



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



In the matter of: )  
)  
) ISCR Case No. 10-02992  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: Lucien A. Cravens, Jr., Esq.

March 11, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On October 2, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 14, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 14, 2010. DOHA issued a notice of hearing on December 30, 2010, and the hearing was convened as scheduled on February 1, 2011. The Government offered exhibits (GE) 1

through 8, which were admitted without objection. Applicant testified but did not submit any documentary evidence. The record was held open for Applicant to submit information. Applicant timely submitted documents that were marked exhibits (AE) AE A and A.1 through A.7 and admitted without objection. Department Counsel's e-mails forwarding the exhibits are marked exhibit (HE) I. DOHA received the hearing transcript (Tr.) on February 16, 2011.

### Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since November 2009. He served on active duty in the United States military from 1982 until he was honorably discharged in 1995. He is applying for a security clearance. He attended college for a period but did not earn a degree. He has been married and divorced twice. He has two adult children.<sup>1</sup>

Applicant was a truck driver in a thriving geographic location. He bought his own truck and trailer and his business was very successful. He incorporated his business in 2005. He and his ex-girlfriend lived with her child in a home that he bought in 2001. He bought a trailer that he could use for vacations and leisure activities. He bought a timeshare in a vacation location where he could park his trailer. He bought a 2005 car for his ex-girlfriend and a 2006 pick-up truck that was financed with a loan of about \$48,000. He bought two jet skis and a trailer to transport them in about January 2007. The economic downturn hit his geographic area hard. He attempted to keep his company afloat, but he lost most of his business. He also stated that his ex-girlfriend "manipulated [his] finances by not paying bills, or simply by taking funds and items that belonged to [him] without [his] knowledge." A number of debts became delinquent, and his house was lost to foreclosure.<sup>2</sup>

The SOR alleges Applicant's four delinquent debts totaling about \$29,626 and the mortgage on the house that was foreclosed. Applicant admitted all the allegations except SOR ¶ 1.c, which he denied. SOR ¶¶ 1.a and 1.b allege debts of \$6,910 and \$9,339 for the deficiency owed on the loans for the two jet skis after Applicant returned them and their trailer as a voluntary repossession in about October 2009. SOR ¶ 1.c alleges a debt to a bank that was \$2,000 past due. SOR ¶ 1.d alleges a debt of \$11,377 to a collection company on behalf of a bank. SOR ¶ 1.e alleges the amount due on the mortgage, \$175,000, before the house was foreclosed.<sup>3</sup>

Applicant took his current job because he realized his trucking business was not succeeding. He and his ex-girlfriend broke up in 2009.<sup>4</sup>

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<sup>1</sup> Tr. at 12-14, 31-34, 40, 64-65; GE 1.

<sup>2</sup> Tr. at 16-27, 30, 36, 42-44, 51, 59-60, 65-68; Applicant's response to SOR; GE 2-5.

<sup>3</sup> Tr. at 16-17; Applicant's response to SOR.

<sup>4</sup> Tr. at 29, 65.

Applicant filed Chapter 13 bankruptcy in October 2010. The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, a \$5,040 loan for his ex-girlfriend’s car, a \$55,000 loan for his trailer, and a \$27,000 loan for his pick-up truck. There were no claims listed under Schedule E – Creditors Holding Unsecured Priority Claims. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed seven debts totaling \$219,377. The largest listed claim was \$175,000 for the mortgage on Applicant’s foreclosed home. The petition listed Applicant’s annual income as \$3,000 for 2006, \$8,000 for 2007, \$3,000 for 2008, \$13,271 for 2009, and \$55,670 for 2010 “(YTD approximate).” The proposed payment plan calls for monthly payments of \$390 for five years. Applicant established that he made the four monthly \$390 payments since November 2010.<sup>5</sup>

Applicant testified that his business was flourishing until about the fall of 2007. He explained that the bankruptcy petition listed his income for 2006 at \$3,000 because that was the profit reported by his business. He stated that his expenses, including his mortgage and car loans, were paid by the corporation before the profit was calculated. He stated that he “used [his] personal credit card and stuff like that to get [his] business started. And it was kind of paying [him] back towards what [he] had used from [his] personal accounts to get the business going.” In essence, Applicant stated that he was living off repayments from the corporation of loans he had made to the corporation when he started the business. He also stated that he had an office in his home from which he ran the business. Applicant submitted copies of his corporation income tax returns for tax years 2006 through 2009. The 2006 tax return noted gross profits of \$113,856 and total deductions of \$132,894, resulting in a taxable income of -\$19,038. The 2007 tax return noted gross profits of \$83,624 and total deductions of \$87,793, resulting in a taxable income of -\$4,169. The 2008 tax return noted gross profits of \$88,785 and total deductions of \$87,435, resulting in a taxable income of \$1,350. The 2009 tax return noted gross profits of \$90,477 and total deductions of \$87,658, resulting in a taxable income of \$2,819.<sup>6</sup>

Applicant’s girlfriend’s car was voluntarily repossessed. It was sold at a higher price than the car loan, and Applicant received a check from the finance company. The loans for his trailer and pick-up truck are being paid outside his bankruptcy plan. The two debts for the jet skis were not listed on the bankruptcy petition because they were “charged off,” and the bankruptcy payment plan would not include charged-off debts. The \$11,377 debt alleged in SOR ¶ 1.d was listed in the bankruptcy. Applicant made \$50 payments toward this debt in June and July 2010. The bankruptcy listed credit card debts of \$13,000 and \$4,000 to the same bank that was alleged in SOR ¶ 1.c. Applicant denied the debt because he thought it was a different account than the two that were listed on the bankruptcy. After reviewing the credit reports and bankruptcy petition, I find

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<sup>5</sup> Tr. at 30, 52-53; GE 6-8; AE A.5, A.6.

<sup>6</sup> Tr. at 19-20, 43, 66, 69-76; AE A.3. Any irregularities in Applicant’s accounting or debts that were not specifically alleged in the SOR will not be used for disqualification purposes. They will be used in assessing Applicant’s overall financial situation, in the application of mitigating conditions, and in analyzing the “whole person.”

that the \$2,000 past-due debt alleged in SOR ¶ 1.c is the same debt as the \$13,000 debt to the bank that was listed on the bankruptcy petition. The \$175,000 listed in the SOR and on the bankruptcy petition reflects the amount of the mortgage before the house was foreclosed. The amount of a deficiency, if any, is unclear. Any deficiency owed will be resolved in the Chapter 13 bankruptcy.<sup>7</sup>

Applicant paid, or continued to pay, several debts that were not alleged in the SOR. He is embarrassed and humbled that he had to file bankruptcy. He is living in the small trailer that he bought for vacations. He received the financial counseling that is required for his bankruptcy. He stated that he intends to continue to maintain the payments to the trustee until the bankruptcy payment plan is completed.<sup>8</sup>

Applicant submitted several letters attesting to his outstanding job performance, leadership, work ethic, competence, professionalism, honesty, loyalty, trustworthiness, resourcefulness, reliability, dependability, and integrity.<sup>9</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

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<sup>7</sup> Tr. at 20-21, 29-30, 34-39, 46-51, 58-59, 62-66; Applicant's response to SOR; GE 2, 3, 5-8; AE A.4.

<sup>8</sup> Tr. at 29-30, 39-40, 52-62; AE A.1, A.2, A.4.

<sup>9</sup> AE A.7.

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 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 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 pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

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 trucking company was operating as a successful business. He incorporated the company in 2005. He owned his home that he shared with his ex-girlfriend and her child. He bought his ex-girlfriend a 2005 car and himself a 2006 pick-up truck that he financed with a loan of about \$48,000. He bought a trailer that he could use for vacations and leisure activities, and a timeshare in a vacation location where he could park his trailer. In about January 2007, he bought two jet skis and a trailer to transport them. Economic hard times hit Applicant's geographic location in the fall of 2007. He lost most of his business, and his ex-girlfriend took advantage of him financially. The economic downturn that caused Applicant to lose his trucking business and the actions of his ex-girlfriend 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.

When it became clear that Applicant's trucking business was no longer viable, he accepted his current job with a defense contractor in November 2009. He and his ex-girlfriend broke up in 2009. He lost his house to foreclosure. He is living in the small trailer he bought for vacations in order to save money. He filed Chapter 13 bankruptcy in October 2010. The plan has not been approved by the court, but his proposed payment plan calls for monthly payments of \$390 for five years. He has made the required \$390 payments every month since November 2010. He has received the financial counseling required for the bankruptcy. He is taking steps toward rectifying his financial problems. However, I remain concerned about certain aspects of this case. Applicant testified that his business was flourishing until the fall of 2007, which justified the purchase of extravagant items such as jet skis, trailer, timeshare, and multiple vehicles. Yet his Chapter 13 bankruptcy petition listed Applicant's annual income as

\$3,000 for 2006. He explained that his expenses, including his mortgage and car loans, were paid by the corporation before the profit was calculated. Applicant basically stated that he was living off repayments from the corporation of loans he had made to the corporation when he started the business. I find that Applicant has recently started to act responsibly toward his finances. I am unable to make an affirmative finding that he acted responsibly throughout the course of accruing his debts. AG ¶ 20(b) is partially applicable.

The \$100 Applicant paid toward the debt alleged in SOR ¶ 1.d and the four monthly payments of \$390 to the bankruptcy trustee are not sufficient to qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable. The first prong of AG ¶ 20(c) (the person has received or is receiving counseling for the problem) is applicable. The Chapter 13 bankruptcy provides some indicators that, if the Chapter 13 bankruptcy is carried out, Applicant's financial problems will be resolved. A track record of additional payments is necessary before those indicators can be considered "clear." The second prong of AG ¶ 20(c) is partially applicable. Applicant's financial issues are recent and ongoing. At this time, I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant denied owing the debt alleged in SOR ¶ 1.c, because he thought it was a different account than the two debts to the same bank that were listed on the bankruptcy petition. The \$2,000 past-due debt alleged in SOR ¶ 1.c is the same debt as the \$13,000 debt owed to the bank that was listed on the bankruptcy petition. AG ¶ 20(e) is not applicable.

In sum, I conclude that financial concerns remain 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 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. I considered Applicant's favorable character evidence and his honorable service to this country in the U.S. military. However, I have lingering concerns about Applicant's finances that he has failed to mitigate. Those concerns must be resolved in favor of national security.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraphs 1.a-1.e:	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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Edward W. Loughran  
Administrative Judge