



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



In the matter of: )  
)  
) ISCR Case No. 11-02512  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

06/11/2012

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 11, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 14, 2012, and requested a hearing before an administrative judge. The case was assigned to me on April 3, 2012. DOHA issued a notice of hearing on April 6, 2012, and the hearing was convened as

scheduled on April 25, 2012. The Government offered exhibits (GE) 1 through 9, which were admitted into evidence. GE 3 was objected to by Applicant, but that objection was overruled. No other objections were made. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and did not submit any exhibits at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted AE A, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 3, 2012.

### **Findings of Fact**

Applicant admitted the following SOR allegations: ¶¶ 1.a – 1.c, 1.e, 1.g, and 1.h. He denied ¶¶ 1.d, 1.f, 1.i, and 1.j. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since March 2010. He is an aircraft loadmaster. He has an associate's degree. He is married, with one adult child from a previous marriage and two adult stepchildren. His wife works as a real estate agent. He is not currently being paid by his employer. He served in the Air Force on active duty for 16 years and held a security clearance during that time. He received an honorable discharge. He does not currently hold a secret security clearance.<sup>1</sup>

The SOR alleges a bankruptcy discharge in 1999, two mortgage foreclosures, and seven delinquent debts totaling about \$24,303. The debts were listed on credit reports obtained on May 4, 2010, and October 4, 2011.<sup>2</sup>

Applicant stated that his divorce led to the Chapter 7 bankruptcy in 1999 (SOR ¶ 1.a). As a result of the divorce proceedings, he incurred high attorney's fees. These fees were ultimately discharged in bankruptcy. After he left the Air Force, he began working in the real estate business in 2001. From 2001 to 2005, he purchased several homes and then rented them. He used the rental income to purchase additional homes. In 2005 the real estate market collapsed and he was unable to sell the properties or to make the mortgage payments. In his answer to the SOR, Applicant thought he only had one property foreclosed; however, during his testimony he remembered that both a duplex (SOR ¶ 1.b) and a condominium (SOR ¶ 1.j) were foreclosed. The credit reports also show two different mortgages, for two different amounts, opened on two different dates, and to two different mortgage holders. I find that there were two separate mortgage foreclosures in 2008. Applicant did not supply any forgiveness of debt documentation for the foreclosed properties.<sup>3</sup>

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<sup>1</sup> Tr. at 6-7, 33, 36; GE 1.

<sup>2</sup> GE 5-6.

<sup>3</sup> Tr. at 26, 43-44, 67-68; GE 5-6, 8; Answer to SOR.

The debt alleged in SOR ¶ 1.c is a delinquent credit card debt in the amount of \$14,000. Applicant admits he used the card to take cash advances to make mortgage payments. He contacted the creditor to negotiate a settlement, but was unable to do so. This debt is unresolved.<sup>4</sup>

Applicant denies the debt alleged in SOR ¶ 1.d in the amount of \$1,212. He claims that he has no knowledge of the debt, and he was overseas when the debt was listed on his credit report. He did not supply any documentation disputing the debt. The debt is listed on both credit reports as an installment debt. It was opened in December 2009 and the last action on the account was in April 2010.<sup>5</sup>

The debt alleged in SOR ¶ 1.e is a delinquent credit card debt in the amount of \$8,071. Applicant admitted he used the card to take cash advances to make mortgage payments. He contacted the creditor to negotiate a settlement, but was unable do so. This debt is unresolved.<sup>6</sup>

Applicant denies the debt alleged in SOR ¶ 1.f in the amount of \$74. He claims that he has no knowledge of the debt. He did not supply any documentation disputing the debt. The debt is listed on one credit report as a medical debt. It was opened in November 2007 and the last action on the account was in January 2008.<sup>7</sup>

The debt alleged in SOR ¶ 1.g is a delinquent utility debt in the amount of \$257. Applicant claims in his testimony that the debt was from a rental property that the tenant was responsible for paying. He did not supply any documentation supporting this claim. In his SOR answer, he admitted this debt. This debt is unresolved.<sup>8</sup>

The debt alleged in SOR ¶ 1.h is a delinquent debt in the amount of \$61. Applicant admits that he hired a company to provide website management. This debt is unresolved.<sup>9</sup>

Applicant denies the debt alleged in SOR ¶ 1.i in the amount of \$628. He claims that he has no knowledge of the debt. He did not supply any documentation disputing the debt. The debt is listed on one credit report as a medical debt. It was opened in February 2009 and the last action on the account was in June 2007 (this appears to be an erroneous date). It is not listed on the most recent credit report.<sup>10</sup>

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<sup>4</sup> Tr. at 52-53; GE 8; Answer to SOR.

<sup>5</sup> Tr. at 54; GE 5-6, 8; Answer to SOR.

<sup>6</sup> Tr. at 55; GE 8, Answer to SOR.

<sup>7</sup> Tr. at 57; GE 5, 8; Answer to SOR.

<sup>8</sup> Tr. at 58; Answer to SOR.

<sup>9</sup> Tr. at 59-60; Answer to SOR.

<sup>10</sup> Tr. at 60; GE 5-6; Answer to SOR.

Although not alleged in the SOR, Applicant is indebted to the IRS for unpaid taxes for years 2005-2007. He is currently paying about \$340 monthly towards that debt. He currently owns a home that he believes has a market value of \$600,000, and that has a mortgage of \$280,000. His equity in this home is approximately \$320,000. The only financial counseling he sought concerned whether he qualified for a loan modification.<sup>11</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 that 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

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<sup>11</sup> Tr. at 72-73; GE 8.

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* Executive Order 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 has had a prior bankruptcy, two mortgage foreclosures, and he failed to pay the debts listed above. He was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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;

(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's foreclosed mortgages are recent and multiple. His other delinquent debts are ongoing and he has not made any payments toward those debts. His poor financial record and his lack of payment toward any of the debts cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant made conscious decisions to buy real estate as an investment strategy. When the real estate market crashed, he was unable to pay his obligations. It is unwarranted to now conclude that because the real estate market is down and he experienced some unforeseen costs with his investments, that these were conditions beyond his control. These are part of the risks inherent in this type of business investment. AG ¶ 20(b) is not applicable.

The only evidence of financial counseling is Applicant's seeking information about loan modifications. Although AG ¶ 20(c) partially applies, ¶ 20(d) does not. He did not supply any documentation to support his disputed debts. I am giving him the benefit of the doubt concerning the debt at SOR ¶ 1.i because the credit report entry is confusing and that debt does not appear on the most recent credit report. Otherwise, ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern 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 relevant 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 that guideline, but some warrant additional comment.

I considered Applicant's years of service to the Air Force. I also considered that he purposefully engaged in a real estate strategy that led to his financial problems. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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 E. Coacher  
Administrative Judge