



**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*

January 27, 2012

**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 were admitted.

I issued my decision on November 16, 2011, denying Applicant's eligibility for access to classified information. Applicant appealed the decision. He provided evidence that he submitted two attachments to his response to the SOR. Those documents were not made part of the record. On January 23, 2012, the Appeal Board remanded the decision for further processing.

I have marked the documents that were attached to Applicant's response to the SOR as Applicant Exhibits (AE) A and B. Applicant's appeal brief contains factual information. I have marked the brief as AE C. AE A through C are admitted to the record.

### **Findings of Fact**

Applicant is a 42-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 and his wife married in March 1997. He has two children, ages 14 and 12.<sup>1</sup>

The SOR alleges eight delinquent debts 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 is an aircraft mechanic. He stated that his income has decreased because of economic problems in the aircraft industry. He stated that he made more per hour in 2000 than he does today. He finds it difficult to find steady employment.<sup>3</sup>

Applicant stated the \$37,636 defaulted student loans alleged in SOR ¶ 1.d were incurred by his wife before they married in 1997. She graduated college with a Bachelor of Arts degree in 1994. 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 2010. Applicant listed this defaulted student loan on his Questionnaire for National Security Positions (SF 86), which was submitted in August 2010. He indicated that he was not responsible for the loan, as it belonged to his wife.

---

<sup>1</sup> Items 5, 6; AE A, C.

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

<sup>3</sup> Items 5, 6; AE C.

He wrote that “[he] was not aware that this debt was on [his] credit report as it should not be and is being disputed by [Applicant].” In May 2011, he reported that his wife 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. In his recent submission, he stated that he and his wife were unable to obtain copies of his wife’s original student loan paperwork. He stated that he submitted his disputes to the three credit reporting agencies, and he is awaiting their investigation into the matter. He stated that he expects the defaulted student loan information to be removed from his credit history in the near future. He did not provide documentation of his disputes with the credit reporting agencies.<sup>4</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). Applicant stated that his mortgage is current. There is no evidence of any payments toward the other delinquent debts.<sup>5</sup>

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>6</sup>

Applicant listed his delinquent debts on his 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>7</sup>

In his recent submission, Applicant stated that he has lived within his means and met his financial obligations. The loans on his truck and his wife’s car are both paid. He stated that “the few obligations that are yet to be met are the result of the downfall of the aviation industry.” There was no additional information about any payments toward his

---

<sup>4</sup> Items 5-9; AE B, C.

<sup>5</sup> Item 4; AE C.

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

<sup>7</sup> Items 5, 6.

delinquent debts. He also did not assert any specific plans on how he would address his debts.<sup>8</sup>

Applicant volunteers in his community. He submitted a character letter in which the author praised Applicant's integrity, honesty, and professionalism.<sup>9</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.

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.

---

<sup>8</sup> Item 4; AE C.

<sup>9</sup> Item 6.

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. Applicant's wife is a college graduate, and she likely incurred student loans. Applicant also attended technical schools and college. 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. When he submitted his SF 86 in August 2010, he stated that he was disputing this debt. He still has not provided 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 stated that his financial problems were related to the downturn in the aviation industry and his employment problems resulting from that downturn. These events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

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. In his recent submission, Applicant stated that his mortgage is current. There is no evidence of any payments toward his other delinquent debts. Applicant asserts that the defaulted student loans are solely in his wife's name. Even if true, that is a significant amount of debt that will have to be addressed by his family.

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(b) is partially applicable. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. I find that financial concerns remain 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 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, including his honorable service in the military. Applicant may have brought his mortgage current, but there is no evidence of any efforts to pay his other delinquent debts.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 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.

---

Edward W. Loughran  
Administrative Judge