent financial counseling. He clearly can benefit from such counseling and advice on how to manage his money. Although he has made some payments on his delinquent debts, at this point, his overall finances are not being resolved and are not under control. His limited payments on several 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, 1.f, 1.h and 1.i. 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 employer and his military service. I also found Applicant to be candid about his finances. However, Applicant failed to establish that he has a clearly established plan to deal with his current debts. He is currently living on a tight margin with no relief in sight. 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h – 1.i:	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