



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



In the matter of: )  
)  
) ISCR Case No. 11-01455  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

November 16, 2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 2, 2011, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 19, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an

opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 6, 2011. As of October 26, 2011, he had not responded. The case was assigned to me on October 31, 2011. The Government exhibits included in the FORM are admitted.

### **Findings of Fact**

Applicant is a 41-year-old employee of a defense contractor. He is applying for a security clearance. He served in the U.S. military from 1989 until he was honorably discharged in 1994. He has attended technical schools and college, but he does not have a degree. He is married with two children, ages 14 and 12.<sup>1</sup>

The SOR alleges eight delinquent debts totaling about \$85,000 and that Applicant is \$1,980 past due on a mortgage. The debts are listed on various credit reports. Applicant admitted owing five delinquent debts totaling about \$1,743 and that his mortgage was past due. He denied owing two accounts totaling \$188, and he denied owing the largest debt: \$37,636 for defaulted student loans.<sup>2</sup>

Applicant stated the \$37,636 defaulted student loans alleged in SOR ¶ 1.d were incurred by his wife before they married in 1997. He stated that they started paying her student loans when they first married. They quickly had two children and were living on a single income. They stopped paying the student loans. Applicant's wife had part-time jobs, but she did not work a full-time job until last year. In May 2011, he reported that she was attempting to arrange a payment plan to address her student loans. The credit reports list the defaulted student loans as a joint debt. Applicant did not provide the student loan documents that might have established that the loans were solely in his wife's name. He also did not provide documentation of a dispute with the credit reporting agencies.<sup>3</sup>

Applicant admitted owing the two delinquent cell phone accounts (SOR ¶ 1.a - \$278 and SOR ¶ 1.b - \$236). He also admitted owing the three delinquent medical debts (SOR ¶ 1.f - \$339; SOR ¶ 1.g - \$706; and SOR ¶ 1.h - \$184). Finally, he admitted that he was \$1,980 past due on his mortgage (SOR ¶ 1.c).<sup>4</sup> Applicant did not respond to the FORM. There is no evidence of any payments toward the delinquent debts. The current status of the mortgage is also unknown.

Applicant denied owing the \$96 delinquent medical debt alleged in SOR ¶ 1.e and the \$92 delinquent debt to a book club, as alleged in SOR ¶ 1.i. Neither debt appears on the two most recent credit reports.<sup>5</sup>

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<sup>1</sup> Items 5, 6.

<sup>2</sup> Items 4, 7-9.

<sup>3</sup> Items 6-9.

<sup>4</sup> Item 4.

<sup>5</sup> Items 4, 6-9.

Applicant listed his delinquent debts on his Questionnaire for National Security Positions (SF 86), which was submitted in August 2010. He discussed them in his background interview in November 2010. He stated that his wife had handled the family finances until about six weeks before the interview. He stated they were struggling to catch up on their debt. He stated that they may have been late on their mortgage and auto loan a time or two, but they were making ends meet. His wife had recently started working a full-time job, so he anticipated their finances would improve. He stated that he had every intention to pay his debts. He planned to contact every creditor and collection agency to make arrangements to pay the outstanding balances. He stated that he would not allow himself to be placed in that situation again.<sup>6</sup>

Applicant volunteers in his community. He submitted a character letter in which the author praised Applicant's integrity, honesty, and professionalism.<sup>7</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 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.

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<sup>6</sup> Items 5, 6.

<sup>7</sup> Item 6.

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 of 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:

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 pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

Applicant stated the \$37,636 defaulted student loans were incurred by his wife before they married in 1997. The credit reports list the defaulted student loans as a joint debt. Applicant did not provide the student loan documents that might have established that the debt was solely in his wife's name. He also did not provide documentation of a dispute with the credit reporting agencies. I am unable to find AG ¶ 20(e) applicable to the defaulted student loans alleged in SOR ¶ 1.d. Applicant successfully disputed owing the debts alleged in SOR ¶¶ 1.e and 1.i. AG ¶ 20(e) is applicable to those debts.

Applicant discussed his delinquent debts during his background interview in November 2010. He stated that his wife had handled the family finances until about six weeks before the interview. He stated they were struggling to catch up on their debt. He stated that he had every intention to pay his debts. He planned to contact every creditor and collection agency to make arrangements to pay the outstanding balances. I have little to no information since that interview. Applicant did not provide a statement or documents when he responded to the SOR, and he did not respond to the FORM. There is no evidence of any payments toward his delinquent debts. The current status of the mortgage is also unknown. The bottom line is that Applicant has left me guessing as to what has occurred since November 2010. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not applicable.

### **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. I considered Applicant's favorable character evidence. However, the limited information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraph 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge