



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 10-02884
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	)	
	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

July 6, 2011

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

On December 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a January 11, 2011, response, Applicant admitted 12 of 15 allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on April 13, 2011. The parties proposed a hearing date of May 10, 2011. A notice setting that date for the hearing was issued on April 18, 2011. I convened the hearing as scheduled.

Applicant gave testimony and offered eight documents, which were accepted into the record without objection as exhibits (Exs.) A-H. He was given through May 31, 2011, to submit any additional documents. The Government introduced nine documents

and one demonstrative hearing exhibit (HE), which were accepted into the record without objection as Exs. 1-9 and HE 1, respectively. During the hearing, the Government stipulated that the debt noted at SOR allegation ¶ 1.I has been paid and is no longer at issue.<sup>1</sup> The transcript (Tr.) of the proceeding was received on May 18, 2011. On June 9, 2011, Department Counsel confirmed that Applicant had not forwarded any additional documents and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns under the guideline for financial considerations. Clearance is denied.

### Findings of Fact

Applicant is a 44-year-old senior designer who has worked for the same government contractor since August 2010. With the exception of a period of unemployment from about June to December 2009, he has been continuously employed in his field for over a decade. He is married and has two teenage children. Applicant earned a high school diploma and has completed some college-level courses.

In 1994, Applicant's wife and a partner opened a coffee shop. Applicant does not remember if he was part of the actual ownership of the business, but knows he was a party to the S-Corporation paperwork when loans were assumed.<sup>2</sup> In 1997, Applicant's wife became pregnant. Her business partner said she would manage the coffee shop during Applicant's wife's pregnancy and for a term thereafter. Applicant's wife returned after a few months away from the business to discover that her partner had dissolved the business.<sup>3</sup> Applicant and his wife estimate that they lost about \$300,000 in the maneuver.<sup>4</sup> From 1998 until 2000, Applicant and his wife tried to salvage the situation and seek recourse against the partner through the courts, expending about \$50,000 in legal fees.<sup>5</sup> In 2000, Applicant and his wife bought out the partner through the services of a real estate agent without first seeking a thorough examination of the business ledgers.<sup>6</sup> The couple ended up selling the business in 2003 for about \$135,000.<sup>7</sup> The proceeds from the sale were used to satisfy acquired business debt.<sup>8</sup> The only money leftover afforded them the purchase to buy a used car with 200,000 miles on it for about \$2,200. Other irregularities by the partner were cited by Applicant, but neither Applicant

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<sup>1</sup> Tr. 8.

<sup>2</sup> Tr. 66.

<sup>3</sup> Tr. 68.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Tr. 71-72. Despite their recent history, Applicant and his wife "trusted" their former partner. They were unaware that she was "going to back stab and try to ruin our life."

<sup>7</sup> Tr. 68.

<sup>8</sup> Tr. 69.

nor his wife pressed criminal charges against the partner or otherwise pursued civil recourse for damages.<sup>9</sup>

At issue in the SOR are 15 debts, one of which (§ 1.1) has been stipulated as having been paid. At least 11 of the remaining debts at issue became delinquent between 1998 and early 2008, while two became delinquent in early 2009.<sup>10</sup> The debts noted in the allegations are as follows:

1.a – 1.b – State tax liens from 1999 for \$3,265 and from 1997 for \$5,543. *Unpaid.* Applicant described these business-related liens as “piggy back” county taxes of which he was previously unaware.<sup>11</sup> Having grown up in a neighboring state, he is not familiar with the tax structure of the state that imposed the liens and relied on a business partner to handle all tax matters. Applicant does not recall ever receiving notices about these liens. To date, he does not know the origin of these liens.<sup>12</sup> At one point, he had a federal tax issue regarding his coffee shop business, but, when he later started receiving federal tax refunds, he assumed any tax issues were resolved. Applicant has not had contact with the state comptroller regarding any tax issues since 2010. He is waiting until he can afford to address his state tax issues.<sup>13</sup>

1.c – Medical collection for \$395. *Unpaid.* This debt dates back to about 2007. Applicant only recalls a wrist surgery performed on his son in that year. He does not know the origin of this debt and has not disputed it with a credit reporting bureau.<sup>14</sup>

1.d – Medical collection for \$407. *Unpaid.* Applicant negotiated a payment plan with this provider to start making payments on the balance by June 2011.<sup>15</sup> No evidence of payment was offered.

1.e – Medical collection for \$851. *Unpaid.* Applicant is unaware of the origin of this debt, which became delinquent in 2008. However, while he testified that he has negotiated a payment plan with this creditor, he provided no evidence that the debt has been paid.<sup>16</sup>

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<sup>9</sup> Tr. 72.

<sup>10</sup> HE 1 (Government schematic).

<sup>11</sup> Tr. 20.

<sup>12</sup> *Id.*

<sup>13</sup> Tr. 25-26.

<sup>14</sup> Tr. 26-27.

<sup>15</sup> Tr. 31, 41.

<sup>16</sup> Response to the SOR.

1.f – Legal services collection for \$646. *Unpaid.* This debt dates back to about 2004. Applicant contacted the law firm representing this debt, explained that he is currently unable to make payments on the balance, and discussed a future payment plan.<sup>17</sup>

1.g – Delinquent account for \$973 on a total balance of about \$17,890. *No evidence of payment.* This account is for a 2007 motorcycle purchase. Applicant testified that he has been in repayment on this debt for about a year, but did not submit evidence of repayment.

1.h – Cable television service collection for \$122. *No evidence of payment.* This debt dates to approximately 2004. He believes this may have been a final bill sent after he switched providers that went unnoticed. Applicant previously provided a copy of the front of a check made out to this provider for \$122, dated July 9, 2010.<sup>18</sup> However, there is no evidence that the check was processed or the debt satisfied.

1.i – Insurance company collection for \$52. *No evidence of payment.* Applicant previously provided a copy of the front of a check made out to this provider for \$122, dated July 9, 2010.<sup>19</sup> However, there is no evidence that the check was transacted or the debt satisfied.

1.j – Medical collection for \$339. *Unpaid.* Applicant recently discovered the origin of this debt, which became delinquent in 2006, but has not made any payments on the account.<sup>20</sup>

1.k – Cable television service collection for \$624. *No evidence of payment.* This account dates back to about 2004. Applicant testified that this balance was satisfied years ago with the return of cable equipment. When he contacted them again last year, he was told he still had a balance of \$139.<sup>21</sup> Because of the discrepancy in amounts shown as owed, he was verbally advised not to pay anything until he was given an official statement. In May 2011, he was told that he has a credit on the account, which was to be transferred to his current account.<sup>22</sup> Applicant posited that it seemed as if the matter must have been resolved previously since he has had the same service for years, although apparently under different account numbers. However, Applicant failed to provide evidence of this transfer or that the debt cited has been addressed.

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<sup>17</sup> Tr. 31-32.

<sup>18</sup> Tr. 42-50; Ex. 2 (Interrogatories) at 1-11.

<sup>19</sup> *Id.*

<sup>20</sup> Tr. 44.

<sup>21</sup> Tr. 51.

<sup>22</sup> Tr. 51-60.

1.l – Telecommunication balance of \$165. *Paid*. The Government stipulated that this debt from about 2004 has been satisfied.<sup>23</sup>

1.m – Judgment for \$3,460. *No evidence of payment*. This debt became a judgment in 1998. Applicant does not know the origin of this debt.<sup>24</sup> When he contacted the entity, he was told that it had no record of him, but he has no documentation supporting that finding. Applicant has not yet contacted the county court to verify the debt.<sup>25</sup>

1.n – State Department of Labor judgment for \$2,211. *No evidence of payment*. This debt dates back to about August 2004. The debt is related to the coffee shop referenced above. Applicant was unaware of this judgment and the judgment noted below. When the partnership broke up, Applicant discovered there were about 13 judgments against the business.<sup>26</sup> Applicant testified that all judgments were withdrawn or satisfied, but had no evidence regarding this judgment.

1.o – State Department of Labor judgment for \$2,058. *No evidence of payment*. This debt dates back to about August 2004. The debt is also related to the coffee shop referenced above. Applicant was unaware of this judgment. As noted, when the partnership broke up, Applicant discovered there were about 13 judgments against the business.<sup>27</sup> Applicant testified that all judgments were withdrawn or satisfied, but had no evidence regarding this judgment.

Applicant is working with a credit repair specialist. Thus far, however, he does not “have the money it takes to get going, to [address his credit report entries]. And because he looked at my credit report, and there is a lot of stuff on there that just looks like it shouldn’t be there.”<sup>28</sup> He has not, however, received financial counseling.<sup>29</sup>

At present, Applicant’s wife is unemployed, having been recently laid off from work.<sup>30</sup> Applicant has a net monthly income of about \$5,500. Monthly expenses include rent (\$1,600), electricity (\$400), water (\$100), vehicle fuel (\$400), cable/premiums/telecommunications package (\$200), car insurance (\$200), and payments on the motorcycle noted at ¶ 1.g (\$478 minimum). With other monthly obligations combined, total monthly bills amount to about \$5,000 a month, leaving

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<sup>23</sup> Tr. 8.

<sup>24</sup> Tr. 60.

<sup>25</sup> Tr. 62.

<sup>26</sup> Tr. 64. Examples of other judgments that have been satisfied are at Exs. E-H. See. Tr. 87-90.

<sup>27</sup> Tr. 64.

<sup>28</sup> Tr. 30.

<sup>29</sup> Tr. 63.

<sup>30</sup> Tr. 71, 79. Applicant’s wife currently generates about \$115 a week. She is actively looking for a new position and recently completed a medical assistant’s degree program.

about \$500 in spare income for Applicant and his family.<sup>31</sup> These additional monthly obligations include funds toward Applicant's son's boarding school (approximately \$1,000) and for his daughter's private school (\$400).<sup>32</sup> Applicant recognizes that education costs are high, but notes that he and his wife place a premium on giving their children the best education possible. He also notes that his son's boarding school costs are reduced due to a sports scholarship.

Applicant has thought about selling the motorcycle to reduce costs, but has not done so because he is hoping his regular payments on that debt will help build his credit.<sup>33</sup> Aside from the debts at issue, He is otherwise timely on his obligations.<sup>34</sup> He has been timely on his state and federal personal income taxes. Applicant was given three weeks (until May 31, 2011) to provide evidence supporting his representations that he had made payments on some of the debts at issue or had arranged for payment plans.<sup>35</sup> As of June 9, 2011, no additional materials were submitted.

At work, Applicant is a highly valued employee. He is known for his work ethic, expertise, and character. He is highly recommended by his superiors and peers.<sup>36</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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

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<sup>31</sup> Tr. 75. Applicant did not offer similar estimates for such categories as groceries/meals, teenage allowances or school supplies, or other categories of expenditures that might be deducted from the \$500 a month remainder.

<sup>32</sup> Tr. 76. Applicant's son is a gifted sportsman who will be entering college in the autumn at a prestigious college. He received a scholarship that offers "the most [funding] they have ever given anybody." Applicant's share of the annual cost for this son's college education will be about \$10,000.

<sup>33</sup> Tr. 77.

<sup>34</sup> Tr. 79.

<sup>35</sup> Tr. 92.

<sup>36</sup> Exs. A-C (References).

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>37</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>38</sup>

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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>39</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>40</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## **Analysis**

### **Guideline F - Financial Considerations**

Under Guideline F, “failure or an 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

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<sup>37</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>38</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

an individual's reliability, trustworthiness and ability to protect classified information."<sup>41</sup> It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."<sup>42</sup> Applicant has 14 delinquent debts that remain unpaid or lack evidence of either payment or the initiation of a payment plan. The debts at issue represent about \$12,000. At present, assuming Applicant is making regular payments on his motorcycle loan, his income only exceeds his monthly obligations by about \$500. There is no evidence of a comprehensive plan to address these debts. Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The 15 debts at issue are multiple in number, many have been delinquent for a number of years, and there is only evidence that one debt has been paid (¶ 1.I for \$165). While Applicant questions some of the debts noted in the SOR, as drawn from his credit reports, there is no evidence he has formally disputed any of those debts. At present, he has a limited net monthly remainder after payments on his monthly obligations. From his net remainder of about \$500, it is assumed Applicant provides for food, meals, allowances, and everyday incidentals typical of a family of four. There is insufficient evidence to raise Financial Considerations Mitigating Condition (FC MC) 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).

The vast majority of delinquent debts, if not all, became delinquent between the late 1990s and early 2009. To the extent that his wife's failed coffee shop venture, her recent unemployment, and Applicant's period of unemployment in late 2009 contributed to Applicant's acquisition of delinquent debt or its perpetuation, FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) have some limited application, although Applicant did not fully describe how he handled these debts during those difficult times.

Although Applicant is receiving limited counsel from a credit repair professional, he testified that he has not received financial counseling. Therefore, FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not apply.

Applicant provided evidence that the debt at SOR allegation ¶ 1.I (\$165) was satisfied. While he credibly testified that other debts were investigated or addressed in some manner, he failed to provide evidence supporting his assertions despite the fact the record remained open for over a month following the hearing. The burden for mitigation in these proceedings is placed squarely on Applicant. Consequently, despite

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<sup>41</sup> AG ¶ 18.

<sup>42</sup> *Id.*



his credible testimony, there is scant documentary evidence of a committed effort to address these debts. FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. None of the other FC MCs apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. Applicant is a highly credible and candid 44-year-old senior designer who has worked for the same government contractor since August 2010. Except for a period of unemployment in late 2009, after the dates of delinquency of the debts at issue, he has been continuously employed in his chosen field. He is married and has two teenage children. Applicant was highly supportive of his wife in her coffee shop venture. He is also highly supportive of his teenage children, whose academic and extracurricular accomplishments he honors by making their education a priority. Applicant, who earned a high school diploma and completed some college-level courses, is highly motivated to see his children college-educated and successful. At work, Applicant is a highly regarded and respected employee known for his ethics.

The first of the debts at issue became delinquent during the existence of his wife's business, around the time they first encountered difficulty with a troublesome partner. However, while they apparently honored their known adverse business judgments, neither Applicant nor his wife pursued criminal or civil action against the former partner after the partner's business irregularities were discovered in the early 2000s. The remaining proceeds from the 2003 sale of that business were applied to the purchase of a used automobile. In addition, the delinquency of Applicant's mounting debts peaked between about 2004 and 2007, the year he bought a costly motorcycle. Further, only nominal efforts have been expended to investigate Applicant's tax liens.

Applicant was unaware of many of the debts at issue before the 2010 SOR was issued. He testified as to some efforts he made to investigate those debts, but provided scant documentary evidence reflecting his efforts. As for debts of which he had knowledge, such as his motorcycle, Applicant testified that he made payments or was in repayment on such debts, but he similarly failed to provide documentary evidence of his efforts or progress. Applicant only provided evidence that one of the debts at issue (¶ 1.1 for \$165) has been addressed and satisfied. From an evidentiary standpoint, Applicant failed to carry his burden in supporting his testimony that he has made efforts, if not notable progress, on the debts at issue.

In addition, Applicant's current financial situation is worrisome. After his monthly obligations are met, including purported payments for his motorcycle, he only has about \$500 in cash leftover to provide for the everyday non-household essentials and extras of a family of four. No examples were offered of efforts to economize, such as reducing cable service or selling his motorcycle. Applicant has not sought or received financial counseling. There is no evidence of a reasonable plan to address his remaining delinquent debts by applying any of his monthly remainder or through some other strategy.

There is no doubt that Applicant is a loving and supportive husband and father. His hopes for his children are highly laudable, and their academic success merit commendation. The ultimate burden of persuasion in these cases, however, rests squarely on the applicant. This process does not require an applicant to satisfy all of his delinquent debts. It only expects an applicant to have a reasonable plan to address his delinquent debts and some evidence that progress is being made. Here, neither a plan nor progress has been demonstrated or documented. As presented, Applicant's financial situation sustains financial considerations security concerns. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Clearance is denied.

### **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.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.o:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge