



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



In the matter of: )  
)  
) ISCR Case No. 10-09893  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin Howry, Esq., Department Counsel  
For Applicant: *Pro se*

December 14, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 50-year-old employee of a defense contractor. He is alleged to be indebted to six creditors in the approximate amount of \$387,134. Applicant mitigated the Financial Considerations security concerns by repaying all but one of the debts. His only unpaid debt, a delinquent mortgage, was resolved through the foreclosure and subsequent sale of his home. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 3, 2012, 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 for cases after September 1, 2006.

Applicant answered the SOR on September 20, 2012, and requested a hearing before an administrative judge. The case was assigned to me on November 9, 2012. DOHA issued a notice of hearing on November 13, 2012, scheduling the hearing for November 29, 2012. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered Exhibits (AE) A through J, which were admitted without objection. Applicant called one witness, and testified on his own behalf. The record was left open for Applicant to submit additional exhibits. On December 5, 2012, Applicant presented AE K through AE M. Department Counsel had no objections to AE K through AE M, and they were admitted. DOHA received the transcript of the hearing (Tr.) on December 11, 2012.

### **Findings of Fact**

Applicant admitted the SOR allegations 1.a through 1.e. He denied allegation 1.f. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He worked in his current position with the defense contractor for the past 16 years. He successfully held a security clearance for the past 16 years without violations. He has been married for 31 years and has four children, ages 26, 25, 19, and 15. He possesses a bachelor's of science degree. (GE 1; Tr. 28-29.)

Applicant is alleged in the SOR to be indebted to six creditors in the amount of \$387,134. In 2006 his credit report shows all of his accounts were in good standing. However, from 2008 to 2009 six debts became delinquent. Applicant's wife had always managed their finances and did not inform Applicant that they were experiencing a monthly deficit. She hid bills from him and acquired credit accounts that he did not know about. His financial problem was compounded by his oldest child taking off a semester from college. That gap in her education ended the student loan deferral period and required repayment to begin immediately. At the same time, his wife switched jobs from a salary-based position to a commission-based position and experienced a decline in her income. Applicant became aware of their financial delinquencies when the bank that held his mortgage issued a notice to vacate the property and his wages began to be garnished for non-payment of his daughter's student loan. At that point, Applicant's wife hired a debt consultation firm, but their help was ineffective. He was unable to stop the foreclosure and the amassing of significant debts due to his wife's mismanagement of their finances. (GE 2; Tr. 37, 41-51.) Applicant's debts are as follows:

Applicant was indebted to a telecommunications company in the amount of \$134 for a cell phone account. Applicant presented documentation from a collection agent for this creditor that shows this account was paid in full on August 16, 2012. (GE 6; GE 7; AE A; Tr. 31-32.)

Applicant was indebted to a bank on a home equity line of credit in the amount of \$8,000. Applicant documented that he settled this account with a collection agent for

this creditor on September 18, 2012, for a payment of \$7,353.87. (GE 4; GE 6; AE B; Tr. 32-35.)

Applicant was indebted to a bank on a credit card account in the amount of \$10,000. Applicant testified that he settled this account in full with this creditor. He presented a letter from a collection agent showing this account was settled as of September 18, 2012. (GE 6; GE 7; AE C; AE I; Tr. 35-36.)

Applicant was indebted to a bank for his primary mortgage on his home, which was foreclosed upon. At the time of foreclosure, Applicant owed \$334,464 on the mortgage. Applicant testified that the house was resold for \$360,000. He received approximately \$2,000-\$4,000 from the bank after the sale of the home toward moving expenses. He presented a 1099-A that confirmed the amount owed and listed the fair market value of the home as \$367,497. Applicant is no longer indebted on this mortgage. (GE 7; AE E; AE I; Tr. 37-40.)

Applicant was indebted to a bank for a credit card in the amount of \$3,000. Applicant paid this debt in full. He provided a letter from a collection agent acknowledging the account was settled as of September 20, 2012. (GE 7; AE D; Tr. 37-38.)

Applicant was indebted to a lender for his daughter's student loan in the amount of \$16,000. Applicant unexpectedly became liable for this debt when his daughter took a semester off of school, before the completion of her degree. His wife hid the statements from him and did not pay the account. A garnishment order was entered and Applicant's pay was garnished for approximately \$2,000 over a two-month period. Applicant then contacted this creditor, and on August 12, 2011, he paid the debt in full, as documented in a letter from the creditor. The account now has a zero balance. (AE F; AE J; AE M; Tr. 37-40.)

Applicant was able to pay off all of his creditors by withdrawing funds from his retirement savings account. He also has satisfied the tax obligations that resulted from the withdrawal. (Tr. 36.)

Applicant testified that he now manages his family's finances. He understands the importance of addressing his financial responsibilities in a timely manner. His wife plays no role in their family's finances. He pays the bills, monitors their bank accounts and their credit. He presented an updated financial statement that shows he has \$1,638 left over each month after paying all of their debts. (AE L; Tr. 51-52.)

Applicant is well respected by his supervisor, who testified on his behalf at the hearing. He indicated that Applicant has high morals and integrity. Applicant's performance evaluations reflect that Applicant is an asset to his team. He is a responsible individual who readily takes on leadership roles at work. He has earned a number of awards for his professional excellence from his employer. (AE K; Tr. 56-60.)

## 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 clearance 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; and
- (c) a history of not meeting financial obligations.

From 2008 to 2012, Applicant and his wife were not financially solvent. They were delinquent on six debts totaling \$387,134. The evidence is sufficient to raise the above disqualifying conditions.

One Financial Considerations Mitigating Conditions under AG ¶ 20 is applicable:

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

Applicant's financial problems were partially attributable to the losses in his wife's income and his daughter's semester break from school. However, they were also due to Applicant's inattention to his family's finances. He was uninformed about his wife's mismanagement of their accounts. Further, once he became aware of potential problems, it took him a number of years to fully address them. However, Applicant has now addressed all of his delinquent accounts in a responsible way. Each delinquent account listed on the SOR has been resolved in good faith. He has taken over his family's finances, monitors their spending, and checks his credit report frequently. AG ¶ 20(d) applies.

### 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.

Applicant is well respected by his supervisor. His standards are reflected in the awards, performance appraisals, and certificates he received during his employment with the government contractor. His integrity, as attested to by his management, shows that his commitment to continue to satisfy future creditors and monitor his finances himself is credible. Upon learning of his financial problems, he initiated steps to responsibly resolve the delinquent debts and prevent them from recurring in the future. His financial problems no longer present a potential for duress or coercion.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that 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 F: | 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 |

## **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