



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-03757
	)	
Applicant for Security Clearance	)	

**Appearances**

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

July 5, 2011

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**Decision**

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

On September 1, 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 an October 12, 2010, response, Applicant admitted 14 of 15 allegations raised under Guideline F. He also requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on December 6, 2010. The parties proposed a hearing date of February 14, 2011. A notice setting that date for the hearing was issued on January 18, 2011. An amended notice was issued on January 27, 2011, correcting a clerical error in the original notice. I convened the hearing as scheduled.

Applicant gave testimony and offered five documents, which were accepted into the record without objection as exhibits (Exs.) A-E. He initially was given until March 14, 2011, to submit any additional documents. The Government introduced nine

documents, which were accepted into the record without objection as Exs. 1-9, as well as a Hearing Exhibit, noted as HE 1. The transcript (Tr.) of the proceeding was received on February 23, 2011. Applicant timely submitted a letter and two files of materials that were accepted without objection as Exs. F-H on March 25, 2011. On April 7, 2011, Department Counsel submitted a compilation of Applicant's materials and a reference to a court case cited by Applicant. These were accepted without objection as Exs. I-J. The record was then closed. On June 28, 2011, I reopened the record to include an email exchange between Applicant and Department Counsel regarding the status of one account at issue (SOR allegation ¶ 1.n). It was accepted without objection as HE 2 and the record was again closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

### Findings of Fact

Applicant is a 60-year-old applicant for an information technology (IT) consultancy position. He has a bachelor's degree. Applicant is currently single and the father of two adult children.

Applicant married in 2000. He provided for his wife and her two children from a previous union. Within two years, the marriage soured and the couple separated. After maintaining two households, the couple ultimately divorced in October 2004. In the interim, in about August 2004, Applicant filed for Chapter 7 bankruptcy protection, an action he took in response to the mounting debts incurred related to his separation, pending divorce, his wife's overuse of credit cards, some medical bills, and his erratic consulting assignments.<sup>1</sup> At the time, he listed assets in the amount of approximately \$895 and liabilities of about \$64,000.<sup>2</sup> Included in his liabilities was an entry for approximately \$5,000 in gambling losses. Applicant denies that such losses were his, noting that he rarely buys lottery tickets. He posits that such debts might have been attributable to his ex-wife and notes that he did not thoroughly review the bankruptcy petition before signing the necessary papers for its filing.<sup>3</sup> That petition was discharged in December 2004. This discharge included all of Applicant's debts, except for one (SOR allegation ¶ 1.n).<sup>4</sup> At the time, Applicant had no knowledge of that debt and it was

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<sup>1</sup> Tr. 17-19, 28-29, 40. Intermittent consulting contracts led to interim periods during which Applicant derived no income. His longest period of time without income was about six months. Tr. 29-30.

<sup>2</sup> Tr. 37.

<sup>3</sup> Tr. 42-44.

<sup>4</sup> There is much confusion about this alleged debt, which does not appear on the credit reports introduced into evidence and the basis for which is evidence of a 2002 judgment, of which Applicant denies any knowledge. Ex. A/Ex. 6 (Civil Action - Complaint, dated Mar. 21, 2002). This is the basis for the Government's allegation and Applicant's belief that any such debt would have been included in his 2004 bankruptcy. See, e.g., Tr. 53-64, 68-70. In noting that the burden in these cases is on the Applicant, not the Government, Department Counsel conceded that the debt, if valid, "clearly should have been included in the bankruptcy, because it seems to have been present at the time." Tr. 70-72, 74. Consequently, Department Counsel was willing to work with the Applicant to provide him more than the usual amount of time to research the issue.

apparently overlooked by his bankruptcy attorney.<sup>5</sup> That entity no longer reflects this debt on its ledgers, but there is no evidence that the debt has been cancelled or that the credit report entry was either withdrawn or disputed.<sup>6</sup> The issue is currently in arbitration.<sup>7</sup>

From about 2001 until June 2009, when he was interviewing for a full-time position at a company in a neighboring state, Applicant's provided consulting services for at least one entity, but projects were irregular.<sup>8</sup> The inconsistency of his income adversely affected his finances. He recently accepted a lucrative full-time position that is contingent on his acquiring a security clearance.

Since discovering the existence of the debt noted at ¶ 1.n, Applicant has been trying to get it subsumed into his earlier bankruptcy petition or resolved through arbitration, as noted above. His original attorney will only file the necessary paperwork for a fee and is not currently available for the work. He consulted the bankruptcy trustee, who referred him to a friend who might help Applicant at a lower fee. In the interim, Applicant consulted a legal services group that, while unable to provide the required legal service, advised him to ask for a Praecepto to Discontinue with the county because of the age of the initial petition.<sup>9</sup> Following this advice, Applicant requested the praecipe. The firm noted: "Assuming that there is an agreement, the record will then be closed. Assuming that there is no agreement, [Applicant should] add [the debt] to his previously discharged bankruptcy" through a petition with the local bankruptcy court."<sup>10</sup>

The legal services group notes that Applicant "has filed the necessary petition and is waiting to hear from the court. Our best guess is that this whole process may take one month from the date of the petition."<sup>11</sup> It also advised him to seek recourse against the original bankruptcy attorney for negligence "in missing the record in the courthouse, consequently failing to include it in the bankruptcy."<sup>12</sup> Applicant has been pursuing the issue about this debt through the county civil court. He also wrote a letter to the bankruptcy court asking that bankruptcy case be reopened for inclusion of this

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<sup>5</sup> Tr. 20. That debt is the largest debt at issue (\$12,386), far outweighing the other debts at issue that cumulatively amount to about \$8,100.

<sup>6</sup> Tr. 53-57. Applicant testified that the entity would not issue him a letter indicating that it had no record of the balance alleged. He believes this debt entry is confused with another company with which he formerly had an account.

<sup>7</sup> Ex. A (Related paperwork).

<sup>8</sup> Tr. 19.

<sup>9</sup> Ex. F (Legal Services letter, dated Mar. 8, 2011).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* As of the date of late June 2011, there was no evidence of final resolution. See HE 2.

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

debt.<sup>13</sup> There is no evidence of formal filing with the bankruptcy court. The issue remains unresolved in both the county civil and bankruptcy courts.

With the exception of the large debt noted at ¶ 1.n for \$12,386, the remaining debts at issue in the SOR amount to about \$8,000 and range from \$110 to \$2,099, with the majority of those debts under \$600 (*ie.*, \$108, \$110, \$331, \$331, \$499, \$536, \$599). In February 2011, Applicant compiled a debt repayment plan that includes all the debts at issue, except the debt noted at ¶ 1.n, discussed above, and the debts noted at ¶ 1.i (\$2,099), which Applicant believed was a duplicate of another debt in the SOR, and provision for the two debts noted at ¶ 1.f and ¶ 1.l, which Applicant believes are duplicates, although there is no evidence establishing that the two noted debts with the same balances of \$331 are the same account.<sup>14</sup> Applicant, however, testified that these debts can be readily added to the plan.

An unsigned copy of the repayment agreement shows that the contemplated monthly payments of the plan as it was presented at hearing were for approximately \$157 a month.<sup>15</sup> As of the time the record closed, however, there was no evidence that Applicant had started making regular payments on the plan.<sup>16</sup> None of the debts at issue in the SOR have been otherwise paid or addressed, although their various dates of delinquency range from 2002 to 2009.<sup>17</sup> He had been aware of most of the delinquent accounts.<sup>18</sup> Applicant specifically confirmed that between 2008 and the compilation of this payment plan that he had made no progress on the debts at issue, nor had he contacted any of the creditors.<sup>19</sup>

Since at least November 2010, Applicant has been unemployed and had become increasingly frustrated at not being able to find a well-paying position in his rural region. He is looking forward to relocating to another state to accept his recent job offer. The position for which Applicant is seeking a security clearance is quite lucrative. As opposed to past annual incomes in the \$30,000 range, this pending position starts at about \$105,000 a year. At present, however, he remains unemployed, although he is willing to take interim employment if an opportunity arises.<sup>20</sup> He is living off of unemployment compensation payments of about \$650 a month, which covers his rent. He is currently acquiring negative balances to cover his cable and

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<sup>13</sup> HE 2 (Email, dated Mar. 28, 2011); Ex. I (Letter to bankruptcy court, dated Mar. 7, 2011). There is no evidence of further effort on this request.

<sup>14</sup> Tr. 25-27.

<sup>15</sup> Ex. C (Agreement, dated Feb. 11, 2011).

<sup>16</sup> Tr. 27. Payments were to start on March 3, 2011.

<sup>17</sup> HE 1 (Debt chart).

<sup>18</sup> Tr. 47-50.

<sup>19</sup> Tr. 46.

<sup>20</sup> Tr. 37.

Internet/telecommunications (about \$200 a month), transportation-related costs (about \$200 a month), and insurance (about \$100 a month), and food.<sup>21</sup> Applicant owns his car, which he bought used, and has no car payments. He is current on his utilities. He does not maintain a savings or checking account.<sup>22</sup> He uses cash or a pre-paid debit card for his transactions. He does not spend money needlessly. He lives a simple life and rarely spends money on entertainment, although he took a two week tour in Europe in 2005 on a promotion that cost less than \$5,000.<sup>23</sup> Lack of financial resources and savings have prohibited him from addressing some of his smaller debts.<sup>24</sup> He has been working with a credit counselor to best allocate his limited income.<sup>25</sup>

As an employee, Applicant is a valued worker. His references speak of him in the highest terms.<sup>26</sup> He is known as a hard working man who is dedicated, professional, discrete, and diligent.<sup>27</sup> He takes great pride in working within the defense industry.

### **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 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

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<sup>21</sup> Tr. 32-35, 57.

<sup>22</sup> Tr. 33.

<sup>23</sup> Tr. 45-46.

<sup>24</sup> Tr. 33.

<sup>25</sup> Tr. 31.

<sup>26</sup> Ex. B (References).

<sup>27</sup> *Id.*

rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”<sup>28</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>29</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 those 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>30</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>31</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 an individual’s reliability, trustworthiness and ability to protect classified information.”<sup>32</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>33</sup> Aside from his 2004 bankruptcy, Applicant

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<sup>28</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>29</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> AG ¶ 18.

<sup>33</sup> *Id.*

has 13 alleged delinquent debts amounting to about \$20,500. Even if the \$12,386 alleged debt were to be proven as erroneous or remedied through retroactive inclusion in his 2004 bankruptcy, approximately \$8,100 in debt that went delinquent between 2002 and 2009 remains unpaid and virtually unaddressed. Such facts are sufficient to raise 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 debts at issue are multiple in number. Although some may have been acquired during times of recent financial distress, they range in dates of delinquency from 2002 through 2009. While Applicant provided evidence of progress exploring one debt, which appears to have been overlooked during his 2004 bankruptcy, 12 other debts amounting to over \$8,000 were ignored until after the September 2010 SOR was issued. It was not until February 2011 that he first sought to formalize a debt repayment plan. There is no evidence that this plan was implemented, that he has made any headway on this proposed plan, or, given his currently negative monthly remainder, that he has the financial resources to do so. 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).

With regard to Applicant's 2004 bankruptcy, there is evidence indicating that much of that debt was attributable to his separation, divorce, the unbridled spending of his ex-wife, and medical bills. Overwhelmed by liability of approximately \$64,000 and with only negligible assets, he declared bankruptcy. Since that time, he has had periods when erratic project assignments adversely impacted his income. This includes his current period of unemployment, which appears to date back to November 2010. To the extent these factors helped create the debts at issue in his bankruptcy and some of the debts acquired between 2002 and 2009, 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) applies.

Although Applicant is receiving credit counseling with regard to his current finances, the majority of the debts at issue, and the contemplation of a debt consolidation repayment plan, Applicant still maintains a negative monthly remainder. Moreover, he has yet to establish a meaningful record of regular payment on his proposed repayment plan. However, his approach to the debt at ¶ 1.n with the guidance of a legal services entity warrants at least partial application of 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) to that debt.

Of the delinquent debts acquired between 2002 and 2009, Applicant has only made contact with the creditor in ¶ 1.n. He has known about most of the other 12 debts. However, he has never contacted any of those creditors, made any payments or alternative arrangements on those accounts, or made any effort to satisfy even the

smallest debts of \$108 or \$110 – debts with balances lower than his non-essential monthly cable and Internet service. He drafted a repayment plan, but failed to show a meaningful track record of payment on it despite reasonable monthly terms (\$157). This amount could also be easily met by foregoing cable and Internet until he is again fully employed. Meanwhile, to the extent his sole income at present is unemployment compensation it may be assumed his current negative monthly remainder is adding to his debt. While some progress has been made toward exploring the situation regarding the debt at ¶ 1.n, such facts undermine broad application of FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) to Applicant's overall financial situation.

### **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 60-year-old IT professional. He is college educated and has helped raise two adult children. Living in a primarily rural region of the country that has faced hard economic times and a shortage of well-paying jobs, he has shown flexibility by being available to relocate in search of stable employment. Following a costly divorce, he declared bankruptcy in 2004 out of financial necessity. Since that time, he has continued in his chosen profession despite the fact full-time, salaried work was, at times, hard to find or maintain. Within the past year, he was offered a lucrative position based on the conditions that he relocate and successfully obtain a security clearance.

Applicant's necessity for a security clearance now appears immediate due to his offer of a lucrative position requiring a security clearance. The standards by which a security clearance may be awarded, however, go well beyond sheer necessity. To his credit, and as the Government concedes, his largest alleged debt, if valid, should have been included in his 2004 bankruptcy petition. On that issue, he has demonstrated clear effort in instituting the two paths recommended by legal counsel to address the status of that debt. Thus far, he has actively pursued recourse through the county civil court, and he has showed that he has taken the first step in exploring the issue with the bankruptcy court. While there is insufficient evidence to suggest how or if this issue ultimately will be resolved, Applicant's preliminary efforts toward this debt are notable.

Remaining are the dozen other debts at issue, which have been virtually ignored for years. While amounting to little over \$8,000, they were acquired between 2002 and 2009, during times of solid employment as well as times when intermittent projects



adversely affected his income. While deferring action on such debts could be understandable when income was tight, there is no evidence that he paid any of the delinquent debts, discussed payments or deferred payments with his creditors, formally disputed the debts, or even contacted any of those creditors during the times he was regularly earning a steady income. To the extent that several of those debts are in the \$100 to \$500 range, such effort would not have been overly burdensome. This is particularly true when he was able to pay for a two week European tour in 2005. Even now, while he relies on unemployment compensation as income, he enjoys cable and Internet service while his creditors remain uninformed and his debts remain unaddressed.

Applicant has no cash reserves or notable assets, and his monthly expenses have exceeded his income since at least November 2010. Although he has sought the aid of a financial counselor and developed a reasonable debt repayment plan (where monthly payments would be less than his Internet/cable costs, for example), there is no evidence that the plan was effectuated and that he is making even the most nominal of regular payments on that plan. Such efforts could have helped demonstrate his commitment to honor his delinquent debts through a realistic plan. Instead, while he may have formulated a schedule to address these debts at some unspecified time in the future, there is no evidence that he has initiated his proposed repayment plan and that he currently has the financial resources to maintain it. In short, as a result of his deferral of responsibility on these debts, there is no indication that he presently has the ability to make any progress on these debts, even if the courts eventually absolve him of liability on the alleged debt noted in SOR allegation ¶ 1.n.

Based on Applicant's evidence and argument, financial considerations security concerns remain unmitigated. As noted, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1m:	Against Applicant
Subparagraph 1.n:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge