



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-03361
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

January 24, 2012

**Decision**

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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 July 14, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 9, 2011, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2011. DOHA issued a notice of hearing on November 15, 2011, scheduling the hearing for December 7, 2011. The hearing was convened as scheduled. The Government offered exhibits

(GE) 1 through 7. GE 1 and GE 3 through 7 were admitted without objection. Applicant's objection to part of GE 2 was sustained. The remainder of the exhibit was admitted. Applicant testified and called a witness, but he did not submit any documentary evidence. The record was held open until January 11, 2012, for Applicant to submit additional information. No additional information was submitted. DOHA received the hearing transcript (Tr.) on December 15, 2011.

### **Findings of Fact**

Applicant is a 50-year-old employee of a defense contractor. He seeks to retain his security clearance. He served on active duty in the U.S. military in 1984. He was honorably discharged for medical reasons in 1985. He has an associate's degree. He is married with four children, ages 24, 22, 19, and 17. Applicant and his wife also raised a number of foster children.<sup>1</sup>

Applicant has had financial issues for a number of years. His wife suffers from a medical condition that makes it difficult for her to work a full-time job. Applicant lost income last year when he had medical problems that left him unable to receive incentive pay and work overtime. His wife's grandmother, mother, and aunt all had medical conditions requiring financial support. His wife's grandmother passed away in 2007, her aunt passed away in February 2011, and her father passed away in October 2011. Applicant's wife takes care of their grandchild. Even though Applicant's son works and earns a decent salary, Applicant and his wife pay most of the expenses of raising the grandchild. They also send some money to another son who is in prison.<sup>2</sup>

Applicant and his wife bought a house in 2004, financed with a mortgage of about \$65,000. It is an old house that, with the proper work, would be a nice house. Applicant stated the appraiser and the inspector both worked for the mortgage company. He stated the appraiser valued the house for more than it was worth, and the inspector did not report structural problems with the house. They had a 15-year warranty with a company that did faulty foundation work on the house, but the company went bankrupt. Applicant had funds set aside for improvements to the house. Because of the financial issues addressed above, he had to use the funds to pay other debts. Applicant was unable to pay for the improvements that would make the house habitable. Applicant stopped paying the mortgage last year. His family moved out of the house and into a rental property. The mortgage company has possession of the house, in that it changed the locks and prevented Applicant from reentering the property. It is unclear whether the mortgage company has instituted formal foreclosure proceedings. A December 2011 credit report lists the mortgage as \$11,000 past due, with a \$70,000 balance. Applicant reported his problems with his home and his mortgage to his company's security officer in September 2010.<sup>3</sup>

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<sup>1</sup> Tr. at 35, 39, 71, 101-102; GE 1.

<sup>2</sup> Tr. at 35-44, 52-55, 67-69, 81.

<sup>3</sup> Tr. at 56-61, 68, 75-76, 79-80; GE 6.

The SOR alleges Applicant's past-due mortgage and 14 other delinquent debts with balances totaling about \$7,500. The amounts owed on the debts range from \$38 to \$2,609. Applicant admitted owing all the debts. The debts also appear on various credit reports.

Applicant has prioritized payments on his debts. His first priority is to pay for his housing, utilities, food, car insurance, gas to drive to and from work, and minimal car repairs to ensure he can drive to and from work. He then pays his second-priority bills, which include recurring bills such as the telephone, car loan, loans for home repairs, and short-term loans. He stated that he usually runs out of funds while he is paying his second-priority bills. If he has any money left after paying his second-priority bills, Applicant will make payments toward his third-priority debts, which include long-term loans, medical bills not covered by insurance, past-due utility debts from previous homes, and student loans.<sup>4</sup>

Applicant has a significant amount of student loans. Credit reports from 2008 through 2011 list a \$56,000 Department of Education student loan in deferment. Applicant stated the student loan is accruing 9% interest. He estimated that he owed \$100,000 in student loans. He stated the deferment on the student loans had recently ended. He has not started paying the student loans.<sup>5</sup>

Applicant received some financial counseling in the early 1990s. He testified the counselor formulated a budget, but it "did not leave any food on the table for [his] family." He stated the counselor had his point of view, but "[Applicant's] point of view is family first, [his] job second, everybody else comes third." Applicant questioned the legitimacy of several of the debts alleged in the SOR, but he submitted no documentary evidence that he paid or disputed any of the debts. He stated the SOR debts are third-priority debts that he will attend to when he is able. He hopes to address his smaller debts first, and then move to the larger debts. He stated that he should be able to pay all the debts, except his student loans, within the next year.<sup>6</sup>

Applicant admitted that he will be unable to make his monthly student loan payments. He stated the student loans will be paid from his income tax refunds for the rest of his life. He also stated that when he retires, he would pay his student loans from his 401(k) retirement plan.<sup>7</sup>

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<sup>4</sup> Tr. at 69-70, 87; GE 2.

<sup>5</sup> Tr. at 69-78. Except for a delinquent \$1,575 student loan, the rest of Applicant's student loans 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 financial history, in the application of mitigating conditions, and in analyzing the "whole person."

<sup>6</sup> Tr. at 81-95, 102-110; GE 2.

<sup>7</sup> Tr. at 76-81, 90.

Applicant is a patriotic American. He stated that, despite his financial problems, he would never do anything to harm the United States.<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.

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

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<sup>8</sup> Tr. at 98-99.

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 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 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.

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; 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 wife suffers from a medical condition that makes it difficult for her to work a full-time job. Applicant lost income last year when he had medical problems that left him unable to receive incentive pay and work overtime. They have provided financial support to family members who were sick, and some of their family members passed away. Applicant also encountered a series of problems with his home. These events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant and his wife pay most of the expenses of raising their grandchild. It is unclear why, with their finances in disarray, they are bearing that financial burden when Applicant testified that the child's father works and earns a decent salary. This appears to be related to Applicant's perspective that it is his "family first, [his] job second, [and] everybody else comes third." There are six debts alleged in the SOR of \$55 or less. Applicant has not established that he has paid or successfully disputed any of the debts alleged in the SOR.

Applicant's finances do not appear to be headed in the right direction. His student loans have come out of deferment and are going unpaid. He estimated that he owed about \$100,000 in student loans that are accumulating interest at the rate of 9%.

I find that Applicant's 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), 20(d), and 20(e) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. I find that financial concerns remain despite the presence of some mitigation.

I find that, because of the many problems Applicant had with his home, his unpaid mortgage does not raise a security concern. SOR ¶ 1.b is concluded for Applicant.

### **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 that guideline, but some warrant additional comment.

I considered Applicant's honorable military service. He is obviously patriotic and loves this country. However, his finances are in disarray, and they appear to be headed in the wrong direction. There are six debts alleged in the SOR of \$55 or less. He has not paid any of them. He has \$100,000 in student loans that are accumulating interest at the rate of 9%. He knows that he will be unable to pay those loans. His only real plan is to have them paid out of his income tax refunds or from his 401(k) when he retires.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge