



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-01688
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

December 22, 2011

**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concern. He was unable to pay his student loans and some smaller debts because he was unable to find a full time job for four years. After securing a full time job, he consolidated and paid his student loans on time, paid some of his smaller debts, and put his financial house in order. His past indebtedness no longer raises a security concern. Clearance is granted.

**Procedural History**

On July 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), which alleges the security concern under Guideline F (Financial Considerations). Applicant submitted a response

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<sup>1</sup> This action was taken pursuant to 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.

on August 11, 2011 (Answer). He admitted the debts alleged, provided significant information in mitigation, and requested a hearing.

On November 1, 2011, Department Counsel filed its ready-to-proceed. On November 8, 2011, the parties agreed to hold the hearing on December 6, 2011. DOHA issued a notice of hearing on November 16, 2011, scheduling this matter via video teleconference on the previously agreed upon date.<sup>2</sup>

At hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel also submitted a demonstrative aid, setting forth each of the debts and their current status, that was marked and accepted into the record without objection as Hearing Exhibit III. Applicant appeared at the hearing and testified on his own behalf. He offered Applicant's Exhibits (AE) A through C, which were admitted into evidence without objection. I kept the record open to provide him the opportunity to submit additional matters for my consideration. He timely submitted AE D and E, which were also admitted without objection. The transcript (Tr.) was received on December 14, 2011.<sup>3</sup>

### **Findings of Fact**

Applicant is 30 years old and has been working since he was 15. He graduated from high school in 2000 and attained his associate's degree in criminal justice in 2009. He has been working as a pipefitter for his current employer, a government contractor, since October 2010. His current salary is approximately \$30,000 per year.<sup>4</sup>

Applicant was unemployed or underemployed for four years before securing his current job. From July 2006 to November 2008, he was only able to find part time work as a carpenter. He was then unemployed from December 2008 to September 2010.<sup>5</sup>

Applicant has been living with his fiancé since 2008. She has a full time job and they are raising their two children, 1 and 2 years old, together as a family. Applicant's fiancé assisted him financially as best she could while he was underemployed and unemployed from July 2006 to September 2010.<sup>6</sup>

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<sup>2</sup> Applicant did not receive the NOH until a week or so before the hearing. He was prepared to proceed and waived the 15-day notice requirement. As a time management tool, on November 21, 2011, I issued a prehearing order requiring the parties to serve one another and me their anticipated exhibits prior to the hearing. Hearing Exhibit I.

<sup>3</sup> I made pen-and-ink changes at 15, 17, 40, in order to correct some minor typographical errors.

<sup>4</sup> GE 1; Answer; Tr. at 33-34, 36.

<sup>5</sup> GE 1; GE 3, *Subject Interview* at 3.

<sup>6</sup> GE 1; GE 3; Tr. at 36, 42-43.

The lack of full time employment left Applicant unable to pay his student loans. He took out about \$30,000 in student loans for his two-year associate's degree. He listed this delinquent student loan debt on his security clearance application and discussed it with the investigator during his background interview. He consolidated his student loans and has been paying \$308 per month for the last seven months. He submitted documentary proof of payment.<sup>7</sup> This is the major debt alleged in the SOR.<sup>8</sup>

Applicant's non-student loan debts are an old cell phone bill for \$612 (¶1.a) and two delinquent medical bills for a combined total of about \$2,000 (¶¶ 1.j and 1.r). Applicant contacted the creditor regarding the old cell phone bill, established a payment plan of \$120 per month for six months, and paid off this debt. He submitted documentary proof regarding the satisfaction of this debt.<sup>9</sup>

Applicant incurred the two medical bills about four years ago when he broke his fibula and had to go to the emergency room. He did not have health insurance at the time. He has had a difficult time tracking down the creditor holding these debts. He submitted a hardship waiver to the hospital, but the hospital never acted on it. He then decided to call the hospital directly in order to pay these bills. The hospital was recently able to locate one of the bills. Applicant settled this bill, agreed to a payment plan, and submitted documentary proof of payment. He is using the money that was recently freed up, after paying his old cell phone bill, to pay his medical debts.<sup>10</sup>

Applicant's outlook on life has changed dramatically with the recent birth of his children. He realizes that he has to responsibly handle his finances, in order to provide for them and put himself in a position to purchase a home for the family.<sup>11</sup> He took over the family's finances from his fiancé, because he discovered that he was better at paying their bills on time than his fiancé. He has all their monthly expenses, including his student loans, deducted from their bank account each month automatically. He did this in order to make sure that the family did not spend any of the money set aside to pay their bills on other matters. He has paid off his car loan and convinced his fiancé to trade in her vehicle to purchase an older model car outright. This move alone has saved the family about \$800 a month. He has an additional \$20 to \$35 in taxes taken out of his weekly paycheck, with the expectation that he will receive a large income tax refund that

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<sup>7</sup> AE C. See also GE 1; GE 2; GE 3; Answer; Tr. at 30-31, 37.

<sup>8</sup> The SOR alleges 18 delinquent debts, 15 of which are Applicant's student loans. (SOR ¶¶ 1.b – 1.i and 1k – 1q). Applicant has consolidated his student loans. See Answer, *Student Loan Statement*.

<sup>9</sup> GE 2 (payment plan); AE B (proof of payments); GE 5 (new credit report reflects this account is paid); Answer; Tr. at 37. See also Tr. at 19-20 (Government stipulates debt has been paid).

<sup>10</sup> AE D; AE E; Tr. at 40-42, 53-55; GE 2; GE 3; Answer.

<sup>11</sup> See Tr. at 58 (“After becoming a father a lot of things, well basically life started to come into play. And how to provide for a family . . . And I’ve kind of got that sense, looking into my kids’ eyes plenty of times . . . And I guess it just struck me from there that I have to change and do something for myself to provide for my family. And I’ve been, and as you can see, that I’ve been trying my best.”).

he will use to satisfy any remaining debts. He has paid his taxes on time, does not have credit cards, and has not incurred any additional bad debt.<sup>12</sup>

Applicant's fiancé recently suffered a serious medical emergency that resulted in increased medical bills for the family. Applicant was able to pay these new medical bills and continue paying their monthly expenses on time, including his student loan obligation. This recent medical emergency and resulting medical bills did impact Applicant's ability to satisfy his old medical debts.<sup>13</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 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>14</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 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

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<sup>12</sup> Tr. at 43-63. See also GE 2, *Personal Financial Statement* (car expenses use to cost the family \$855 per month); GE 4 and GE 5 (only bad debts listed on credit reports are those reflected in SOR).

<sup>13</sup> Tr. at 59-60.

<sup>14</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.").

awarded a clearance, he actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country.”<sup>15</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 past indebtedness raises this concern and establishes the following disqualifying conditions under AG ¶ 19:

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

However, 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 judgment, reliability, and trustworthiness.”<sup>16</sup> Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions, and find that the following were established by the evidence:

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

<sup>16</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).

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's past financial problems were due to matters beyond his control. He incurred medical expenses when he suffered a broken leg and had to go to the emergency room. He did not have health insurance at the time and incurred large medical bills as a result. He was unable to pay the medical bills and his student loans because he was unemployed or underemployed for four years until September 2010. Since securing his current full time job, Applicant has responsibly handled his financial affairs. He has consolidated his student loans and has been consistently paying them for seven months. He satisfied an old cell phone bill and is using the money that was freed up from paying this bill to pay his old medical bills. AG ¶¶ 20(b) and 20(d) apply.

Applicant has taken several concrete steps to put his financial house in order. He has placed his monthly expenses on automatic deduction, which prevents the family from spending beyond their means. He has also slashed the family's living expenses, notably their car expenditures. These fiscally responsible steps have provided the family additional income to meet unexpected contingencies and satisfy old debts. He is also setting aside additional money through his taxes to satisfy his old medical debts.

Applicant's newfound sense of fiscal responsibility was recently tested when his fiancé suffered a medical emergency. He was able to meet the added financial burdens and continued paying the family's monthly expenses, including his student loans, on a timely basis. This unexpected medical emergency did impact Applicant's ability to satisfy his old medical bills. However, he is resolving these debts and has not accumulated any other bad debt. He now has the financial means to satisfy his old medical bills and, more importantly, a proven track record of fiscal responsibility. AG ¶¶ 20(c) applies.<sup>17</sup> Applicant's past financial problem no longer raises 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

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<sup>17</sup> *Contrast with* ISCR Case No. 09-08108 (App. Bd. Feb. 15, 2011) (application of mitigating conditions not warranted because applicant's financial trouble due to voluntary decision to switch jobs and, as of the close of the record, he had paid only one debt, and only after being sued by the creditor).

nine factors listed at AG ¶ 2(a).<sup>18</sup> I incorporate my Guideline F analysis herein and highlight some additional whole-person factors. Applicant's delinquent debts are not a result of frivolous spending or other matters that would themselves raise a security concern. Instead, his financial problems were due to an unexpected medical emergency and excessive student loan debt – neither of which, except that they were delinquent, raises a security concern. He has matured greatly with the recent birth of his children. He has resolved his financial problems not simply because of the current security issue, but because he wants to provide a better life for his children. This provides far greater assurance that he will continue to responsibly manage his finances once the spotlight from this security review has long passed. He answered the questions posed by the Government and myself in a straightforward fashion without making excuses or attempting in any way to minimize his role in getting into financial difficulty in the first place. These whole-person factors, in conjunction with the mitigating conditions noted above, fully mitigate the financial considerations concern. Overall, the record evidence leaves me with no questions or 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):      FOR APPLICANT

Subparagraphs 1.a through 1.r:      For Applicant<sup>19</sup>

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>18</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>19</sup> SOR ¶ 1.q was withdrawn by the Government at hearing. Tr. at 17-18.