



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-01492  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

04/23/2012

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

**Statement of the Case**

On October 14, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on April 15, 2011.<sup>2</sup> On July 14, 2011, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative*

<sup>1</sup> Item 5 (SF 86), dated October 14, 2010.

<sup>2</sup> Item 7 (Applicant's Answers to Interrogatories, dated April 15, 2011).

*Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on July 27, 2011.<sup>3</sup> On an unspecified date, Applicant submitted an undated statement and an attached Joint Parenting Agreement.<sup>4</sup> In a sworn statement, dated November 8, 2011,<sup>5</sup> Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on January 12, 2012, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on January 24, 2012, and as of April 12, 2012, he had not submitted any information. The case was assigned to me on April 17, 2012.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all 11 of the factual allegations pertaining to financial considerations in the SOR (§§ 1.a. through 1.k.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 44-year-old employee of a defense contractor who, since September 2008, has been serving as a principal engineer.<sup>6</sup> He has never served with the U.S. military.<sup>7</sup> Applicant has held a secret security clearance since June 2002.<sup>8</sup> He attended high school from August 1982 until May 1985, but did not graduate or receive a diploma.<sup>9</sup> No information was provided regarding Applicant's early employment history. He was an engineer from December 1998 until December 2003; and a technical engineer from December 2003 until September 2008.<sup>10</sup>

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<sup>3</sup> Item 3 (Receipt, erroneously dated July 27, 2010).

<sup>4</sup> Item 6 (Statement, undated, Joint Parenting Agreement, filed August 4, 2010, and Marital Settlement Agreement, filed August 4, 2010).

<sup>5</sup> Item 4 (Applicant's Answer to the SOR, dated November 8, 2011).

<sup>6</sup> Item 5, *supra* note 1, at 14.

<sup>7</sup> *Id.* at 21.

<sup>8</sup> *Id.* at 37-38.

<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 15-19.

Applicant was married in March 1989 and divorced in August 2010.<sup>11</sup> He married his second wife in November 2010.<sup>12</sup> He has two children from his first marriage, born in December 1989, and September 1997, respectively.<sup>13</sup> His eldest child is emancipated, but his youngest child resides with Applicant's ex-wife under a Joint Parenting Agreement.<sup>14</sup>

## Financial Considerations

It is unclear when Applicant first started having financial problems. In November 2010, he acknowledged having such problems "for several years," and attributed those problems to his first wife's extravagant spending habits.<sup>15</sup> According to Applicant, she felt that the children should have whatever they wanted, and she spent money needlessly. A consequence of her actions was that Applicant would borrow money from his 401(k) retirement plan to help pay the bills.<sup>16</sup> He would repay the loan only to go through the entire cycle repeatedly. In addition, although his first wife had a bachelor's degree in teaching, she refused to work.<sup>17</sup> Eventually, Applicant started missing monthly payments and accounts became delinquent.

In 2001, after over-extending themselves because of a family vacation, Applicant decided to pay a variety of bills, but not one for his family's third automobile.<sup>18</sup> After missing three payments, the vehicle was repossessed.<sup>19</sup> In 2004, after missing payments for another automobile for three months, that vehicle was also repossessed.<sup>20</sup> In early 2010, after missing payments, a piano was repossessed.<sup>21</sup> In December 2009, Applicant stopped making mortgage payments for the family residence, and in March 2011, the foreclosure process commenced.<sup>22</sup> As a result of being chronically financially

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<sup>11</sup> *Id.* at 25-26.

<sup>12</sup> Item 6 (Statement), *supra* note 4.

<sup>13</sup> Item 5, *supra* note 1, at 28-29.

<sup>14</sup> Item 6 (Joint Parenting Agreement), *supra* note 4.

<sup>15</sup> Item 7 (Personal Subject Interview, dated November 12, 2010 (2010 PSI)), at 1, attached to Applicant's Answers to Interrogatories.

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

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

<sup>18</sup> Item 7 (Personal Subject Interview, dated October 23, 2006 (2006 PSI)), at 1, attached to Applicant's Answers to Interrogatories.

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

<sup>20</sup> Item 7 (2010 PSI), *supra* note 15, at 1.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.*; Item 10 (Equifax Credit Report, dated December 21, 2011), at 2.

overextended, accounts started to become delinquent, and were placed for collection or charged off.<sup>23</sup> Because of the “vicious cycle” pertaining to his wife’s spending habits and their irreconcilable differences, Applicant and his wife decided to divorce.<sup>24</sup>

In November 2011, Applicant’s annual gross salary was \$89,900, with a monthly net salary of about \$5,200.<sup>25</sup> He estimated his take home pay for every two weeks to be about \$2,600. He claimed \$3,418 in monthly expenses, including \$1,020 for child support, and \$500 for ex-spousal maintenance.<sup>26</sup> Using his numbers, he should have had approximately \$1,782 left over each month for discretionary spending or savings. As of November 2010, Applicant was current on all of his newer accounts.<sup>27</sup>

The SOR identified 11 continuing delinquencies, totaling approximately \$70,709. One of those accounts is a delinquency of \$17,717 on a home mortgage that is in a foreclosure status with a total loan balance of approximately \$69,991. Two medical accounts have delinquent balances of \$53 and \$100, respectively. There is no dispute regarding any of the accounts, as Applicant has made no payments to any of the creditors.<sup>28</sup> During his 2010 interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant indicated he would contact his creditors to set up repayment arrangements to satisfy his debts.<sup>29</sup> He has not submitted any documentary evidence to confirm that he did so. He recently noted:<sup>30</sup>

I am prepared to start the process to recover the listed debts. . . . Over the next two years I plan to recover all of the debts under \$5000.00 dollars and will work with the other institutions to make agreed restitution and payments until all debts are recovered.

Furthermore, because he has repeatedly promised to address his delinquent accounts in the future, and has not yet done so, there are no indications that his financial problems are being resolved or are under control. There is no evidence that Applicant has received any financial counseling regarding money management, debt consolidation, or repayment plans.

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<sup>23</sup> *Id.*

<sup>24</sup> Item 6 (Statement), *supra* note 4.

<sup>25</sup> Item 7 (2010 PSI), *supra* note 15, at 3.

<sup>26</sup> *Id.*; Item 6 (Joint Parenting Agreement), *supra* note 4, at 4; Item 6 (Marital Settlement Agreement), *supra* note 4, at 3.

<sup>27</sup> *Id.* Item 7 (2010 PSI).

<sup>28</sup> Item 4, *supra* note 5.

<sup>29</sup> Item 7 (2010 PSI), *supra* note 15, at 1-3.

<sup>30</sup> Item 6 (Statement), *supra* note 4.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>31</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>32</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>33</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>34</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>31</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>32</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>33</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>34</sup> *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>35</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>36</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

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

The security concern relating to the guideline 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(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly, under AG ¶ 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Applicant’s financial problems go as far back as 2001, when a vehicle was repossessed. In 2004, another automobile was repossessed. In 2010, a piano was repossessed. In March 2011, the foreclosure process on his residence commenced. His financial difficulties remain unresolved. AG ¶¶ 19(a) and 19(c) apply.

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<sup>35</sup> *Egan*, 484 U.S. at 531

<sup>36</sup> See Exec. Or. 10865 § 7.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “*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.*” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “*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.*” Evidence that “*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*” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*”<sup>37</sup>

AG ¶¶ 20(a), 20(c), and 20(d) do not apply. The nature, frequency, and relative recency of Applicant’s continuing financial difficulties since about 2001 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” There is no evidence to indicate Applicant has ever received counseling in money management, debt management, debt repayment, or budgeting. His declaration of future intention to resolve his debts, after so much time where no positive efforts were taken, not even the payment of a small \$53 debt, does not qualify as a “good-faith” effort, and are entitled to little weight.<sup>38</sup> In light of his substantial period of continuing financial problems, it is unlikely that they will be resolved in the short term, and they are likely to continue.

AG ¶ 20(b) minimally applies. Applicant attributed his financial problems to his first wife’s extravagant spending habits. In a way, Applicant continued to enable her spending sprees when he repeatedly borrowed money from his 401(k) retirement plan to help pay the bills. He also participated in decisions regarding overspending during a vacation. His history of delinquent debt extends over many years and although his ex-wife’s spending adversely affected his finances, he did not act responsibly under the circumstances. At some point he should have set up separate accounts and managed his own finances.

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<sup>37</sup> The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that she or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>38</sup> See ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008).

The evidence does not support a conclusion that Applicant acted responsibly under the circumstances. Accordingly, Applicant failed to mitigate his financial situation, and under the circumstances, his actions do cast doubt on his current reliability, trustworthiness, and good judgment.<sup>39</sup>

### **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 the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>40</sup>

There is some evidence in favor of mitigating Applicant's conduct. His financial difficulties were caused, in part, because of his first wife's extravagant spending habits. His newer accounts were current, as of 2010.

The disqualifying evidence under the whole-person concept is more substantial. Applicant encountered numerous delinquencies since 2001, and some of them resulted in repossessions and a residence in a foreclosure status. His track record for addressing his delinquent debts is unsatisfactory. Applicant could have made some reasonable timely efforts to resolve some of his SOR accounts, but he has not done so. Applicant's actions indicate poor self-control and a lack of judgment, which raise questions about his reliability, trustworthiness and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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<sup>39</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>40</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).



## 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against 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 ROBINSON GALES  
Administrative Judge