



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-06380
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

04/17/2012

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 4, 2011 (the SOR was undated, but an accompanying transmittal document reflected this date), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on November 30, 2011, and requested a hearing before an administrative judge. The case was assigned to me on January 10, 2012. DOHA issued a notice of hearing on February 9, 2012, and the hearing was convened

as scheduled on March 8, 2012. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called one witness, and submitted exhibits (AE) A and B at the hearing, which were admitted into evidence without objection. The record was held open until March 23, 2012, for Applicant to submit additional evidence. He did not submit any additional evidence. DOHA received the hearing transcript (Tr.) on March 16, 2012.

### **Findings of Fact**

Applicant admitted some of the SOR factual allegations and denied others. These admissions are incorporated as findings of fact. After a review of the pleadings, testimony, and admitted exhibits, I make the following additional findings of fact.

Applicant is a 39-year-old employee of a defense contractor who works as a security officer. He has worked for his employer for about 13 months. He is married, and he and his wife are expecting their first child from this marriage. He has a stepchild from this marriage. He has three children from a previous marriage. He pays about \$400 per month in child support for these children. He has a high school diploma and two years of college. He received a non-characterized medical discharge from the Army in 1992.<sup>1</sup>

The SOR alleged a previous Chapter 7 bankruptcy, a home foreclosure, a vehicle repossession, and 25 delinquent debts totaling approximately \$35,837. The debts were listed on credit reports obtained on March 17, 2011, and July 6, 2011.<sup>2</sup>

Applicant's financial difficulties resulted, in part, from extensive medical problems his children had. His oldest daughter who is 11 years old now, was born with a heart condition that requires open heart surgery every five years. His son contracted spinal meningitis and was hospitalized for one month after his birth. Applicant estimates that the total medical expenses are over \$1 million. His delinquent debts from these medical bills are for various copays that are his responsibility. He filed for Chapter 7 bankruptcy protection in 2002 (SOR ¶ 1.a), shortly after his daughter was born. He missed work frequently to be with his daughter during her surgeries and hospitalizations, and this caused a loss of income. Consequently, he was unable to keep up with his bills, including his mortgage and car payments. His home was foreclosed in 2005 (SOR ¶ 1.x) and he voluntarily returned his vehicle back to the dealer (SOR ¶ 1.w) when he could not make his monthly payments in 2006. In 2010, he moved out of the state where his children were located to his present location seeking better employment opportunities.<sup>3</sup>

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<sup>1</sup> Tr. at 6, 22; GE 1, 3.

<sup>2</sup> GE 4-5.

<sup>3</sup> Tr. at 21, 23; GE 2.

The debt alleged in SOR ¶ 1.b is a delinquent tuition account for his daughter's school. This is also the same debt alleged in SOR ¶ 1.v. Although Applicant claims some amount has been paid, an unpaid balance still remains.<sup>4</sup>

The debt alleged in SOR ¶ 1.c is a delinquent second mortgage on the home that was foreclosed in the amount of \$23,824. No payments have been made on this debt.<sup>5</sup>

The debts alleged in SOR ¶¶ 1.d through 1.p, 1.y, and 1.aa are delinquent medical debts. All are unresolved. The debts at SOR ¶¶ 1.p and 1.y are duplicate debts.<sup>6</sup>

The debt alleged in SOR ¶ 1.q is a collection for a consumer account in the amount of \$452. He claims this is his ex-wife's debt, but provided no documentation supporting this assertion. This debt remains unresolved.<sup>7</sup>

The debt alleged in SOR ¶ 1.r is a collection for a consumer account in the amount of \$78. He claims this is his ex-wife's debt, but provided no documentation supporting this assertion. This debt remains unresolved.<sup>8</sup>

The debt alleged in SOR ¶ 1.s is a charged-off utility account related to his foreclosed home in the amount of \$369. This account is unpaid and unresolved.<sup>9</sup>

The debts alleged in SOR ¶¶ 1.t and 1.u are delinquent telephone service debts in the amounts of \$666 and \$216. He disputed these amounts because of early termination of his contract, but provided no documentation to support his dispute.<sup>10</sup>

The debt alleged in SOR ¶ 1.bb is a collection for a book club account in the amount of \$37. He disputed this account claiming that it belongs to his ex-wife, but he did not provided documentation to support his dispute.<sup>11</sup>

Applicant claimed that when he filled out his security clearance questionnaire, he was unsure of what his actual finances were like at the time. Additionally, he was not quite sure how to answer the questions related to his past debts. He admitted that his foreclosure occurred in 2005, and that he was aware of both the foreclosure and the

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<sup>4</sup> Tr. at 38-39, 46, 58.

<sup>5</sup> Tr. at 39.

<sup>6</sup> Tr. at 40-42, 48.

<sup>7</sup> Tr. at 42.

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

<sup>9</sup> Tr. at 43.

<sup>10</sup> Tr. at 44-45.

<sup>11</sup> Tr. at 50.

judgment against him at the time he completed the questionnaire. He stated that he did not intend to deceive the government with his answers.<sup>12</sup>

Applicant's documentary evidence did not relate to any of the SOR-related debts, but indicated he paid his 2009 federal tax obligation with his 2011 tax refund. He also used his refund to pay back child support debts that he owed. He stated that he is now caught up on his back child support and that his current monthly child support payments come directly out of his pay. He did not seek any credit counseling services other than from his father-in-law. The record was held open for Applicant to provide additional information on the status of his debts, but he did not provide any additional information.<sup>13</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 that 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 decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>12</sup> Tr. at 52-55.

<sup>13</sup> Tr. at 26, 51; AE A-B.

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 about 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 applicant concerned.” See *also* Executive Order 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 as follows:

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 satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 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 made little to no effort to pay any of his obligations. They are not infrequent and there is no evidence to support the assertion that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced large medical bills related to his children's health. These are conditions beyond his control. However, in order for this mitigating condition to fully apply, Applicant must also act responsibly under the circumstances. Applicant's actions do not show responsible behavior. He has done little to resolve the majority of his debts, despite having the resources to do so since obtaining his current job 13 months ago. AG ¶ 20(b) is partially applicable.

Applicant did not seek financial counseling to assist with his delinquent debts. He failed to document payments to his creditors. His debts remain unsettled and unresolved. Therefore, his finances are not being resolved and are not under control. The evidence is insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are not applicable. He offered no documentary evidence of his disputed debts. AG ¶ 20(e) does not apply. The duplicate debts listed in SOR ¶¶ 1.v and 1.y will be found in favor of Applicant. However, at this point, Applicant's finances remain a concern despite the presence of some mitigation.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire....

Applicant's acknowledged that he was aware of the prior judgment against him, which he failed to report on the questionnaire. However, it was reasonable for him to be unaware of what his current financial conditions were concerning his other debts at the time he completed the questionnaire. Therefore, AG ¶¶ 16(a) applies to SOR ¶ 2.a, but not to SOR ¶ 2.b.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and considered the following as potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Falsification of material information on a security clearance application is a serious offense and calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not apply.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered medical bills related to his children's conditions. I considered Applicant's service to his employer. Applicant has not shown a track record of financial stability. Additionally, he deliberately falsified his security clearance questionnaire. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or personal conduct 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
Subparagraphs 1.a – 1.u:	Against Applicant
Subparagraph 1.v:	For Applicant
Subparagraphs 1.w – 1.x:	Against Applicant
Subparagraph 1.y:	For Applicant
Subparagraphs 1.z – 1.bb:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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