



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



In the matter of: )  
)  
) ISCR Case No. 10-10384  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

January 31, 2012

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He owes over \$21,000 on four judgments and two other past-due debts that date back several years. He recently started to address his overdue debts, but it is too early to say that his financial situation is under control. Clearance is denied.

**Statement of the Case**

On May 18, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.<sup>1</sup> The basis for this decision is set forth in a Statement of Reasons (SOR) that alleges the security concern under Guideline F (Financial Considerations). Applicant filed his response on June 24, 2011 (Answer). He admitted all but two of the debts alleged in the SOR, and requested a hearing.

---

<sup>1</sup> This action was taken under Executive Order 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.

Department Counsel indicated the Government was prepared to proceed with a hearing on August 4, 2011. After coordinating with the parties, I scheduled the hearing for September 20, 2011. At hearing, Government Exhibits (GE) 1 through 4 and Applicant's Exhibit (AE) A through L were admitted into evidence without objection. The Government did not call any witnesses. Applicant testified on his own behalf. The transcript (Tr.) was received on September 28, 2011.<sup>2</sup>

### Findings of Fact

Applicant is 42 years old. He separated from his wife in approximately 2004 and divorced in August 2011. In 2004, he was granted full custody of his two children, who are now 12 and 17 years old. He attributes his financial difficulties to having to raise his children on his own without financial support from his ex-wife, and being unemployed from January to May 2010.<sup>3</sup>

The SOR alleges 20 debts. After the SOR was issued, Applicant paid the five minor debts referenced in SOR ¶¶ 1.b, 1.c, 1.i, 1.n, and 1.s, totaling \$1,189.<sup>4</sup> Also after the SOR was issued, Applicant successfully disputed the six debts alleged in ¶¶ 1.a, 1.k, and 1.o through 1.r, which total \$2,362.<sup>5</sup> He also established a payment plan to satisfy the debt in ¶ 1.j, and submitted proof of partial payment.<sup>6</sup>

Applicant still owes over \$21,000 for four judgments and two past-due debts. (SOR ¶¶ 1.d through 1.h and 1.m). One judgment was issued in 2004, and the other three were issued in 2008. The two past-due debts consist of a car repossession and an old cable bill. After the SOR was issued, Applicant made arrangements to satisfy one of the judgments and submitted proof of one payment for \$100.<sup>7</sup>

In 2004, a judgment was issued in favor of Applicant's former landlord in the amount of \$1,941. This debt is referenced in SOR ¶ 1.g, and is reflected on Applicant's credit reports. Applicant disputes this judgment, claiming he resided at the apartment in question until 2010 without issue, and that the alleged debt is still pending adjudication by the civil court system. He submitted a civil summons to appear for trial for non-

---

<sup>2</sup> I made one minor pen-and-ink to the transcript at page 8 to reflect "1.e", vice "1.3."

<sup>3</sup> Tr. at 106-112; GE 1. *But see* GE J, Letter, dated 9/19/11 (Applicant did not discuss, but his friend, who has known him for year, states that she was recently the matron of honor at his wedding).

<sup>4</sup> Tr. at 30-32; AE A (¶¶ 1.b and 1.c); Tr. at 81-83, AE D (¶ 1.i); Tr. at 95, AE A (¶ 1.n); Tr. at 101-103, AE G (¶ 1.s).

<sup>5</sup> Tr. at 29-30; AE G (¶ 1.a); Tr. at 85-88 (¶ 1.k); Tr. at 96-101 (¶¶ 1.o - 1.r); Tr. at 81-83, AE D (¶ 1.i); Tr. at 95, AE A (¶ 1.n); Tr. at 101-103, AE G (¶ 1.s).

<sup>6</sup> Tr. at 83-85; AE E.

<sup>7</sup> The \$151 debt alleged in ¶ 1.t is a medical bill. Tr. at 103-104; AE I. As the resolution of this minor medical debt does not affect the outcome of this case, I find in Applicant's favor as to this debt.

payment of rent, and claims this new civil matter relates to the 2004 judgment. He did not present any documentation that the 2004 judgment had been overturned or otherwise invalidated. Further, the named plaintiff in this new action is not the same as the creditor who was awarded the 2004 judgment.<sup>8</sup> The 2004 judgment remains unpaid.

In 2008, Applicant had three judgments issued against him. The first of these judgments is referenced in SOR ¶ 1.d for \$6,136. This judgment is for damage and carpet replacement Applicant owed when he moved out of another apartment in 2006. The judgment is reflected on Applicant's credit reports. After the SOR was issued, Applicant made arrangements to satisfy this debt and submitted proof of one payment in the amount of \$100 from June 2010.<sup>9</sup> This 2008 judgment remains unpaid.

The second of the 2008 judgments is referenced in SOR ¶ 1.e for \$1,026. This judgment was for a personal loan Applicant did not repay. Applicant's former girlfriend lent him money to pay an overdue school bill. This judgment is reflected on Applicant's credit reports. He denies this debt, claiming the money was a gift, not a loan.<sup>10</sup> Applicant submitted e-mails from his former girlfriend from 2008, in which she asks that he repay the loan.<sup>11</sup> He explained that when they broke up, she demanded that he repay the money. At the time, he told her: "Sure. I don't have a problem giving you the money back . . . you helped me out. I'll give you the money back."<sup>12</sup> Applicant did not repay the loan, and his former girlfriend obtained a civil judgment against him. At hearing, Applicant initially testified that he did not have the opportunity to contest the claim in court, because he "didn't know there was a court date" and "the judgment just appeared on (his) credit report." Upon being questioned, Applicant admitted he had been notified of the court date and had failed to appear, resulting in the entry of a default judgment.<sup>13</sup> Prior to the hearing, Applicant told a Government investigator that he had repaid a majority of the loan.<sup>14</sup> As of the hearing, Applicant's efforts to satisfy the loan consisted of two e-mails to his former girlfriend seeking to satisfy the judgment. The e-mails were sent after the SOR was issued.<sup>15</sup> This 2008 judgment remains unpaid.

---

<sup>8</sup> Tr. at 68-76; GE 3 at 83; GE 4 at 1; AE C; AE H at 42-43. *See also* Answer (admits debt).

<sup>9</sup> Tr. at 33-40; GE 1 at 55; GE 2, 6/10 Subject Interview (SI) at 2; GE 4 at 1; AE A; AE D (\$100 payment on 6/20/11); AE H at 42-43. *See also* Answer (admits debt).

<sup>10</sup> Tr. at 40-56; SCA at 54; GE3 at 84; GE 4 at 1; AE H at 42-43. *But see* GE 2, SI at 1 (during June 2010 interview, never claims that the charges he made to former girlfriend's credit card was a gift).

<sup>11</sup> AE B.

<sup>12</sup> Tr. at 50-51.

<sup>13</sup> Tr. at 42-44. *See also* GE 2, SI at 1 (tells agent that he was unaware of this judgment).

<sup>14</sup> GE 2, SI at 1 (admits to charging \$800 to former girlfriend's credit card and claims to have repaid \$750 of the \$800 in charges).

<sup>15</sup> AE B.

The third of the 2008 judgments is referenced in SOR ¶ 1.f for \$641. Applicant claims this judgment is for unpaid cable service. He denies this judgment, claiming that it was likely a result of fraud. This judgment is reflected on Applicant's credit reports and was properly filed in a local court. When Applicant went to the courthouse, he was told that he could pay the judgment directly through the court. He did not pay the judgment and, instead, is disputing it through the credit agencies. Applicant admits he did not pay his cable bill, but claims the amount past-due was the \$130 debt referenced in SOR ¶ 1.m. He previously promised to pay this \$130 debt by June 2010. Both the \$641 judgment and \$130 cable bill remain unpaid.<sup>16</sup>

In January 2010, Applicant was fired by his former employer for alleged misconduct.<sup>17</sup> He was unemployed until May 2010, when he secured a job with his current employer. Applicant's new job requires that he have access to classified information and, thus, he submitted a SCA on May 24, 2010. He reported accessing his credit report and promised to resolve his debts within 12 months.<sup>18</sup>

In June 2010, Applicant was interviewed by a Government agent. He told the agent that he was unaware of a majority of the debts reflected on his credit report, but had recently contacted a debt consolidation firm (DCF1) and was "in the process of working out settlement for his debts that are on his credit report."<sup>19</sup>

In August 2010, Applicant's car was repossessed. This is the \$12,000 debt referenced in SOR ¶ 1.h. Applicant has contacted this creditor, but he is unable to pay the amount they are asking to settle the debt.<sup>20</sup>

In January 2011, DOHA sent Applicant an interrogatory that requested, in part, information on his past-due debts. Applicant responded on March 16, 2011, and reported that he had contracted with a different debt consolidation firm (DCF2) to resolve his debts. Applicant's agreement with DCF2 is dated the day before he submits his response. Applicant consolidated \$24,000 of unsecured debt with DCF2's assistance. The plan called for Applicant to pay \$400 a month for 36 months, at which time his debts would be resolved.<sup>21</sup>

---

<sup>16</sup> Tr. at 57-67, 89-94; SCA at 53 (was summoned to appear in court to answer claim, but failed to appear); GE 2, SI at 1 (promises to pay cable bill by June 2010); GE3 at 83; GE 4 at 1 (reflected as a medical judgment on 6/10 and 5/11 credit reports); AE H at 43. *But see* Answer (admits the \$641 judgment and claims it was satisfied, but denies the \$130 cable debt, claiming it was a result of fraud).

<sup>17</sup> GE 1 at 30. The alleged misconduct that lead to Applicant's discharge was not alleged as a concern, and I have only considered it in addressing his mitigation case and whole-person factors.

<sup>18</sup> GE 1 at 50-56, 58.

<sup>19</sup> GE 2, SI; Tr. at 61-62.

<sup>20</sup> Tr. at 78-81; GE 3; GE 4; AE H; Answer (admits debt). Department Counsel concedes, and the evidence established, that the debt referenced in SOR 1.l is duplicative of this debt. Tr. at 88-89, AE F.

<sup>21</sup> GE 2.

In June 2011, Applicant stopped sending his monthly payments to DCF2 when he realized that half his money was going to pay DCF2's fees and his debts were not being paid. Applicant then contacted some of his creditors directly and used the money that he was sending DCF2 to satisfy the past-due debts noted earlier.<sup>22</sup>

Applicant earned his college degree in May 2010. He is currently taking graduate level coursework, and has a 3.0 GPA while working full time. He does not own a car, has no credit cards, and by all indications lives a modest lifestyle.<sup>23</sup> He spoke to an attorney about the possibility of filing for bankruptcy, but was "told by the attorney that with the new bankruptcy laws, (he would) still have to pay" his debts.<sup>24</sup> He plans on "hunkering down" and paying off his debts within the next year or two.<sup>25</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 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15.<sup>26</sup> An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt

---

<sup>22</sup> Tr. at 115-120.

<sup>23</sup> Tr. at 123-133; GE 2, *Personal Financial Statement*; AE J (performance review); AE L.

<sup>24</sup> Tr. at 129.

<sup>25</sup> Tr. at 122, 130-131.

<sup>26</sup> ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) ("Once an applicant's SOR admissions and/or the Government's evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.").

concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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. “A clearance adjudication is an applicant’s opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country.”<sup>27</sup>

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 of potential, rather than actual, risk of compromise of classified information.

### **Analysis**

#### **Guideline F, Financial Considerations**

The security concern relating to financial problems is articulated at 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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant’s accumulation of a substantial amount of debt, dating back several years, directly implicates this concern. It also establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

An applicant’s past or current indebtedness is not the end of the analysis, because “[a] security clearance adjudication is not a proceeding aimed at collecting an applicant’s debts. Rather, it is a proceeding aimed at evaluating an applicant’s

---

<sup>27</sup> ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

judgment, reliability, and trustworthiness.”<sup>28</sup> Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

(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 and provides documented proof to substantiate the basis of the dispute.

Applicant’s financial situation is partially attributable to the lack of child support from his former spouse and the less than reputable debt consolidation firm that he contracted with in March 2011. He also receives some credit under AG ¶¶ 20(d) and (e) as to those debts he paid and successfully disputed. However, Applicant’s resolution of these debts occurred only after the SOR was issued. Applicant’s recent efforts to resolve some of his debts is simply not enough to demonstrate that he currently handles his finances responsibly, nor gives me much confidence that he would handle his security obligations in a responsible fashion. Further, AG ¶ 20(b) does not fully apply because Applicant failed to act responsibly under the circumstances.<sup>29</sup> Four of his creditors, including a friend that lent him money, had to obtain judgments to force him to pay his legal obligations. Even after judgments were issued, Applicant has refused to pay. These four judgments date back to 2004 and 2008. Together with the car repossession and overdue cable bill, these debts total over \$21,000.

---

<sup>28</sup> ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

<sup>29</sup> See generally ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008) (“the second prong of MC 20(b) requires that an applicant act responsibly under the circumstances”).

Moreover, at each stage of the security clearance process, from the submission of the SCA to his Answer, Applicant has promised to address his debts and then failed to follow through. His contradictory and internally inconsistent statements regarding the 2008 judgment to his former girlfriend, and his lack of effort to resolve the four outstanding judgments, continue to cast doubt on his judgment, reliability, and trustworthiness.<sup>30</sup> AG ¶¶ 20(a), (b), and (c) do not apply. In the end, although Applicant presented some favorable evidence, it was not enough to meet his burden to mitigate the financial considerations concern. His financial problem remains a security concern.

### **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 relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>31</sup> I have considered all the favorable and extenuating factors in this case. Applicant took on the burden and responsibility of raising his two daughters on his own. He has gone back to school to improve his own job prospects, as well as to better provide for his daughters. He recently started paying his old debts. These are significant mitigating factors. However, he has a substantial amount of unresolved debt and failed to dispel the significant security concerns raised by his financial situation. The favorable whole-person factors present in this case do not outweigh the security concern at issue.<sup>32</sup> Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Subparagraphs 1.d – 1.h:	Against Applicant
Subparagraphs 1.i – 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant

---

<sup>30</sup> ISCR Case No. 10-08560 at 3 (App. Bd. Dec. 5, 2011) (a judge may properly consider inconsistent statements made by an applicant regarding a debt at issue in order to assess the applicant's "credibility and on whether he had met his burden of persuasion as to mitigation under Guideline F.").

<sup>31</sup> (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.

<sup>32</sup> See generally ISCR Case 10-04405 at 3 (App. Bd. Dec. 28, 2011) (favorable whole-person findings does not necessarily equate with a finding that the security concern at issue has been mitigated).



Subparagraphs 1.n – 1.t:

For Applicant

**Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is therefore denied.

---

Francisco Mendez  
Administrative Judge