



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



In the matter of: )  
)  
) ISCR Case No. 10-02170  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeffrey Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

October 6, 2011

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 44-year-old employee of a defense contractor. He is alleged to be indebted to two creditors in the approximate amount of \$45,041 on two delinquent credit cards. Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 27, 2011, 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) effective September 1, 2006.

Applicant answered the SOR on June 1, 2011, and requested a hearing before an administrative judge. The case was assigned to me on July 5, 2011. DOHA issued a

notice of hearing on July 14, 2011, scheduling the hearing for August 9, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered no exhibits. Applicant testified on his own behalf and called one witness. The record was left open for Applicant to submit additional exhibits and on August 17, 2011, August 18, 2011, and August 22, 2011, Applicant presented Exhibits (AE) A through S, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 16, 2011.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a and 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor. He served in the Navy from 1988 to 1998. He worked as a Navy Seal for nine of his ten years of service. During his military career, he received four Navy and Marine Corps Achievement Medals and was “decorated as a combat vet with valor” during the first Gulf War. He is unmarried and has no children. (GE 1; Tr. 33-37.)

As stated in the SOR, Applicant is alleged to be indebted to two creditors in the approximate amount of \$45,041. The first debt was listed as a credit card account totaling \$32,345 (1.a), and the second was a credit card account totaling \$12,696 (1.b). Each of his debts were established through the credit reports entered into evidence by the Government. (GEs 5-7; Tr. 22-31, 38-66.)

Applicant attributes his recent financial problems to a series of events beyond his control. After leaving the Navy, Applicant worked in the insurance industry, selling insurance policies to construction entities. He also worked as a pharmaceutical representative, promoting certain name brand drugs. In 2001 Applicant purchased a home for \$200,000 with a fixed interest rate. He was able to afford the payments for the home with the income from both his insurance business and through selling pharmaceuticals. In 2005 Applicant refinanced his home and borrowed \$265,000 with a three-year adjustable-rate mortgage. In approximately 2008 the mortgage on his home adjusted from monthly payments of \$1441 per month to payments of \$2,258 per month. At the same time, the patent on the pharmaceuticals he was selling expired and they became available over-the-counter. His insurance business also declined due to the widespread economic decline in the construction industry. Applicant testified that due to these two events, his income declined from approximately \$80,000 to \$20,000 per year. He did everything he could to meet his mortgage obligations, including use his credit cards to make mortgage payments and pay for living expenses. Eventually, however, he defaulted on his mortgage.<sup>1</sup> Applicant utilized the two credit card debts alleged in ¶¶ 1.a and 1.b, along with his other credit cards, to pay his mortgage and for living expenses during this time. (GEs 2-4; Tr. 38-45.)

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<sup>1</sup> The home has been foreclosed upon and is not an issue alleged on the SOR.

After his home was foreclosed upon in 2009, Applicant worked diligently to repair his credit. In fall of 2009, he hired a law firm to represent him in negotiations with his outstanding creditors. He had a number of delinquent accounts that he wished to settle. The law firm contacted each of the creditors and attempted to work out payment agreements. The law firm failed to successfully negotiate a settlement with the creditor listed in ¶ 1.a. It successfully settled a \$30,000 debt with the same creditor as alleged in ¶ 1.b, but somehow the smaller debt alleged in ¶ 1.b was not addressed. Applicant was still seeking resolution of these two delinquent accounts when his retainer agreement with the law firm expired. In December 2010, Applicant hired a second law firm to continue to negotiate with Applicant's creditors. A representative of the second law firm testified on Applicant's behalf that Applicant had hired the firm to settle the debts listed in ¶¶ 1.a and 1.b. (GE 3; AEs E-J; Tr. 22-31, 45-47.)

With respect to the debt alleged in ¶ 1.a, the second law firm's representative testified that he expected they would reach a negotiated settlement agreement within "45-60 days." They had recently rejected a counter offer from the creditor but planned to make another counter offer to this creditor. In Applicant's post hearing exhibits, Applicant presented an email from this creditor agreeing to accept payments on this debt. The email indicated Applicant's first payment of \$915 was made on August 17, 2011, and that he wished to make monthly payments on the 11<sup>th</sup> of each month until the agreement was satisfied. (GEs 1-7; AEs I-K, R; Tr. 25-26, 42-45, 53-54.)

The second law firm contested the debt in ¶ 1.b, as the statute of limitations had passed and there were other "discrepancies." It was subsequently removed from Applicant's credit report. Applicant thought that a lump-sum settlement made when he was with the first law firm to this creditor may have settled this second account with that creditor, but the second law firm verified this debt was still delinquent. Applicant requested that the law firm still negotiate payment of this debt, even though it no longer appeared on his credit report. In Applicant's post hearing submission, Applicant included an offer to settle this debt for 12 monthly payments of \$267, for a total payoff of \$3,200. There is no indication whether the creditor accepted this payment offer. (AE S; Tr. 27, 30-31, 45-47, 55-59, 66.)

Applicant currently lives within his means. He has a positive monthly remainder after his monthly expenses are met. He resides with a family member and is focusing on saving money and repaying his debts. He has \$4,000 in cash saved toward settling his debts. He testified he had another \$10,000 in assets that he could liquidate to repay his debts. His most recent credit report reflects zero balances on all accounts, except for the debts listed in ¶¶ 1.a and 1.b. He has received financial counseling from his church. He offered the course outline he received during the counseling into evidence. (GE 7; AE N; Tr. 48-51.)

Applicant is well respected by his friend and former co-worker who wrote a letter on Applicant's behalf. He indicated he recommends Applicant for a clearance "due to his sustained superior performance and commitment to duty, in both his personal life and [their] friendship and his unwavering support of the United States Military. . ." (AE P.)

## 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 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.

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 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, 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 concern under AG ¶ 19. One is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant was unable to satisfy his two delinquent credit cards totaling \$45,041, as alleged on the SOR. The Government established a case for disqualification under Guideline F.

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's financial indebtedness was caused by his decision to satisfy his mortgage through the use of his credit cards. While he could not control the downturn in his insurance business, he could have anticipated the expiration of the pharmaceutical patent. It was his choice to refinance his home at an adjustable interest rate and then to use his credit cards to continue to pay his mortgage. These choices indicate Applicant did not use good judgment with respect to his finances. Applicant has not established that he acted responsibly under the circumstances. He only recently established a payment plan with the creditor in ¶1.a and has no repayment plan with the creditor in 1.b. There is little indication that the counseling from his church or the assistance of the two law firms had a significant impact with respect to either of the alleged delinquent accounts. He has had several offers to negotiate from his creditors but he failed, until recently, to make any payments, despite his savings and assets. He failed to establish a track record of acting responsibly with respect to his finances. None of the mitigating conditions 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 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 those guidelines, but some warrant additional comment. Applicant is well respected by his friends and colleague. He served the U.S. Navy for ten years and was a Navy Seal for nine of those years. However, he has failed to adequately address his outstanding debts, despite having resources to make payments on his delinquent accounts.

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 failed to mitigate the Financial Considerations security concern.

### **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:	Against Applicant
Subparagraph 1.b:	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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Jennifer I. Goldstein  
Administrative Judge