



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



In the matter of: )  
)  
) ISCR Case: 11-04674  
)  
)  
Applicant for Security Clearance )

**Appearances**

Department Counsel: Braden M. Murphy, Esq.  
For Applicant: *Pro se*

01/03/2013

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the Government’s security concerns raised under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

On August 30, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 13, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for Financial Considerations. The action was taken 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 effective within the Department of Defense on September 1, 2006.

On July 19, 2012, Applicant answered the SOR in writing and elected to have a hearing. DOHA received Applicant’s answer (AR) on July 25, 2012, and assigned the

case to me on October 11, 2012. On November 6, 2012, DOHA issued a Notice of Hearing, setting the case for November 20, 2012. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence without objection. Applicant testified and offered Exhibits (AE) 1, and, A through S into evidence without objection. DOHA received the hearing transcript on November 30, 2012. The record remained open until December 7, 2012, to give Applicant an opportunity to submit additional documents. Applicant timely submitted AE T and U, which are admitted into the record without objection. Applicant's correspondence to Department Counsel regarding his interaction with a prior lender is marked as AE V.

### **Findings of Fact**

Applicant admitted the factual allegations contained in paragraphs 1.a, 1.b, 1.d, and 1.h of the SOR. He denied all other allegations contained in paragraph 1. His admissions are incorporated into the findings of fact herein.

Applicant is 39 years old and single. He earned a General Educational Development (GED) certificate in 1992. He enlisted in the Air National Guard on March 9, 1996. He served until January 2005, when he left with an Honorable discharge. He held a Top Secret security clearance and had access to sensitive compartmented information (SCI) from 1998 until he left. (Tr. 35.) He was a senior airman, E-4, and worked as a satellite communications technician. In May 2004 Applicant began working for his current employer. He is a field engineer. Prior to this job, he worked as a security guard for an international airport. (Tr. 38.)

In 2005 Applicant purchased a house for \$194,500, without a down payment, and obtained a mortgage for the full amount. (Tr. 44.) At the time his annual salary was \$52,000 and the monthly mortgage payments were \$1,500. (Tr. 47, 50.) In retrospect, he acknowledged that he should not have purchased the house because he was not sufficiently financially solvent, having previously worked at a low paying position and experienced a year of unemployment prior to that. However, he was convinced by his realtor that the house would be a good investment. (Tr. 48-49.)

In February 2009 Applicant's employer transferred him to another state. His mortgage balance was about \$186,000 at that time. (Tr. 54.) He found a renter, but she moved after three months and did not pay the third month's rent. He spoke to a realtor who advised him not to place the home on the market because the house would not sell for more than \$150,000. (Tr. 54.) He then contacted the mortgage company for a loan modification agreement. The company said it could not help him unless the loan had accrued an unpaid balance. (Tr. 55; AE S.) Three months later the company provided him a loan to cover the three mortgage payments he missed. (Tr. 56.) According to his research, the house sold in August 2010 for \$177,000 at a foreclosure auction. (Tr. 58; AE I, G.) The mortgage company sent him documents regarding the sale, but he lost those papers when his car was stolen. (Tr. 59.) He received an IRS 1099-A, but has been unable to locate another copy, despite numerous contacts with the mortgage company and IRS. (Tr. 60; GE 5 at 275; AE V.) He does not believe that he owes any

deficiency on the property, but if he did it would be less than \$10,000. (Tr. 62-63.) He explained that beginning in 2009, he accrued delinquent debts as a consequence of moving, not selling his residence, and using credit cards to cover the mortgage and other expenses. (Tr. 41.)

Based on his attorney's advice, Applicant filed a Chapter 13 bankruptcy in June 2010, as a means of resolving his debts and attempting to preserve his real estate. The bankruptcy listed liabilities of \$231,350, including the \$184,000 mortgage outstanding. (GE 5.) In September 2010 the court entered a modified payment plan, which Applicant could not afford. In addition, the house had been sold by that time. (Tr. 68.) The case was later dismissed. Applicant informed his security officer of the bankruptcy. (Tr. 117.)

Applicant submitted his January 2012 budget, based on an annual salary of \$75,000. His net monthly income is \$3,606 and expenses are \$2,892, including a payment on one debt. Some of his expenses have slightly increased since January. He has about \$400 remaining at the end of the month. (Tr. 89-92; GE 5 at 321, GE 6.) He took an online credit counseling course. He learned the importance of living within a budget. (Tr. 86.) He does not have credit cards. (Tr. 93.)

The SOR alleged the Chapter 13 bankruptcy and nine delinquent debts, including two debts relating to a mortgage and loan on his foreclosed house. The status of each debt is as follows:

1.b. The Chase credit card judgment for \$6,381 is unresolved. He intends to contact the creditor when he has saved enough money to make a settlement offer. (Tr. 72; AE 1.)

1.c. The IC Systems installment debt for \$27 was disputed and removed from Applicant's credit history. (Tr. 74; AE 1, E.)

1.d. The USAA/FSB credit card debt for \$4,850 is unresolved. He contacted the creditor to establish a payment plan, but the creditor told him they would not track the payments because this account had been included in the bankruptcy that was dismissed. He thinks he will be able to work out a plan when the debt is forwarded to their collections department. He is ready to make payments. (Tr. 75; AE 1, D.)

1.e. The Strategic Recovery loan for \$5,950 arose when Applicant's bank loaned him money for the three months of unpaid mortgage payments. He settled the debt for \$1,800 and paid it on October 4, 2012. (Tr. 65; AE 1, F.)

1.f. The BOA credit card debt for \$3,771 was settled and is being repaid with monthly payments of \$157. The balance is \$2,042. (Tr. 76; AE 1, B, T.)

1.g. The ADNI/Qwest installment debt for \$129 was disputed and removed from Applicant's credit history. (Tr. 79; AE 1, H.)

1.h. The SOR alleged a deficiency balance of \$186,000 on the Mortgage Service Center's mortgage debt. The house sold in August 2010. According to AE A, a credit bureau report (CBR) from March 16, 2011, the balance owed was \$13,546. A July 25, 2012 CBR, reported a zero balance. (AE Q.) Applicant asserted that he received an IRS Form 1099-A, but no other document indicating that he owes a deficiency.

1.i. The HSBC credit card debt for \$171 was paid. (Tr. 81; AE 1, A.)

1.j. Applicant disputes a state university tuition debt for \$1,291. He claimed that a class was cancelled before he attended it due to low enrollment. He attempted to enroll in another class, but was unable to gain approval. He will pay the debt if necessary. (Tr. 84; AE K.)

Applicant has been working to systematically pay one debt at a time. He expressed his intention to resolve and pay the three unresolved debts, which total \$12,522. He will also reduce unnecessary personal spending in order to save more money. (Tr. 94-95.)

Applicant submitted performance evaluations from 2004 through 2011. He has steadily increased his performance level over the years. In 2011 he obtained an overall average of "Exceeds Expectations." (AE P.) He submitted eight letters of recommendation from co-workers and managers. All of the letters attest to his high level of performances, honesty, and dedication to supporting our troops. Some of the authors are aware of his financial difficulties and security concerns. (AE O.)

Applicant testified credibly. He takes responsibility for his debts and finances. He spent time obtaining his evidence and organizing his case, as indicated by his numerous exhibits. He demonstrated detailed familiarity with his debts and finances.

### **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 (AG) list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2(a), describing 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 “any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Directive ¶ E3.1.14 requires the Government to 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 mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 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.”

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 an 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns pertaining to Financial Considerations are 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying, two of which are raised by the evidence in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant began accumulating delinquent debts in 2009 some of which remains unpaid to date. He was unable or unwilling to repay all of the debt as it was accumulating because of insufficient income. Subsequently, he did not timely establish a plan to address it. The evidence raised the above disqualifications.

After the Government raised potential disqualifying conditions, the burden shifted to Applicant to rebut or prove mitigation of the resulting security concerns. AG ¶ 20 includes four conditions that could mitigate the security concerns arising under this guideline:

(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 delinquent debts began accumulating in 2009 after he transferred to another state for employment. At the time his income was insufficient to pay the mortgage and additional living expenses. He attempted to manage those financial obligations through a loan modification request in 2009 and a Chapter 13 bankruptcy that he filed in June 2010. The evidence supports the application of AG ¶ 20 (b).

Although he has not participated in formal credit counseling, Applicant has made reasonable decisions to resolve his debts, after the bankruptcy was dismissed, by addressing them one at a time. Based on good-faith efforts to resolve the debts, he paid two SOR-listed debts, and is paying another through a repayment plan. Three debts, totaling \$12,522, remain unresolved, including one he is disputing. He is saving money so that he can negotiate a resolution of another debt. He provided sufficient evidence, documenting his efforts to confirm that he does not owe any deficiency on his prior mortgage. At this time there are clear indications that his finances are coming, albeit slowly, under control, warranting the application of AG ¶ 20(c) and AG ¶ 20(d). He presented evidence that he successfully disputed two debts. The evidence also supports the application of AG ¶ 20(e).

## **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.

According to 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 facts and circumstances surrounding this case. Applicant is an honest, responsible, 39-year-old former reservist, who honorably served this country for about nine years. He held some level of a security clearance during his service. As a consequence of transferring to a new location for his employment in 2009, he began accumulating debt. To date, he provided sufficient evidence that he resolved the largest debts listed on the SOR, a mortgage and home loan, and is resolving another debt. The remaining \$12,522 of debt will be resolved as money permits. The likelihood of a recurrence of financial problems is minimal, given his financial awareness and knowledge that similar issues could jeopardize his employment. His actions to date removed any potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant mitigated the security concerns arising from 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:	FOR APPLICANT
Subparagraphs 1.a through 1.j:	For Applicant

## **Conclusion**

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

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SHARI DAM  
Administrative Judge