



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-05381
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esq., Department Counsel  
For Applicant: Mark J. Carroll, Esq.

July 27, 2011

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 30, 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 February 11, 2011, and requested a hearing before an administrative judge. The case was assigned to me on May 16, 2011. DOHA issued a notice of hearing on June 16, 2011, and the hearing was convened as scheduled on July 12, 2011. The Government offered Exhibits (GE) 1 through 5, which

were admitted without objection. Applicant testified and submitted Exhibits (AE) A through T, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 20, 2011.

### Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer since August 2009. He is applying for a security clearance for the first time. He has a bachelor's degree. He has never been married, and he has no children.<sup>1</sup>

Applicant was laid off work in 2002. He was out of work for about five to six months. His employment and income was sporadic for the next several years. He lost a sales job in 2007 because he was unable to make his sales quotas. Applicant worked periodically for the family business, but that company was struggling, and his income fluctuated. Applicant also lost money that he invested in the company. He was unable to pay all his bills and a number of debts became delinquent.<sup>2</sup>

The SOR alleges nine delinquent debts. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.h, and 1.i. He settled four of those debts and has been making payments on the fifth. Individual debts are addressed below.

SOR ¶ 1.a alleges a \$3,405 debt to a collection company collecting the debt on behalf of a bank. The balance on this debt was \$4,393 in January 2011. Applicant settled the debt for \$878, with payments of \$600 and \$278 made in January 2011.<sup>3</sup>

SOR ¶ 1.c alleges a \$9,666 debt to a collection company collecting the debt on behalf of a bank. In January 2011, Applicant settled the debt for \$1,100, with payments of \$700 and \$400.<sup>4</sup>

Applicant settled a \$2,188 debt to a collection company collecting on behalf of a bank, as alleged in SOR ¶ 1.d, for \$624. He made a \$312 payment in January 2011, and another \$312 payment in February 2011.<sup>5</sup>

SOR ¶ 1.h alleges a \$1,619 delinquent debt owed to a credit union. In January 2011, Applicant agreed to pay \$100 per month until the debt is satisfied. He made \$100

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<sup>1</sup> Tr. at 37, 103; GE 1.

<sup>2</sup> Tr. at 33-37, 56-58, 92-96; GE 1, 2.

<sup>3</sup> Tr. at 71; Applicant's response to SOR; GE 2, 3; AE A, M.

<sup>4</sup> Tr. at 71; Applicant's response to SOR; GE 2; AE B, C, M.

<sup>5</sup> Tr. at 71; Applicant's response to SOR; GE 2; AE D-F, M.

payments in January, February, and April 2011. He made a \$300 payment in June 2011.<sup>6</sup>

Applicant settled the \$4,967 debt to a credit card company, as alleged in SOR ¶ 1.i, for \$745. He made payments of \$600 and \$145 in February 2011.<sup>7</sup>

SOR ¶¶ 1.b, 1.f, and 1.g allege debts of \$2,309, \$3,917, and \$19,759 owed to the same credit card company. Applicant admitted that he had two accounts with the credit card company, but he was unable to locate a third. He believes that the \$3,917 and \$19,759 debts alleged in SOR ¶¶ 1.f and 1.g are the two debts associated with his two cards. The three debts are listed on a combined credit report obtained in April 2010. The date of last action on the \$19,759 debt is listed as July 2003. The \$2,309 debt is listed as reported by Experian. It lists the first 12 numbers of the account. It showed the date of last action as October 2003. The \$3,917 debt is listed on the credit report by TransUnion. It lists the first 15 numbers of the account. The first 12 numbers are identical to the 12 numbers reported on the \$2,309 debt. The report also showed the date of last action as October 2003. None of the three accounts with this credit card company are listed on any of the later credit reports. Applicant called the credit card company and was told they could only locate two accounts associated with his Social Security number. The credit card company told Applicant that the accounts were transferred to two companies for collection. I find that the debts alleged in SOR ¶¶ 1.b and 1.f represent the same account.<sup>8</sup>

The remaining delinquent debt is a \$24,394 debt to a collection company on behalf of a bank. This debt is alleged in SOR ¶ 1.e. Applicant does not dispute that this is his debt. The debt is listed on the combined credit report obtained in April 2010. It is not listed on any of the later credit reports. Applicant's attorney told him that this debt and the two debts alleged in SOR ¶¶ 1.f and 1.g are barred from collection by the statute of limitations. He nonetheless feels morally obligated to pay the debts. Several of the debts that Applicant settled appear to have been barred from collection by the statute of limitations, and they were not listed on his credit report when they were paid. He stated that he plans to find the current holder of the debts and settle them or set up payment plans.<sup>9</sup>

Applicant was living with his parents when he obtained his current job. He continued to live with them for eight months after he was hired in order to save money to pay his debts. He paid several debts that were not alleged in the SOR. His father's business closed, and he is now driving a truck for a living. He gave his father about \$8,000 to help him pay his mortgage and other bills after his father lost his business. Applicant consulted and worked with a financial expert. His credit score improved to the

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<sup>6</sup> Tr. at 70, 83-84; Applicant's response to SOR; GE 2; AE G, M, O, P.

<sup>7</sup> Tr. at 71; Applicant's response to SOR; GE 2; AE I, M.

<sup>8</sup> Tr. at 42-47, 58-63; Applicant's response to SOR; GE 2, 5; AE K-M, Q-S.

<sup>9</sup> Tr. at 43-48, 63-65, 81-83; Applicant's response to SOR; GE2, 5; AE K-M, Q-S.

point where he could purchase a home and a good used car. He maintains a budget. He contributes to a retirement account at work. He is not accumulating new delinquent debt. His annual salary is \$69,000, which is more than he has ever earned. His current finances are sound. He is able to make payments toward his delinquent debts without excessively straining his current financial status. He credibly testified that he intends to resolve all his delinquent debts.<sup>10</sup>

Applicant's performance evaluations reflect superior job performance and show that Applicant is a valued and trusted employee.<sup>11</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 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

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<sup>10</sup> Tr. at 25, 38-39, 49-55, 64-65, 70, 74-80, 84-87, 92-97; GE 3-5; AE K-M, Q-T.

<sup>11</sup> AE N.

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 financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

The bulk of Applicant's financial problems happened more than seven years ago. He was laid off work in 2002, and he was out of work for about five to six months. His employment and income were sporadic until he was hired by his current employer in August 2009. Almost all of his delinquent debts have dropped off his credit report because they are too old to be reported. His attorney told him that the debts cannot be collected because they are past the statute of limitations. Applicant feels morally obligated to pay his debts, even those barred from collection. He settled four debts and has been making payments on a fifth. He also paid several debts that were not alleged in the SOR. He still has debts to be paid. He credibly testified that he intends to settle or pay those debts, even though they are no longer on his credit report and are past the statute of limitations. Applicant has been working with a financial expert. He has a budget, and he is not accruing new delinquent debts. He is now in the position where he can pay his current debts, contribute to his retirement accounts, and still pay his delinquent debts.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's unemployment and underemployment qualify as conditions that were outside his control. I find that he acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are applicable. AG ¶ 20(e) is applicable to the duplicate debt alleged in SOR ¶ 1.b.

## **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 found Applicant to be honest and candid about his finances. I believe he is sincere about resolving his remaining financial issues. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant

## **Conclusion**

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

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Edward W. Loughran  
Administrative Judge