



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 11-05268  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

04/26/2012

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concern. His financial problems were due to an unexpected layoff and his former employer illegally withholding money that was due to Applicant as part of a severance package. Applicant has addressed his debts and established that he is resolving his financial situation. Clearance is granted.

**Statement of the Case**

On September 29, 2011, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline F (Financial Considerations).<sup>1</sup> On November 29, 2011, Applicant submitted his Answer and requested a hearing.

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<sup>1</sup> DOHA acted 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.

On December 22, 2011, Department Counsel advised the Hearing Office that the Government was ready to proceed with a hearing. On January 12, 2012, I was assigned the case. I scheduled the hearing for February 29, 2012.

At hearing, Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant appeared at the hearing, testified, and offered Applicant's Exhibits (AE) A through I. These exhibits were admitted without objection. I granted Applicant's request to keep the record open to provide him additional time to submit matters for my consideration. He timely submitted proof of payments and completion of a financial counseling course. These documents were marked and admitted as AE J – N. The transcript (Tr.) was received on March 12, 2012.

### **Findings of Fact**

Applicant is in his forties, married, with four children. He served in the Army National Guard (ANG) from 1989 to 1997 in several different positions, including as a forward observer. He had access to classified information throughout his service with the ANG, and was honorably discharged. He is currently employed as a computer support technician with a federal contractor. He has held this job for three years and has helped avert the "spillage" of classified and sensitive information. In total, Applicant has held a security clearance for over 10 years without issue.<sup>2</sup> The Deputy Director for security and protection for the Government program Applicant is assigned to writes:

I have known [Applicant] since he began working at the [Government] program and, in the median, have interacted with him frequently. In these dealings, I can say without reservation he is among our most upstanding employees. This program routinely handles highly classified information and media, and [Applicant's] duties require his contact with these materials. By all indications, this security office assesses his fidelity in handling controlled data and equipment as outstanding (with zero major or minor security incidents noted.) He demonstrates himself as a highly responsible, intelligent, and focused worker. . . . [Applicant] is routinely trusted with most sensitive responsibilities. On a personal note, I find [Applicant] a morally and ethically solid individual. He is honest, forthright, and very loyal to this program and the Department of Defense. With good conscience, I would recommend him for any clearance and access for which he may be nominated.<sup>3</sup>

Applicant's financial trouble began in 2009 when he was laid off by his former employer. Applicant's former employer had promised to pay him about \$12,000 as part of severance package, but did not follow through and filed for bankruptcy. The former employer recently settled a lawsuit for wrongfully failing to pay Applicant and other

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<sup>2</sup> Tr. at 26-30, 70-77, 89-97; GE 1.

<sup>3</sup> AE H at 4.

employees their severance packages. Applicant received a small portion of the severance payment he was owed, approximately \$1,200, in November 2011. He did not use this money to purchase consumer goods, go on vacation, or in other frivolous ways. Instead, he used the money to satisfy some of his debts, which he accumulated after being laid off. He anticipates receiving an additional \$1,200 settlement payment this year. He will use this money and any other money he receives from the settlement to satisfy his debts.<sup>4</sup>

Applicant was out of work until he was able to secure a job with his current employer. His starting salary was approximately \$11,000 less than he was making at his former job. Applicant cut back on expenses by moving to a smaller house, eliminating cable service, and slashing other monthly expenses. Yet, as the sole bread winner, he was unable to keep pace with expenses and fell behind on his bills.<sup>5</sup>

The SOR lists 18 delinquent debts totaling about \$18,000. A large portion of this delinquent debt is attributable to Applicant's student loans. Applicant addressed his delinquent student loans prior to the SOR being issued. He consolidated a majority of his student loans and they are current.<sup>6</sup> (SOR ¶¶ 1.n, 1.o, and 1.q) The only student debt Applicant was unable to consolidate was for coursework he took in pursuit of his master's degree. Applicant's tuition and other expenses were to be reimbursed through his employer's education assistance program. However, he did not meet the eligibility requirements and the program did not pay for his educational expenses. Applicant has worked out a payment plan directly with the school to satisfy this debt.<sup>7</sup> (SOR ¶ 1.d)

Applicant paid the \$1,200 debt alleged in SOR ¶ 1.b through monthly payments of \$250.<sup>8</sup> He also submitted proof that he paid the debts in SOR ¶¶ 1.c, 1.f, 1.g, and 1.j.<sup>9</sup> The non-student debts that remain outstanding total less than \$4,000. Applicant has contacted his overdue creditors, worked out payment plans with those he was able to reach, and has a plan in place to satisfy his debts. He is going to allot the \$250 that he was using to pay the debt in ¶ 1.b to satisfy his remaining debts. He does not have overdue taxes and has not accumulated any other bad debt. He and his wife own two old cars that they paid off in order to avoid monthly car payments that would drain their finances. They have completed a financial counseling course, and have a budget in place to meet their monthly expenses and pay off their old debt. Applicant disclosed his

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<sup>4</sup> Tr. at 58-61, 88-89; GE 1; GE 2.

<sup>5</sup> Tr. at 45-48, 71-74, 88.

<sup>6</sup> Tr. at 30-34, 61-63; AE E; AE G.

<sup>7</sup> Tr. at 49-51, 78, 85-88; AE K; AE G.

<sup>8</sup> Tr. at 38-41, 48; AE J; AE K; AE M; AE N.

<sup>9</sup> Tr. at 34-38, 48-55; AE B - AE C.

delinquent debts on his security clearance application and fully discussed his finances during his background investigation.<sup>10</sup>

Applicant misused his company credit card in 2010, after returning from a business trip. He purchased gas and groceries totaling \$300 for his family. At the time, Applicant thought he could charge his personal expenses to his company credit card, because he had used his own money to pay for business-related travel expenses. Also, the \$300 in personal charges would easily be covered by the amount that he would be reimbursed by the company for his travel-related expenses. Applicant did not submit his travel voucher in time and the bill for his company credit card became delinquent. He was reprimanded by his supervisor. He then submitted the voucher and paid the overdue bill in full. Applicant's employer has since sent him on numerous business trips, including to Hawaii and Japan. He has used his company credit card solely for business-related travel expenses. In light of Applicant's responsible use of his company credit card, the limit on the amount he can charge to the card was recently raised. Applicant's employer did not submit an adverse information report regarding his misuse of the company credit card, because the security officer determined that it did not need to be reported. However, Applicant voluntarily disclosed this incident during his background investigation. He credibly testified that this one-time lapse in judgment will not recur.<sup>11</sup> (SOR ¶ 1.a)

### **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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

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<sup>10</sup> Tr. at 41-48, 63-64, 78-80; GE 1; GE 2, 11/30/10 Subject Interview at 6; AE I; AE J - AE L.

<sup>11</sup> Tr. at 66-70, 80-85; GE 2, 11/30/10 Subject Interview at 2-3.

admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15.<sup>12</sup> An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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.

## **Analysis**

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

The security concern relating to financial problems is articulated at 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.

Applicant’s delinquent debt and misuse of his company credit card implicates the above concern. It also establishes the following disqualifying conditions under AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.<sup>13</sup>

However, an applicant’s past or current indebtedness is not the end of the analysis, because “[a] security clearance adjudication is not a proceeding aimed at

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<sup>12</sup> ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) (“Once an applicant’s SOR admissions and/or the Government’s evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.”).

<sup>13</sup> I considered AG ¶ 19(d). However, Applicant’s misuse of his company credit card was not an intentional or deliberate breach of trust. Nonetheless, his misuse does implicate the general Guideline F concern because it raises questions as to his judgment and ability to abide by rules and regulations.

collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."<sup>14</sup> Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debt is directly tied to being laid off and his former employer withholding payment of a substantial severance payment. Further, Applicant's starting salary with his current employer was \$11,000 less than he was making at his former job. However, in order to meet his burden, Applicant must demonstrate that, despite the issues outside of his control, he handled his financial obligations in a responsible manner.<sup>15</sup> Applicant met this heavy burden. He consolidated and brought his student loans current, paid a number of his past-due debts, and is in the process of satisfying his remaining overdue creditors. He has received financial counseling and, more importantly, demonstrated that he is resolving his financial situation. Applicant's past debts no longer cast a doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20 (a) through (d) apply to Applicant's debts.

Applicant's misuse of his company credit card was not caused by a matter outside of his control. However, it was a one-time lapse in judgment that did not rise to the level of deliberate, criminal conduct. Instead, Applicant mistakenly thought he could use his company credit card to charge necessities for the home, because he had used the money he normally sets aside for household purchases on business-related travel expenses. Applicant has since proven his trustworthiness by properly using his company credit card on numerous business travels. He voluntarily disclosed this information during his background investigation, even though his own security officer did

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<sup>14</sup> ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

<sup>15</sup> See generally ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

not believe it needed to be reported. Applicant's honesty speaks volumes as to his character and evidences the sort of integrity one would expect of an individual entrusted with this nation's secrets. AG ¶¶ 20(a) applies to Applicant's misuse of his company credit card. Applicant mitigated the financial considerations concern.

### **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 relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>16</sup> I incorporate my Guideline F analysis herein and highlight some additional whole-person factors. Applicant has handled highly classified information without issue, and has prevented the disclosure of classified and sensitive information. His employer and the Government employees he works with have full faith and confidence in his reliability, trustworthiness, and good judgment. These whole-person factors, in conjunction with the mitigating conditions noted above, mitigate the financial considerations concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):      FOR APPLICANT

Subparagraphs 1.a through 1.s:      For Applicant

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge

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<sup>16</sup> (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.