



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



In the matter of: )  
)  
) ISCR Case No. 11-02567  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray Blank, Esq., Department Counsel  
For Applicant: *Pro se*

06/29/2012

**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 February 15, 2012, 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 March 16, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2012. DOHA issued a notice of hearing on June 2, 2012, scheduling the hearing for June 14,

2012. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on June 22, 2012.

## **Procedural and Evidentiary Rulings**

### **Notice**

Applicant affirmatively waived his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

### **Evidence**

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE K through O and admitted without objection. Department Counsel's correspondence forwarding AE K through O is marked Hearing Exhibit (HE) I.

### **Findings of Fact**

Applicant is a 40-year-old employee of a defense contractor. He has worked for his current employer since March 2010. He served in the U.S. military from 1993 until he was honorably discharged in 1999. He held a security clearance in the past, but it lapsed when he changed jobs. He attended college for a period but did not obtain a degree. He is married with three adult stepchildren and one minor stepchild.<sup>1</sup>

Applicant has had financial problems for a number of years. In the military, he was stationed in an area with a high cost of living, and he had difficulty paying his bills with his pay as a junior enlisted service member. He admitted that he lived beyond his means and became overextended on credit cards, which continued after his discharge from the military. He left a good-paying job in 2001 to move back home to care for his mother after she suffered an injury. He cosigned a car loan for a girlfriend. She did not maintain the payments on the loan after they broke up, and her car was repossessed. Applicant had about five other cars that were repossessed. He also lost his job in 2009. He had accessed a few social networking sites on his work computer. His employer stated it was a violation of company policy and offered him the option of resignation or termination. He chose resignation. He was unable to find full-time employment until 2010.<sup>2</sup>

The SOR alleges 15 delinquent debts totaling more than \$45,000. In his response to the SOR, Applicant admitted owing all the debts in the SOR, with the exception of the \$442 medical debt alleged in SOR ¶ 1.j. The name of the creditor for that debt is not identified in the SOR. The debt appears on a 2010 credit report without

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<sup>1</sup> Tr. at 24, 63-65, 73; GE 1; AE G.

<sup>2</sup> Tr. at 24-27, 30-33, 36-39, 50-51; GE 1, 2.

naming a creditor. The debt is listed as opened in July 2004, with a date of last action of April 2004. The debt does not appear on later credit reports.<sup>3</sup>

Applicant did not have enough taxes withheld from his pay for a number of years, and he did not pay his tax liability when due. He had a \$6,766 federal tax lien filed against him in August 2009. He entered into an installment agreement with the Internal Revenue Service (IRS) to pay \$300 toward his back taxes. A June 2011 notice from the IRS confirmed the installment agreement. The notice indicated that Applicant's 2006 taxes had been paid. He owed in excess of \$15,700 in taxes and penalties for tax years 2007 and 2008. The amount owed in interest was not legible on the document.<sup>4</sup>

Applicant's payments to the IRS left him unable to pay his other delinquent debts. When he received the SOR, he felt that his only option was to file bankruptcy. He filed Chapter 7 bankruptcy in March 2012. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$800 owed on a loan for a 2003 car. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$17,000 owed to the IRS. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed 21 debts totaling \$50,797. Schedule I, Current Income of Individual Debtor(s), listed Applicant's and his wife's net monthly take home pay as \$3,597. Under Schedule J, Current Expenditures of Individual Debtor(s), the petition listed Applicant's average monthly expenses as \$3,765. That figure includes \$300 to the IRS and \$50 toward Applicant's student loan. When Applicant's average monthly expenses are subtracted from his average monthly income, the remainder is negative \$167.<sup>5</sup>

Applicant made some payments toward his delinquent debts, and he paid several debts that were not alleged in the SOR. He owed the Department of Veterans Affairs (VA) \$159, as alleged in SOR ¶ 1.i. He sent a \$159 check to the VA in May 2011. There is no evidence that the check was honored. Applicant's bank statement shows two \$35 nonsufficient funds (NSF) debits and two \$35 overdraft fees shortly before and after the date on the check to the VA. The debt is listed on Applicant's bankruptcy petition.<sup>6</sup>

Applicant received financial counseling as a requirement of his bankruptcy. His wife is disabled. She is in a protracted custody battle over her child and is currently residing in the state where the child is located. Applicant has helped her with her legal costs and her living expenses. He testified that his finances are tight and that every dollar of his income "is accounted for somewhere."<sup>7</sup>

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<sup>3</sup> Tr. at 33-35; Applicant's response to SOR; GE 3-6; AE B-D, I.

<sup>4</sup> Tr. at 27, 40-41, 54-57, 66-67; GE 2-4. Applicant's tax problems were not alleged in the SOR. Any debts that were not specifically alleged in the SOR will not be used for disqualification purposes. They may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

<sup>5</sup> Tr. at 27-28, 40, 59-61, 69-71; Applicant's response to SOR; AE A, F.

<sup>6</sup> Tr. at 42-48, 54, 59-60; Applicant's response to SOR; GE 2, 3.

<sup>7</sup> Tr. at 54-58; Applicant's response to SOR; AE F, H.

Applicant submitted a number of documents and letters attesting to his character and his excellent performance while in the military. He is praised as a hard-working family man who displays integrity, honor, professionalism, dependability, reliability, and honesty.<sup>8</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.

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<sup>8</sup> AE E, G, H, J-O.

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 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.

There is insufficient evidence to conclude that Applicant owes the \$442 unidentified medical debt alleged in SOR ¶ 1.j. That allegation is concluded for Applicant.

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.

Applicant was stationed in the military in an area with a high cost of living. He left a good-paying job in 2001 to care for his mother. His ex-girlfriend did not maintain the payments on the car loan he cosigned. He had periods of unemployment and underemployment. His wife is disabled and in a protracted custody battle over her child. These events constitute conditions that were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant admitted that he lived beyond his means and overextended himself on credit cards. For several years, he did not have enough taxes withheld from his pay, and he did not pay his tax liability when due. Applicant filed Chapter 7 bankruptcy and received financial counseling as a requirement of the bankruptcy. His debts have not yet been discharged. Moreover, his bankruptcy petition shows that Applicant's monthly expenses are more than his monthly income.

I am unable to find that Applicant acted completely responsibly under the circumstances or that he made a good-faith effort to pay his debts.<sup>9</sup> His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is not.

### **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

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<sup>9</sup> The Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [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 he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [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. Jun. 4, 2001)).

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 that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and his honorable military service. Events beyond Applicant's control had a significant effect on his finances, but some of his financial problems were of his own creation. His bankruptcy, even if granted, will not solve all his financial problems because his monthly expenses exceed his income.

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.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.o:	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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Edward W. Loughran  
Administrative Judge