



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-06095
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esquire, Department Counsel  
For Applicant: *Pro se*

02/24/2012

**Decision**

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

On August 26, 2011, 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) implemented by the DOD on September 1, 2006.

In an undated response, Applicant admitted seven of the nine allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on November 4, 2011. The parties proposed a hearing date of December 6, 2011. A notice setting that date for the hearing was issued on November 21, 2011. The hearing was convened as scheduled. Applicant testified and offered nine documents that were accepted into the record without objection as exhibits (Exs.) A-I. The Government introduced five documents which were accepted into the record as Exs. 1-5.

Applicant was given until January 4, 2012, to submit any additional materials. He timely submitted one additional document, which was accepted without objection as Ex. J, 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 related to financial considerations. Clearance is denied.

### **Findings of Fact**

Applicant is a 40-year-old computer specialist who has worked for the same defense contractor since August 2009. He completed high school and has an associate's degree in computer network management. Applicant is divorced and has one young child. A self-described "computer geek," Applicant has worked in his present field for nearly two decades.<sup>1</sup>

In 2001, Applicant married a woman with whom he had grown up. In 2004, he began working as an independent consultant. His income quickly jumped from about \$80,000 to close to \$300,000 a year. At the time, he was expecting a child. Because his new job required extensive travel, his wife, who did accounting and bookkeeping for small businesses, managed the family's finances. Applicant trusted her implicitly. Whenever he would inquire about their finances, she told him that all was well. Knowing that his business was lucrative, he did not challenge his wife's assessment, even though he knew that they were starting to live extravagantly. He was often left out of the decision-making process about acquisitions because he was generally gone from Monday morning until Friday night. His wife often encouraged him to make upgrades to their life. Telling him that there was sufficient money to do so, he bought two costly vehicles and moved from a \$180,000 home to one that cost about \$500,000. By 2007, his income had been reduced to about \$180,000, a downward trend that would continue for the next two years. Meanwhile, unbeknownst to him, his wife was leading "a completely separate life as soon as [he] left" town for work.<sup>2</sup>

Aside from excessive spending, Applicant's wife stopped paying Applicant's taxes. Although she would go through the motions of having him sign his tax forms and say that money had been withdrawn from his account for their payment, the forms were never submitted and his taxes were never paid. In 2009, Applicant ran out of work as a consultant and began working for his present employer at a substantially reduced salary. In that same year, he discovered his wife had been having an on-going affair and that he owed federal taxes for multiple years. In July 2009, he filed for divorce. As they headed to their 2010 divorce, he not only learned that his wife had misled him and that he had never had the financial resources to responsibly purchase some of their extravagances, he also discovered other financial irregularities. For example, sums he had allocated for their child's future had never been invested. He then started trying to settle some of the debts he discovered.

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<sup>1</sup> Tr. 15.

<sup>2</sup> Tr. 16.

Applicant petitioned for divorce predicated on his wife's infidelity. As a consequence, his wife was outraged. He proved that she had vacated their home, taking most of their possessions and all the jewelry they had acquired. He had to take her to court to sell the marital house, which she initially refused to sell. Ultimately, she was denied financial support and Applicant won a \$75,000 judgment against her. Shortly after the divorce, his ex-wife filed for bankruptcy as a ploy to vacate the judgment owed to Applicant. Applicant provided evidence that her assets were over \$100,000, far exceeding the \$50 she listed in her bankruptcy petition. She is now facing bankruptcy fraud charges.

As a result of Applicant's drop in income, he could not make payments on those debts associated with the house and the vehicles. With a substantially reduced income and only the expectation of receiving the judgment against his ex-wife, Applicant consulted an attorney to help him negotiate with the Internal Revenue Service (IRS) regarding his tax debt. Counsel recommended that he first work on his bankruptcy petition and address any extraneous debts. Applicant filed for Chapter 7 bankruptcy in November 2010 after satisfying the debts noted in the SOR at ¶ 1.g and ¶ 1.h, leaving his tax debts as his remaining financial issues (SOR allegations ¶¶ 1.a - 1.f).<sup>3</sup> His bankruptcy was discharged in February 2011.

In the interim, Applicant's attorney proceeded with IRS negotiations and Applicant received financial counseling. On August 20, 2011, an Offer in Compromise (OIC) package was submitted to the IRS on Applicant's behalf for tax years 2004 through 2010.<sup>4</sup> Including fees and interest, the estimated sum at issue is about \$280,000. The package included all necessary forms, financial statements, filing fees, and an initial deposit check for \$2,050.<sup>5</sup> The IRS accepted Applicant's package and deposited his check. Negotiations are still going on to complete the IRS' determination of whether it will accept the offered lump sum or the lump sum plus additional payments.<sup>6</sup> Applicant's counsel is still working on the matter. It is unclear when the process will be completed. His counsel believes the final sum for the tax years at issue will be about \$10,000, after the fees are repealed and the sum negotiated down. Consequently, the \$2,050 initial payment is considered to be a 20% good faith payment on the compromise. Applicant intends to satisfy the resultant debt by liquidating part of

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<sup>3</sup> Tr. 23-24. See also Ex. A (regarding ¶ 1.g) and Ex. J (regarding ¶ 1.h).

<sup>4</sup> The SOR sets forth concerns regarding the taxes for tax years 2004 through 2009. Appellant also owes taxes for 2010.

<sup>5</sup> Ex. D (OIC package).

<sup>6</sup> Tr. 30.

his 401k plan, which currently has a balance of about \$17,000.<sup>7</sup> He also has a current income of about \$93,000.<sup>8</sup>

Applicant has acquired no new debt and lives within a defined budget. Except for Internet/cable service, he lives simply. Applicant's child lives with him half the time. Some of his current spare income is for her extracurricular activities (i.e. about \$300 for piano and gymnastics). Applicant has learned from his mistakes, developed personal financial strategies, and changed his "entire lifestyle."<sup>9</sup> Applicant now manages his own finances, except for issues related to his taxes.

### **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 rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>10</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>11</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>7</sup> Tr. 54-55.

<sup>8</sup> After all expenses, Applicant has a net monthly remainder of about \$300. That number should increase by about \$150 in April 2012, when he will no longer be paying for his ex-wife's health insurance.

<sup>9</sup> Tr. 68.

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

<sup>11</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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>12</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>13</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>14</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>15</sup> The Government’s evidence showed that Applicant has been deemed responsible for about \$280,000 in estimated federal taxes, including fees and interest. There was also evidence of his 2009 Chapter 7 bankruptcy. 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.

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

<sup>13</sup> *Id.*

<sup>14</sup> AG ¶ 18.

<sup>15</sup> *Id.*

The debts at issue are multiple in number. They were acquired over a protracted period of time, from approximately 2004 through 2009. During that time, Applicant thoroughly deferred to his wife to manage the household accounts, despite considerable evidence that the couple was leading an extravagant lifestyle. Applicant admits that he failed to adequately inquire about their expenses and finances. Moreover, while the extraneous debts have been addressed, Applicant's taxes remain at issue, despite the best efforts of Applicant and his tax attorney. This includes not only the taxes at issue in the SOR (2004-2009), but also his tax debt for 2010. At present, his net monthly remainder is lean. Until his tax issue is resolved and a final sum is compromised, it cannot be discerned whether Applicant has the financial resources to meet his IRS obligation. Furthermore, Applicant has not yet had an opportunity to show that he can personally handle his finances independently and reliably. While the facts regarding the creation of the debts are unique and Applicant has demonstrated improved judgment and responsibility, 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*) or 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*).

Applicant has received financial counseling. With the knowledge gained, he satisfied some of his debts, formulated a budget, proceeded with a bankruptcy petition, and has followed the advice of a tax attorney concerning his IRS debt. With only his tax debts remaining at issue, Applicant has executed an OIC with the IRS and made a good faith payment. Consequently, there are sufficient facts to raise 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*). However, because the total sum to be paid to the IRS has yet to be determined, Applicant's payment of \$2,050 only raises FC MC AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to a limited extent.

### **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 mature and highly credible professional. During his marriage, he was

offered a highly lucrative professional opportunity that demanded he work out of town Monday through Friday. He depended on his wife, a bookkeeper, to manage the household accounts. Unbeknownst to him, his wife abused his trust by overspending, mishandling his finances, and conducting an affair. Because of his trust in her, Appellant never questioned their lifestyle despite the fact their lifestyle was becoming conspicuously lavish – even as his high salary began to decrease.

Applicant discovered his wife’s affair and her financial abuse in 2009. He divorced her and tried to rehabilitate his financial situation. He satisfied most of their debts by payment or bankruptcy. However, he did not pursue a compromise with the IRS over the nearly \$280,000 at issue until August 2011. That compromise offer has yet to be accepted. While his tax attorney apparently believes that the matter should be compromised for about \$10,000, no evidence to that effect has been received or presented. Therefore, it is premature to conclude that his current net monthly remainder and 401k balance is sufficient to honor the IRS obligation at issue (2004-2009) and any additional debt due from 2010.

This process does not demand that all of an applicant’s debts be paid. It does, however, require that an applicant present a workable plan for satisfying his debts and evidence that such a plan has been implemented successfully. Here, Applicant has a plan. Until the IRS sets a sum certain for his tax liability, however, it cannot be discerned whether the plan can be successfully implemented, despite Applicant’s recent good faith efforts. As previously 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. 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:	<b>AGAINST APPLICANT</b>
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g-1.i:	For 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