



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 11-04593

**Appearances**

For Government: Fahryn E. Hoffman, Esquire, Department Counsel  
For Applicant: James A. Jacobs, Esquire

03/29/2013

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 3, 2012, the Department of Defense (DOD) issued to the above-referenced Applicant a Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline F (Financial Considerations). DOD took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On August 3, 2012, Applicant submitted a response in which he admitted 6 of 17 allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. DOHA assigned the case to me on October 12, 2012. The parties agreed to a November 7, 2012, hearing. A notice setting the hearing for that date was issued on October 19, 2012.

The hearing was convened as scheduled. Applicant gave testimony, introduced three witnesses, and offered 16 documents, which were accepted without objection as exhibits (Exs.) A-P. He was given until November 20, 2012, to submit any additional materials. The Government offered seven documents, which were accepted into the record without objection as exhibits (Exs.) 1-7. On November 16, 2012, Applicant

requested that the record be kept open through December 4, 2012. Noting no objection, the request was granted. On November 19, 2012, Applicant submitted a memorandum that included documentation related to SOR allegations ¶¶ 1.a, 1.f, 1.l, 1.m, 1.n, o, 1.p, and 1.q. Noting no objection, it was accepted into the record as Ex. Q. The transcript of the proceeding (Tr.) was received on November 27, 2012. On December 7, 2012, Department Counsel forwarded timely received additional documents from Applicant. I received those items on December 12, 2012. Noting no objection, I accepted those documents into the record as Ex. R through Ex. JJ, and the record was closed.<sup>1</sup> Based on a review of the testimony, official case file, and exhibits, I find Applicant met his burden of mitigating security concerns related to financial considerations. Clearance is granted.

### **Findings of Fact**

Applicant is a 51-year-old missile technology assembler who has served in that capacity with a defense contractor for over two years. He has a high school education and considerable experience in business. He and his wife have two children.

For over 20 years, Applicant ran a trucking business. It yielded annual gross revenues ranging from about \$750,000 to the low millions. He managed his business without lawyers, relying on good faith in his transactions. By the mid-2000s, he discovered not all of his customers and associates were equally true to their word, especially during an economic downturn. Some of his business peers faced dire economic times while others declared bankruptcy. Such incidents adversely affected Applicant's business, his income, and his ability to meet his tax obligations. As he continued to take business losses, he tried to honor his own agreements. Meanwhile, he relied on an accountant to work on his taxes. The accountant tried to work around the business downturn and, for one year, used money reserved for payroll taxes. Then Applicant had a costly dispute with his largest customer that culminated in 2008. That dispute was over what Applicant believed to be illegal or unethical practices. Meanwhile, as they argued over their business arrangement, Applicant filed for Chapter 7 bankruptcy as he endeavored to find alternative ways to meet payroll, honor his obligations, and keep his company going. Under these circumstances, business-related debts became delinquent (*i.e.*, 1.g, 1.i).

In 2008, Applicant's Chapter 7 bankruptcy petition was dismissed as having been filed in the wrong form. Applicant continued to work to honor his debts and find some resolution to his Company's dilemmas. Meanwhile, his wife was battling a form of cancer which got progressively worse over the next few years. Throughout this period, Applicant tried to work with his creditors, federal and state tax authorities, and his accountant, while providing maximum emotional and financial support for his ailing wife.

The debts at issue in the SOR are represented by the following allegations:

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<sup>1</sup> A duplicate of Ex. Q was also included in the mailing.

1.a – Collection account for \$1,882. *Account in dispute* (Exs. S, V; Tr. 37-39). Applicant has disputed this debt, which originated in a final cell phone bill several years ago. Applicant orally told staff at the tele-communication company's store of his dispute of the charge, but the issue has yet to be resolved formally.

1.b – Internal Revenue Service (IRS) tax lien entered December 2011 for approximately \$1,677. *Being addressed*. Although this debt remains unpaid, Applicant has been actively working with the IRS over this and other tax liens noted below (Tr. 40).

1.c – Internal Revenue Service tax lien entered September 2009 for approximately 4,231. See 1.b.

1.d – Internal Revenue Service tax lien entered June 2009 for approximately \$72,308. See 1.b.

1.e – Internal Revenue Service tax lien entered June 2009 for approximately \$56,450. See 1.b.

1.f – Charged-off credit card with balance of about \$10,000. *In dispute* (Ex. T). Evidence indicates the debt was previously resolved (Ex. N at 2).

1.g – Past-due credit card in the approximate amount of \$475. *In repayment*. This debt is now in timely repayment. (Ex. E; Tr. 20).

1.h – Charged-off credit card with balance of about \$1,149. *Satisfied*. This account was satisfied by payment of \$899.32 (Ex. H).<sup>2</sup>

1.i – Second charged-off account with the same lender as immediately above in the amount of approximately \$1,426. *Balance significantly reduced; payments made*. While this account remains past due, the current balance owed was initially reduced to \$1,247.56 (Ex. F; Tr. 21). In turn, Ex. G shows that the current past-due balance is currently \$778.20, indicating that the total past-due balance on the account ending – 6637 has been reduced by nearly half.<sup>3</sup>

1.j – Collection account in the amount of \$9,143. *Unaddressed; scheduled to be addressed in the future*. This vehicle is no longer operable. Applicant hopes to satisfy this debt. However, as a non-business debt, it is not currently at the top of his list for debt satisfaction.<sup>4</sup>

1.k – Charged-off account with balance of about \$1,178. *Paid off* (Ex. B; Tr. 16-17).

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<sup>2</sup> Exhibit page three indicates a balance of \$1,136.68 plus \$112.64 interest yielding an approximate balance of \$1,149, the amount at issue in this allegation for this account.

<sup>3</sup> Compare full account numbers on both exhibits to establish that both exhibits reference the same account.

<sup>4</sup> Tr. 57-59.

1.l – Past-due credit account with the same merchant as the one noted at 1.g in the approximate amount of \$462. *In dispute* (Ex. U). However, Applicant claims to have cleared the title on this vehicle prior to sale, thus suggesting the debt was previously satisfied, as argued by the Applicant. (Tr. 59-61).

1.m – Collection account for the approximate amount of \$1,421. *Satisfied*. Applicant provided evidence that this debt is no longer outstanding (Ex. A; Tr. 19-20).

1.n – Collection account for the approximate amount of \$261. *In dispute* (Ex. W).

1.o – Failure to file Federal income tax returns as required for tax years 2005-2009. *Returns filed*. Applicant denied this allegation at the hearing (Tr. 63). He noted that he worked with the IRS and, with IRS assistance, filed two years of returns late. (Tr. 64; Exs. AA-EE; Ex. J). Copies of his filings for tax years 2005-2009 were provided after the hearing. The filing for 2005 is unsigned, but bears contact and preparation information for the tax preparer, and is stamped as “client’s copy.” The 2006 copy is an amended form and is similarly marked. The 2007 form is similarly marked. The 2008 form is unsigned but stamped on page one as a “copy” and is stamped by the IRS and dated June 11, 2010. The 2009 form is also unsigned, marked as “copy,” and stamped by the IRS as received on June 11, 2010. (Exs. AA-EE).

1.p – Failure to file state income tax returns as required for tax years 2008 and 2009. *Returns filed*. Applicant provided signed copies of filings for 2008 and 2009. Both copies are completed on bar-coded state forms; 2008 reflects \$291 owed, while 2009 shows \$1,425 is owed. (Exs. FF-GG). No refunds are requested on either form. The evidence indicates that the filings were made appropriately. Applicant is presently working with the state to determine the final sum owed, if any (Tr. 64-65). Calculation of his final debt, if any, has been delayed due to state procedures and cutbacks (Tr. 65).

1.q – September 2008 termination of Chapter 7 bankruptcy proceeding filed in July 2008. The filing was withdrawn after it was determined by the court to be inappropriate under this chapter. (Ex. HH).

Applicant is presently living within his means on a significantly reduced income. The majority of his present income is devoted to satisfying his remaining debts and caring for his wife, a previous cancer patient whose illness returned in 2010 and which has since progressed to stage IV cancer. Her essential medical needs are extensive. They have necessitated considerable travel and expense, which has been paid primarily by Applicant through his income and COBRA health insurance policy. The couple receives minimal assistance through Applicant’s workplace’s insurer. Applicant’s wife receives about \$1,089 in disability payments. While money is tight, there is no indication that Applicant is acquiring any new debts or undertaking new financial obligations.

Applicant and his wife have two grown children, who live independently. Applicant inherited his present home, on which he owes a modest mortgage, incurred around 2005 or 2006 to help save his failing business. The couple has received some

unsolicited financial and emotional assistance from family and their community. At his place of employment, Applicant is a valued employee who has the potential of more in-depth work should he receive a security clearance.

## **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>5</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>6</sup>

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 those 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 states 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for

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<sup>5</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

access to classified/sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>8</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, failure or an 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.<sup>9</sup> It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.<sup>10</sup> Applicant admits that he acquired numerous obligations resulting from the economic downturn in the mid-2000s, the failure of his business, and his wife’s declining health. Such facts are sufficient to raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Much of Applicant’s financial distress comes from the economic downturn in the mid-2000s, and its effect on his trucking business through the mid- to late-2000s. Although he endeavored to honor his commitments and debts, not all of his associates and suppliers were able to reciprocate in that capacity, thus hampering his ability to meet the demands of his customers. Meanwhile, as he struggled to sustain his business, or at least make good on his financial commitments, his wife faced an aggressive form of cancer which was medically costly in terms of income and time, as well as emotional turmoil. Despite his diligent efforts, his company failed and his debts became delinquent. Then, a Chapter 7 bankruptcy petition was dismissed for being filed in the wrong form for addressing Applicant’s business-related debts. Meanwhile, Applicant worked with both the IRS and his state tax bureau to sort out any tax liabilities, and he continues to actively work with them to date. At the same time, his

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> AG ¶ 18.

<sup>10</sup> *Id.*

wife's cancer has returned and she is now in stage IV, demanding significant, regular, and costly medical care. In light of these facts, Financial Consideration Mitigating Condition AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) applies.

While effectively addressing his financial difficulties has been slow since the mid-to late-2000s, Applicant has undeniably made progress toward the delinquent debt at issue. In addition, he has worked with both the federal and state tax bureaus with regard to his accountant's failings, past filing issues, and tax debts assumed to be owed. Further, he has formally disputed questionable account balances alleged as delinquent on his credit reports. Significantly, he also has satisfied or settled several of the debts at issue. His approach to the accounts at issue clearly appears to be one of cautiously verifying the debts alleged, working with his creditors, and making measured progress toward their satisfaction as best he can under his current financial situation. Overall, it appears his effective approach is to address his smaller or more manageable obligations first, while actively working with his larger creditors in a forthright and candid manner. Such efforts are sufficient to raise AG ¶ 20(d) (*the individual indicated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

### **Whole Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the specific facts and circumstances in this case. Applicant is a mature and direct man who was considerably humbled with the collapse of his business. He endeavored to hold his business together and honor his obligations despite a downward national economic trend and the economic distress suffered by his associates and customers. Meanwhile, he helped his wife of many years battle her first bout of cancer. When he ultimately resorted to filing Chapter 7 bankruptcy, only to discover it would not cover the types of business debts mostly included in his filing, he declined to refile under Chapter 13. Instead, he continued to try to keep his business afloat and to honor his debts as best he could, including the assumption of a modest mortgage on an inherited home. Despite his best efforts, he lost his business, but ultimately found employment at his present job. There, he continues to try to satisfy his debts and support his wife, whose cancer has returned and progressed.

As he acquired the debt at issue, Applicant behaved responsibly and honorably. Since that time, he has worked diligently to adopt a viable approach for addressing his

