



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



In the matter of: )  
)  
) ISCR Case No. 10-06552  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Heidi Rogers, Personal Representative

February 9, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 42-year-old employee of a defense contractor. He is alleged to have a history of indebtedness including ten debts in the approximate amount of \$190,205, raising security concerns under Financial Considerations. Applicant mitigated the Financial Considerations security concerns because the debts were caused by unforeseen circumstances beyond his control, and he has acted responsibly with respect to his debts. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 13, 2011, 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) effective September 1, 2006.

Applicant answered the SOR on July 7, 2011, and requested a hearing before an administrative judge. The case was assigned to another administrative judge then reassigned to me on November 7, 2011. DOHA issued a notice of hearing on November 7, 2011, scheduling the hearing for December 14, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant testified on his own behalf and called one witness. DOHA received the transcript of the hearing (Tr.) on December 27, 2011.

### **Findings of Fact**

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer for the past 16 years and recently received a promotion. He also works two additional part-time jobs to make ends meet. (GE 1; AE B; Tr. 35-42, 25.)

Applicant was married from July 1994 through August 2009. He has two children with his ex-wife, ages 19 and 14. He shares joint custody of their minor child with his ex-wife. (GE 1; Tr. 42-44.)

DOHA alleged under Guideline F, Financial Considerations, that Applicant is indebted to ten creditors in the approximate amount of \$190,205. Applicant denied these allegations in his Answer, as each of the debts were discharged through Chapter 7 bankruptcy. (SOR; Answer.)

Applicant testified that each of the delinquent debts were a direct result of the demise of his marital relationship. In 2005, Applicant and his wife purchased a restaurant franchise to supplement his income. Applicant's wife ran the franchise and was solely responsible for its operation and management. In approximately 2008, Applicant's wife injured her back and began taking pain medication. She became addicted to pain killers. As a result, she began misappropriating funds designated for their bills and the upkeep of the franchise for her own personal use. Applicant had trusted his wife to manage their funds in the past and had no knowledge of her mismanagement of the business and of the funds until his wife became involved in another relationship and moved away. Applicant was left with their two children, a failing franchise, and a significant amount of unpaid bills. After his divorce in 2009, Applicant sold the franchise for a fraction of its fair-market value due to a number of required upgrades and compliance issues that had to be resolved by the new owner. Due to the loss of income from the franchise, he was unable to pay the mortgage on his house. In August of 2010, it was foreclosed upon and the bank took possession of the home. (Answer; Tr. 23-34, 40-66.)

Applicant attempted to contact his creditors and work out payments, but he quickly found himself overwhelmed with the amount of debt. As a result, Applicant filed Chapter 7 bankruptcy on or about March 10, 2011. He disclosed approximately \$115,016 in unsecured debts (incorporating SOR allegations 1.a-1.f, 1.i-1.j), and \$607,307 in secured claims (incorporating SOR allegations 1.g and 1.h) including the first and second mortgage on Applicant's foreclosed residence. Applicant had little

independent knowledge relating to the debts listed on the SOR, as his wife managed their finances. His debts were discharged on June 17, 2011. (GE 2; GE 5; GE 6; AE A; Tr. 23-34, 40-66.)

As part of Applicant's bankruptcy, he completed an instructional course on personal financial management. It included a computer-based financial planning session, a booklet of financial information that he read, and two telephonic counseling sessions. Applicant estimated that all of the counseling sessions took approximately five hours for him to complete. During the course, he created a budget that he is able to utilize. (GE 4; Tr. 30-31.)

Applicant's most recent credit report shows no other delinquent accounts. He testified he is current on all of his credit cards. He has savings of approximately \$3,000 in liquid funds and approximately \$35,360 in retirement accounts. His former landlord wrote a letter of support on his behalf verifying that Applicant was an excellent tenant and paid his rent on time. Applicant now manages all of his finances himself and will not rely on anyone else to manage his money in the future. (GE 3; GE 7; AE C; Tr. 64-65.)

Applicant is well respected by his co-workers, friends, and two assistant fire chiefs. A friend and co-worker for over 16 years wrote of Applicant, "he is the hardest working, most conscientious honest trustworthy person I know." All spoke of his good moral character and trustworthiness. An assistant chief also spoke of the many hours of community service Applicant has devoted to his community. (AE C.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 (AG ¶ 2 (a)). 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 the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, as follows:

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;
- (b) a history of not meeting financial obligations.

As listed on the SOR, Applicant was indebted to ten creditors in the approximate amount of \$190,205. These debts became delinquent in approximately 2008 and remained delinquent for a number of years. Since 2008, he was unable to satisfy the first and second mortgage on his property and his home was foreclosed upon. He filed

Chapter 7 bankruptcy and the debts alleged on the SOR were discharged in June 2011. The Government established a case for disqualification under Guideline F.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are recent, the circumstances under which they occurred are unlikely to recur. He trusted his ex-wife to manage their finances. He could not have predicted her misappropriation of the funds, after 14 years of marriage, which was caused by her addiction to painkillers and her extra-marital affair. Her actions led to the financial demise of both their franchise and the default of their mortgage. Applicant acted responsibly by seeking discharge of the debts through bankruptcy and the debts are now resolved. The Applicant's financial problems are directly attributable to unforeseen circumstances. He continues to remain current on his other financial obligations. It does not appear that Applicant was living beyond his means in any regard. He can be trusted to monitor his finances closely and resolve his debts in the future. He received financial counseling, created a budget, and is current on all of his bills. He has a small savings account for use in emergencies. Clearly, Applicant's financial problems are under control. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) 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 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 those guidelines, but some warrant additional comment. Applicant is well respected by those that know him and work with him. He performs well at his job and works three jobs to support himself and his children. His dedication, community service, and integrity, as attested to by those that know him best, indicate he is trustworthy. His financial problems were unexpected. They were created by factors beyond his control and Applicant behaved maturely in how he handled his debts. He can be expected to remain debt free in the future.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the 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 B:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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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Jennifer I. Goldstein  
Administrative Judge