



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



In the matter of: )  
)  
) ISCR Case No. 10-09936  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

December 14, 2011

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 3, 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. DOHA acted 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 3, 2011, and requested a hearing before an administrative judge. The case was originally assigned to another judge. Because of a scheduling conflict, the case was assigned to me on October 12, 2011. DOHA issued a notice of hearing on October 19, 2011, and the hearing was convened as scheduled

on October 24, 2011. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through J at the hearing. Applicant's exhibit list is marked as HE II. The exhibits were admitted into evidence without objection. The record was held open until November 30, 2011, for Applicant to submit additional evidence. He submitted one document (AE K) that was admitted into the record without objection. Department Counsel's forwarding memorandum is marked as HE III and Applicant's counsel's email is marked as HE IV. DOHA received the hearing transcript (Tr.) on October 28, 2011.

### **Procedural Rulings**

During the course of the hearing, Department Counsel moved to amend the SOR to withdraw various allegations under Guideline F. Specifically, she moved to withdraw SOR ¶¶ 1.r, 1.s, and 1.t because they are duplicative of other allegations. I granted the motion; however, to insure clarity of the results, I will also enter findings in favor of the Applicant on those allegations. Additionally, Applicant and counsel waived the 15-day notice requirement in order to have this case heard while Applicant was back from an overseas work assignment. Counsel and Applicant readily agreed to the hearing date.<sup>1</sup>

### **Findings of Fact**

Applicant admitted some of the SOR factual allegations and denied others. The admissions are incorporated as findings of fact. After a review of the pleadings, testimony and admitted exhibits, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He is single and has one minor child. He has custody of his child because the mother is incarcerated. He has some taken college courses. He began working for his current defense contractor employer two years ago. He recently deployed overseas for his company. He was honorably discharged from the Air Force after serving from 2001 to 2005. He held a security clearance while in the Air Force.<sup>2</sup>

The SOR alleged 18 delinquent debts totaling approximately \$38,242. The debts were listed on credit reports obtained on July 1, 2010 and February 3, 2011.<sup>3</sup>

Applicant's financial difficulties began after he left the Air Force in 2005. He was unemployed for about 10 months before he found his first job. He received about \$600 a month in unemployment benefits during this time. He obtained a job at a retail company on a part-time basis earning about nine dollars per hour. He later obtained another retail job paying about one dollar an hour more. From 2005 to 2008, he was living with the

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<sup>1</sup> Tr. at 9-12.

<sup>2</sup> Tr. at 26-27, 85; GE 1; AE K.

<sup>3</sup> GE 4-5.

woman (W) who is his child's mother. This relationship deteriorated because W started using drugs. Despite this, Applicant claims that he trusted W to pay his bills and other expenses with money he was earning. He claims to have given her approximately \$10,000 to pay various bills over an extended time period. He later realized that the bills were not paid when he was evicted from his apartment for nonpayment. He no longer associates with W and provides all the financial support for their child. Since he obtained his current job, he has been working to pay off his delinquent obligations. His current salary is about \$80,000 per year and he has about \$3,400 per month in disposable income at the end of each month.<sup>4</sup>

The debt alleged in SOR ¶ 1.a is a delinquent phone provider debt for \$414. Applicant claims he paid this debt, but provided no documentation to support payment.<sup>5</sup>

The debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d are delinquent medical debts. He provided documentation showing payment of these debts.<sup>6</sup>

The debt alleged in SOR ¶ 1.e is a collection for an unexpired lease for which he was responsible in the amount of \$5,724. He disputes the amount of delinquency (no proof to support the dispute), but acknowledges the debt. This debt remains unresolved.<sup>7</sup>

The debt alleged in SOR ¶ 1.f is a delinquent school loan debt for \$7,845. He claims this debt was paid, but provided no documentation showing payment.<sup>8</sup>

The debt alleged in SOR ¶ 1.g is a collection for an unexpired lease for which he was responsible in the amount of \$1,303. He claims he paid this debt over the telephone through an electronic transfer from his bank account. To support this claim, he supplied a voided front-side of a check to this creditor in the amount of \$850. The check was unsigned and did not show any endorsements. He did not provide any documentation showing the amount was deducted from his bank account.<sup>9</sup>

The debt alleged in SOR ¶ 1.h is a delinquent cable debt in the amount of \$641. He claims to have paid this debt, but provided no documentation to support payment.<sup>10</sup>

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<sup>4</sup> Tr. at 27, 31-32, 49-54; GE 2.

<sup>5</sup> Tr. at 33-47; GE 2-3; AE C-E, J.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

The debt alleged in SOR ¶ 1.i is a delinquent school loan debt in the amount of \$8,304. He claims he is making payments on this debt, but he also provided documentation showing this debt remains in a delinquent status.<sup>11</sup>

The debt alleged in SOR ¶ 1.j is a delinquent phone provider debt in the amount of \$113. He claims this debt was paid when he paid the debt in SOR ¶ 1.a to the same phone provider. However, he did not provide documentation of payment on either debt.<sup>12</sup>

The debt alleged in SOR ¶ 1.k is a delinquent school loan debt in the amount of \$1,519. He provided documentation showing payment of this debt on October 18, 2010, by electronic transfer from his bank account.<sup>13</sup>

The debt alleged in SOR ¶ 1.l is a delinquent consumer account in the amount of \$734. He claims he paid this debt over the telephone through an electronic transfer from his bank account. To support this claim, he supplied a voided front-side of a check to this creditor in the amount of \$551. The check was unsigned and did not show any endorsements. He did not provide any documentation showing the amount was deducted from his bank account.<sup>14</sup>

The debt alleged in SOR ¶ 1.m is a delinquent consumer account in the amount of \$271. He claims he paid this debt over the telephone through an electronic transfer from his bank account. To support this claim, he supplied a voided front-side of a check to this creditor in the amount of \$104. The check was unsigned and did not show any endorsements. He did not provide any documentation showing the amount was deducted from his bank account.<sup>15</sup>

The debt alleged in SOR ¶ 1.n is a delinquent consumer account in the amount of \$5,593. He claims this debt is paid, but provided no documentation showing payment.<sup>16</sup>

The debt alleged in SOR ¶ 1.o is a collection for an unexpired lease for which he was responsible in the amount of \$4,216. He disputes the amount of delinquency (no proof to support the dispute), but acknowledges the debt. This debt remains unresolved.<sup>17</sup>

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<sup>11</sup> *Id.*

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

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

<sup>14</sup> *Id.*

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

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

The debt alleged in SOR ¶ 1.p is a delinquent consumer account in the amount of \$58. He claims this debt is paid, but provided no documentation showing payment.<sup>18</sup>

The debt alleged in SOR ¶ 1.q is a delinquent consumer debt in the amount of \$71. He provided documentation showing payment of this debt on June 28, 2010, by electronic transfer from his bank account.<sup>19</sup>

The debt alleged in SOR ¶ 1.u is a delinquent consumer debt in the amount of \$286. He acknowledged that this debt remains unpaid.<sup>20</sup>

The debt alleged in SOR ¶ 1.v is duplicative of the debt alleged in SOR ¶ 1.l and will be resolved in favor of Applicant.<sup>21</sup>

Applicant indicated he would submit documentation post-hearing showing that he paid the debts indicated in his testimony. The record was held open for more than 30 days after the hearing, but he did not submit any documentation showing payment of any debts. He also stated in his testimony that he had not received financial counseling. He did hire a law firm to dispute accounts on his credit report, but he became dissatisfied with their results, so he ended the relationship.<sup>22</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 that 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

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Tr. at 47, 80, 83, 90-91.

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 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 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 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* Executive Order 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.

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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;
- (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.

Although Applicant has paid some debts, most of the debts are still owed. They are not infrequent and there is no evidence to support the assertion that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced a period of unemployment and underemployment. These are conditions beyond his control. He also claims that he trusted W to pay his bills, but she used the money for other things and left him with the resulting delinquent debts. This is not a condition beyond his control. He chose to live with and trust W with his finances. However, with respect to his unemployment-underemployment situation that was beyond his control, in order for this mitigating condition to fully apply, the Applicant must also act responsibly under the circumstances. Applicant's actions do not show responsible behavior. He has done very little to resolve the majority of his debts, despite having the resources to do so since obtaining his current job two years ago. AG ¶ 20(b) is partially applicable.

Applicant did not seek financial counseling to assist with his delinquent debts. He paid his medical debts, one school loan, and a consumer debt, but he failed to document payments to the remainder of his creditors. His remaining debts remain

unsettled and unresolved. Therefore, his finances are not being resolved and are not under control. His attempts to reach settlements with his creditors are insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are not applicable. He offered no documentary evidence to dispute any of the debts. AG ¶ 20(e) does not apply.

At this point, Applicant's finances remain a concern despite the presence of some mitigation.

### **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 relevant 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 considered his periods of unemployment and underemployment. I also considered the domestic situation he faced with W. I also considered his Air Force service and his recent deployment in his current position. However, he has done very little to resolve his debts. He claimed to have paid several of the debts, but provided no documentary support for those claims. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b - 1.d:	For Applicant
Subparagraphs 1.e – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.p:	Against Applicant
Subparagraphs 1.q – 1.t:	For Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	For 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