



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



In the matter of: )  
)  
) ISCR Case No. 10-04406  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

January 6, 2012

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On July 6, 2011, 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 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 24, 2011, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 6, 2011. The FORM was mailed to Applicant and

he received it on October 31, 2011. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information in an undated letter before November 30, 2011 (Reply). The case was assigned to me on December 12, 2011.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted every SOR allegation. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. He is divorced and has one child. He has worked for his current employer, a defense contractor, since December 2009. He is a computer technician. He is a high school graduate with some college. He has no history of military service.<sup>1</sup>

The debts listed in the SOR are supported by credit reports dated June 8, 2011, February 28 2011, and February 3, 2010. The debts alleged in SOR ¶¶ 1.a, 1.hh, 1.pp - 1.zz, 1.ddd - 1.ooo are various consumer debts totaling about \$25,991. The debts alleged in SOR ¶¶ 1.b - 1.gg, 1.ii - 1.oo and 1.aaa - 1.ccc are medical debts totaling about \$43,706. Applicant presented no proof of payment for any of these debts. These debts remain unresolved.<sup>2</sup>

Applicant's medical debts arose because of five surgeries he underwent for kidney stones. His first surgery was in either 1992 or 1993, and the most recent surgery was in 2006. He had medical insurance to cover some of the cost of the surgeries; however, the remaining amounts were not covered and went into collection for nonpayment. He was not able to work for considerable periods of time after the surgeries and used all of his sick leave. He then was in an unpaid status and was unable to pay his medical bills or his other debts at the time. In March 2010, he expressed his intent not to file bankruptcy and to set up payment plans for his debts. However, more recently, in his Reply, he stated his new intent is to file bankruptcy for all of his medical debts in the summer of 2012.<sup>3</sup>

Applicant's personal financial statement indicated a net monthly income of about \$2,000 and monthly expenses of about \$900. The expenses do not include payments on any SOR debts. Applicant provided no evidence of seeking financial counseling.<sup>4</sup>

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<sup>1</sup> Item 5.

<sup>2</sup> Items 4, 6, 7, Reply.

<sup>3</sup> Item 4, Reply.

<sup>4</sup> Item 6.

## 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 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, 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. 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, 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, and 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 that an 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).

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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 provided no evidence that he paid or resolved his delinquent debts. Therefore, his behavior is recent and remains a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain unresolved. Applicant provided evidence that his medical expenses were due to circumstances beyond his control. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He failed to produce evidence of his responsible behavior. I find AG ¶ 20(b) does not apply. Applicant failed to present evidence of financial counseling and there is no clear evidence that Applicant's financial problems are being resolved or under control. There was no documented evidence that he has made a good-faith effort to pay or has attempted to resolve any of the debts. I find AG ¶¶ 20(c) and 20(d) do not apply. No documentary evidence was presented to dispute any of the SOR debts. On the contrary, he admitted all the debts. I find AG ¶ 20(e) does not 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 the 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. He has not shown a track record of financial stability. The record lacks any evidence that Applicant has made any type of good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

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 failed to mitigate the security concerns arising under Guideline F, Financial Considerations.

### **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 – 1.000: 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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Robert E. Coacher  
Administrative Judge