



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-04339
	)	
Applicant for Security Clearance	)	

**Appearances**

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

11/23/2012

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On July 19, 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 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 August 6, 2012, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on September 11, 2012. The FORM was mailed to Applicant

and he received it on September 24, 2012. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He provided an undated response (Response) to the FORM, which included several attachments. The case was assigned to me on November 14, 2012.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the SOR debts. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 31 years old. He is separated from his wife. He has one child from that marriage for whom he pays child support. He also has another son who lives with him and his girlfriend. He has worked for his current employer, a defense contractor, since February 2010. He also worked for a different defense contractor from September 2009 to February 2010. He is a cable installer. He has taken some college courses. He served in the Army on active duty between 2002 and 2009. He achieved the rank of specialist (E-4) and received an honorable discharge.<sup>1</sup>

The debts listed in the SOR are supported by credit reports dated September 2012, March 2012, December 2011, April 2011, and October 2010. Applicant claims the debts alleged in ¶¶ 1.a and 1.h. both arise from the same underlying debt. The debt alleged in ¶ 1.a is a judgment entered in January 2007 and is supported by a judgment and lien filing in the respective state for \$2,891. The debt alleged in ¶ 1.h is to a different creditor than that named in ¶ 1.a and the amount is \$2,861 as reflected in the September 2012 credit bureau report. This debt was charged off in 2006. Applicant entered into a payment plan arrangement to pay this debt in October 2012. He is to pay \$300 each month on the first of the month. Applicant did not supply proof that he had made any payments under the plan. I find that there is insufficient evidence to show that the two debts are related. Both ¶¶ 1.a and 1.h. are unresolved.<sup>2</sup>

The delinquent debt alleged in SOR ¶ 1.b is a consumer loan account in the amount of \$6,838. This debt has been delinquent since December 2006. In September 2012, Applicant entered into a debt relief plan to pay this debt. He did not supply evidence showing any payments under the plan. This debt is unresolved.<sup>3</sup>

Applicant provided documentation showing that the debts listed in ¶¶ 1.c through 1.f and 1.j were paid. He also claims the debt listed in ¶ 1.e is a duplicate debt to the one listed in ¶ 1.i. Both debts are to the same underlying creditor. Applicant paid the ¶

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<sup>1</sup> Item 3.

<sup>2</sup> Items 2-3, 7-11; Response.

<sup>3</sup> Items 2, 8; Response.

1.e debt in August 2012 and neither debt appears on his September 2012 credit bureau report. These debts are all resolved.<sup>4</sup>

The delinquent debt alleged in SOR ¶ 1.g is a car loan account in the amount of \$5,529. This debt has been delinquent since August 2007. In September 2012, Applicant entered into a debt relief plan to pay this debt. He did not supply evidence showing any payments under the plan. This debt is unresolved.<sup>5</sup>

Applicant stated part of the reason for his financial problems was that his estranged wife used his power of attorney while he was deployed to take out various loans. He was told by an attorney that he was ultimately responsible for those loans. His personal financial statement shows a net monthly remainder of \$134 after he pays his expenses. This amount does not include money to pay the SOR-related debts.<sup>6</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 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, these guidelines are applied 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

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<sup>4</sup> Items 2, 7-11; Response.

<sup>5</sup> Item 2, 8; Response.

<sup>6</sup> Items 5-6.

mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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.

Section 7 of Executive Order 10865 provides that 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**

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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.

Although Applicant paid many of the debts, the higher balance ones still remain unpaid. He did not provide sufficient evidence to show that the debts are unlikely to recur. I find mitigating condition AG ¶ 20(a) does not apply because several of Applicant's debts remain unresolved. Applicant provided evidence that his estranged wife's misuse of his power of attorney contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. Although he showed some responsible behavior by paying some of the debts, he failed to produce evidence that he was making payments under an agreed payment plan. This demonstrates a lack of responsible behavior. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling and while some debts were paid, there is no clear evidence that Applicant's financial problems are being resolved or under control because the higher balance debts remain unpaid. There is some evidence that he has made a good-faith effort to pay or has attempted to resolve some of the debts. I find AG ¶¶ 20(c) and 20(d) partially apply. Applicant provided documented evidence showing that one debt was a duplicate (SOR ¶ 1.e and ¶ 1.i) I find for the Applicant on the duplicate debt. I find AG ¶ 20(e) partially applies.

### **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 the 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 considered Applicant's service to his country and the impact his estranged wife had on his debt situation. However, he has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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 – 1b:	Against Applicant
Subparagraphs 1.c – 1.f:	For Applicant
Subparagraphs 1.g – 1.h:	Against Applicant
Subparagraphs 1.i – 1.j:	For 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