



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



In the matter of: )  
)  
) ISCR Case No. 11-02439  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

April 24, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 55-year-old employee of a defense contractor. He is alleged to be indebted to five creditors in the approximate amount of \$66,956. Applicant mitigated the Financial Considerations security concerns, because his inability to repay his debts was caused by his wife’s unexpected unemployment, and he has acted responsibly with respect to his debts. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 15, 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) effective September 1, 2006.

Applicant answered the SOR on October 11, 2011, and requested a hearing before an administrative judge. The case was assigned to me on February 13, 2012. DOHA issued a notice of hearing on February 15, 2012, scheduling the hearing for March 20, 2012. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibits (AE) A through G, which were admitted without objection. Applicant testified on his own behalf and called one witness. The record was left open for Applicant to submit additional exhibits and on April 2, 2012, and April 3, 2012, Applicant presented AE H through AE R. Department Counsel had no objections to AE H through AE R and each exhibit was admitted. DOHA received the transcript of the hearing (Tr.) on March 29, 2012.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a through 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 55-year-old employee of a defense contractor. He enlisted in the Navy from 1973 to 1977. He possesses a bachelor's degree. He has worked as a government contractor for the past 35 years. He has held a security clearance since 1985. (GE 1; AE Q; Tr. 29-30.)

Applicant is married and has three adult children. One of his sons is on active duty in the Army and has served several tours in Iraq. His youngest daughter, who is now 18, is gifted academically. When she was applying to high schools, she applied and was accepted into a very prestigious private high school. Applicant and his wife decided that they would try to make financial sacrifices to send their daughter to the costly private school. They were able to make ends meet by relying on credit cards and personal loans during that time. In May 2010, just after their daughter graduated from high school and they started to pay off the debts they amassed while putting her through the private school, Applicants' wife was laid off from her job. Some of their bills became delinquent. Applicant's wife's layoff reduced that family's yearly income by \$25,000 a year. She has been unable to find employment since that time and her unemployment benefits have expired. (GE 1; GE 4; Tr. 29-35.)

In February 2010, prior to being laid-off, Applicant's wife contacted a debt management company (DMC) to help them address their debts. She had arranged to make monthly payments of \$1,300 to DMC. DMC agreed to negotiate with each creditor on Applicant's behalf, and pay off the debts as the sums became available from the deposits Applicant made monthly with DMC. With the help of DMC, Applicant has satisfied four accounts that are not listed on the SOR. In May of 2010, after Applicant's wife lost her job, Applicant lowered his monthly payment to DMC to \$700. At that rate, DMC estimated that it would take Applicant 49 months to satisfy all of their delinquent debt. A letter from DMC verifies the status of each debt and indicates that Applicant has not missed a payment since enrolling in the debt management program. (AE D; AE E; AE H; Tr. 51-54.)

As stated in the SOR, Applicant is alleged to be indebted to five creditors in the approximate amount of \$66,956. Applicant admits each of these debts. The debts appear on Applicant's credit reports dated October 2010, March 2011, June 2011, January 2012, and March 2012. His credit reports reflect that each debt has been past due since approximately May or June 2010. (GE 2; GE 3; GE 5; GE 7.) Applicant's debts are as follows.

Applicant was indebted on a credit card account in the approximate amount of \$17,867, as stated in SOR ¶ 1.a. Applicant has been making payments on this debt through DMC since January 2012. He intends to pay off this debt by June 2012 with a lump sum payment after he receives a loan from his 401K. He introduced documentation from DMC showing his history of disbursed payments to this creditor. (AE C; AE D; Tr. 36, 41, 54.)

Applicant is indebted on a credit card in the approximate amount of \$16,420, as stated in SOR ¶ 1.b. This debt is being managed by DMC, although no payments on this account have been made through DMC as of the close of the record. (AE C; AE D; Tr. 37, 42, 57.)

Applicant was indebted on a credit card in the approximate amount of \$6,623, as stated in SOR ¶ 1.c. Applicant has been making \$331.16 payments per month to this creditor through DMC. Applicant testified, and DMC records show, that his final payment to this creditor would be made shortly after the hearing. (AE C; AE D; Tr. 37-38, 42, 53-54.)

Applicant was indebted on a credit card in the approximate amount of \$18,333 as stated in SOR ¶ 1.d. This debt was for an unsecured loan from a credit union. In November 2010, Applicant began making monthly payments of \$300 to this creditor to repay this debt. He provided an account statement showing he has made each payment since that time, and the current balance due is \$14,733. (AE C; AE D; AE J; 38-39, 42-43, 54-57.)

Applicant was indebted on a credit card debt in the approximate amount of \$7,713 as stated in SOR ¶ 1.e. Applicant had listed this debt with DMC for repayment. However, before Applicant's account had the funds available to settle this debt, the creditor secured a judgment against Applicant. On February 22, 2012, an earnings withholding order was filed with Applicant's employer for the total amount of \$8,881.91. (AE C; AE I; Tr. 39, 44-45, 60-62.)

In Applicant's post-hearing submission, he provided evidence that he has requested a \$38,000 loan from his 401K plan to satisfy his remaining debts. He believes these funds will be sufficient to satisfy his remaining debts. Applicant and his wife are remorseful about their financial decisions. They did not anticipate the loss of Applicant's wife's income and testified they always intended to repay their debts. (AE R; Tr. 29-35, 51-65.)

Applicant is well respected by his senior manager, co-workers, and friends who wrote letters of support attesting to Applicant's trustworthiness, high degree of honor, and integrity. In 2012, Applicant was recognized as employee of the month for his exemplary conduct. Applicant volunteers in his community with the Boy Scouts and builds computers for needy neighbors. (AE F; AE G; AE M; AE N; AO O; AE P; AE Q.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 clearance 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 protect or 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.

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, 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.

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 was unable to satisfy debts owed to five creditors in the approximate amount of \$66,956, as alleged on the SOR. These debts have been past due since 2010. The Government established a case for disqualification under Guideline F.

Four Financial Considerations mitigating conditions under AG ¶ 20 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; and

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

Applicant established significant mitigating factors for his financial considerations. While his financial difficulties are recent, they occurred due to Applicant's wife's unexpected unemployment after incurring a costly education for their daughter. While he did choose to send their daughter to an expensive private school, he made that financial choice based partially upon his wife's income. Applicant was current on his debts and was beginning to repay his large financial obligations until his wife lost her job. His wife's job loss occurred due to circumstances that were completely beyond his control. Further, his financial delinquencies do not reflect recent poor judgment. Applicant has acted responsibly by incurring no further debts since 2010, while regularly paying into his debt management program.

Applicant sought the help of DMC to manage his debts even before the credit reports reflect he became delinquent on his debts. After his wife lost her job and he was unable to make his higher monthly payment to DMC, he contacted them and worked out a new debt repayment plan. Through DMC, he has repaid four debts, not listed on the SOR, and is currently making payments on two of the debts listed on the SOR (allegations 1.a and 1.c). He is making separate payments directly to the creditor alleged in 1.d. Payments to the creditor in 1.d and to DMC have been documented and have been consistently on time for over a year-and-a-half. While the debts to Applicant's creditors in 1.b and 1.e remain outstanding, Applicant has shown a track record of systematically addressing his indebtedness. Further, he has now taken a loan from his 401K, which he has indicated he will use to repay his remaining accounts. Given Applicant's recent history of working diligently to satisfy his debts, and his credibility as attested to by those who know him best, he has shown he can be relied upon to continue to address his remaining delinquent accounts. He is making a good faith effort to repay his financial obligations.

Applicant has a distinguished history of acting with honor and integrity. He can be trusted to monitor his finances closely and resolve his debts in the future. Applicant has acted responsibly by following the advice of DMC. Applicant's financial problems are under control. AG ¶¶ 20(b), 20(c), and 20(d) apply.

### **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. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by his superiors, friends, and co-workers. He performs well at his job. His reputation for integrity and his military service record show Applicant is trustworthy.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concern.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge