



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



In the matter of: )  
)  
) ISCR Case No. 11-06383  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

09/05/2013

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On February 6, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F.<sup>1</sup> 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on February 28, 2013, and requested a hearing before an administrative judge. The case was assigned to me on June 14, 2013. The

<sup>1</sup> Applicant's name is spelled incorrectly in the SOR. It has been corrected in this decision.

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 10, 2013. I convened the hearing as scheduled August 14, 2013. The Government offered exhibits (GE) 1 through 7, and they were admitted into evidence without objection. Applicant testified, and he offered exhibit (AE) A, which was admitted into evidence without objection. The record was held open until September 4, 2013, to allow Applicant to submit additional documents. He submitted AE B through E that were admitted into evidence without objection.<sup>2</sup> DOHA received the hearing transcript (Tr.) on August 22, 2013.

### **Findings of Fact**

Applicant admitted all SOR allegations with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 31 years old. He is a high school graduate and has earned some college credits, but does not have a degree. He holds numerous certifications and licenses for the work he does with a federal contractor. He has worked for his present employer since 2010. He served in the Air Force from 2001 to 2006 and received a General Discharge under Honorable Conditions. He was married for eight months in 2004. He has two daughters from a previous relationship, ages 12 and 5. He pays \$2,000 a month in child support for his daughters and is current in his payments. He has held a security clearance since 2001 without incident.<sup>3</sup>

Applicant worked in Afghanistan for two and a half years, from late 2007 to 2009. Upon his return, he began working for his current employer and has worked at various overseas locations.<sup>4</sup>

In 2007, Applicant went to school after being discharged from the military. He credibly stated that he sought guidance with officials at the school about what classes were necessary for him to obtain certain certifications and licenses. A teacher asked him why he was in the class because he already knew the material. The teacher arranged for Applicant to take the licensing test with the appropriate federal agency. Applicant passed. Applicant then discussed the enrollment issue with the school officials. He told them they wrongfully advised him that he was required to take certain classes. He requested the school officials disenroll him. The documents reflecting his request are in a storage facility due to Applicant's overseas employment. The school continued to charge him tuition for three semesters when he was not present. Applicant was unaware that the school continued to charge him tuition after he requested to be disenrolled. Applicant's tuition was being paid through the GI Bill. He felt the school was fraudulently taking the loan funds. He disputed the debts with the credit bureaus. He

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<sup>2</sup> Hearing Exhibit I is Department Counsel's email noting there were no objections to the exhibits.

<sup>3</sup> Tr. 36-44, 48.

<sup>4</sup> Tr. 42-43.

contacted the collection companies, but they would not remove the debts. Applicant stated he finally gave up and the student loan debts were paid through retention of his federal income tax refunds. The student loan debts alleged in SOR ¶¶ 1.d (\$6,285), 1.e (\$3,805), and 1.f (\$1,248) are paid.<sup>5</sup>

Applicant completed his security clearance application and background interview in 2011. He became unaware he had outstanding debts at this time. He admitted he had debts discharged in bankruptcy in 2004. He believes it was about \$7,000. He attributed his financial issues at that time to problems with his wife. He met her, and three weeks later they married. He was 22 years old. When they married, she had a job. He provided money for her to make car payments while he was absent on military assignment, and instead she spent the money elsewhere. She accumulated credit card debts in his name. He could not catch up with his car payments, and the car was repossessed. The marriage failed shortly thereafter when he realized she had taken all of the money in his savings and checking accounts.<sup>6</sup>

When Applicant learned he had some delinquent debts after his background investigation, he contacted all of the creditors and had them validate the debts. He was cognizant of the ramifications these debts might have on his security clearance. Applicant credibly stated that the debts in SOR ¶ 1.c (\$613-telephone service) and ¶ 1.l (\$741-telephone service) were fraudulently opened after his divorce, by his ex-wife in his name. He was unaware of them. He settled the debt in ¶ 1.c for \$512 and provided a confirmation number, but was unable to get a receipt immediately. He paid the debt in ¶ 1.l in full, and the account was closed. He was waiting for the creditor to send a receipt.<sup>7</sup>

The debt in SOR ¶ 1.b (\$318-medical) is no longer on his credit report, and Applicant was unable to contact the creditor due to lack of identifying information.<sup>8</sup>

The debt in SOR ¶ 1.g was for a parking ticket Applicant was issued in 2005. He was towing a vehicle and its wheel fell off. He parked the vehicle and went for assistance. He did not see a ticket on the vehicle when he returned. He did not learn of the ticket until he was provided the information during his 2011 background investigation while overseas. He contacted the jurisdiction where the ticket was issued, and they advised him he had to appear in person. Due to his overseas deployment, he was permitted to send a certified check to pay the ticket. Applicant works primarily overseas and all of his documents are kept in storage. He provided documentation to show the creditor is having the account removed from his credit report.<sup>9</sup>

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<sup>5</sup> Tr. 18-26, 48-49.

<sup>6</sup> Tr. 35, 49, 50-52.

<sup>7</sup> AE B.

<sup>8</sup> AE B.

<sup>9</sup> AE E; Tr. 35, 72-74.

Applicant stated he paid in full and provided a confirmation number for the debt in SOR ¶ 1.h (\$1,148-telephone service). He has contacted the creditor twice and requested they send him a receipt. He has not received it yet. Applicant stated the debt in ¶ 1.i (\$251) was paid in full. He was not able to provide a confirmation number because the account was closed. Applicant contacted the creditor and is waiting for the receipt. The debt in SOR ¶ 1.j (\$318-other) was paid and a receipt was provided. Applicant stated the debt in SOR ¶ 1.k (\$100-cable), was paid by telephone, and he is waiting for the receipt. He provided a confirmation number.<sup>10</sup>

Applicant's current credit report does not list SOR ¶ 1.m (\$246-bank). He has contacted the creditor and paid the debt. He is waiting to be issued a receipt.<sup>11</sup>

Applicant readily admitted he made some immature mistakes and "messed up" when he was younger. His father told him how proud he was that he was getting his life together. His father has helped him with his finances. He has also received financial counseling from a bank counselor. He gives his father \$500 a month that is invested for him for his financial future. Applicant also puts 20% of his pay into a 401k retirement account and saves another 10%. He has approximately \$62,000 in his 401k. He has approximately \$5,000 in his savings account and \$8,000 in checking. He does not have credit cards. He pays all of his bills on time through an automatic electronic withdrawal. He has only three recurring debts. They are for child support, telephone services, and a truck payment. His housing expenses are paid by his employer.<sup>12</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.

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<sup>10</sup> AE B and C.

<sup>11</sup> AE B, D. Tr. 20-26-34, 52-55, 74; GE 2; AE A.

<sup>12</sup> Tr. 30-31, 47, 57-59, 63, 69-72, 75-76.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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 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.

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**

The security concern for financial considerations is 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had numerous delinquent debts from at least 2004 that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 disputed that he owed money for debts on student loans when he disenrolled from school and the institution continued to charge him tuition for three semesters when he did not attend. I found Applicant's testimony credible. He was provided incorrect information that caused him to take classes that he did not need. When he realized he was misinformed he attempted to correct the situation. Even after he disenrolled, the school continued to charge him tuition when he was not a student there. He disputed the debts in SOR ¶¶ 1.d, 1.e and 1.f, but eventually they were paid through the involuntary retention of his federal income tax refunds.

A couple debts in the SOR were attributed to Applicant's ex-wife obtaining accounts without his knowledge. He was unaware that others were delinquent. Applicant has addressed all of the debts. I find the circumstances surrounding these

debts are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness or good judgment. AG ¶ 20(a) applies.

The debts attributed to Applicant's ex-wife without his knowledge were beyond his control. The student loan debts that he disputed were somewhat beyond his control. Applicant should have been more diligent in keeping track of his remaining debts, even though he was overseas. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. When Applicant became aware that he had delinquent debts, he contacted the creditors and resolved them. His federal income tax refunds were seized to pay his delinquent student loans. I do not consider this a negative issue as Applicant attempted to dispute and resolve what he believes were fraudulent claims by the school. I find Applicant acted responsibly regarding resolving his other debts. AG ¶ 20(b) partially applies.

Applicant is in a stable financial position and his finances are under control. He has received financial counseling. He made good-faith efforts to resolve his delinquent debts. Applicant pays his monthly expenses, saves money, invests in his future, and takes care of his children. He does not live beyond his means. I find AG ¶¶ 20(c) and 20(d) 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 31 years old. He admitted he had problems earlier in his life and made some mistakes. He married young and his wife misused their finances, causing him to file bankruptcy. He was unaware of some small debts he had and has since paid them. Due to his overseas employment, his records are in storage and communicating with creditors is difficult. Applicant presented himself as a mature young man who understands the gravity of maintaining his finances. When he became aware there were potential issues, he resolved them. I found his testimony credible. He responsibly pays his child support. He saves his money and invests for his future. He is not living beyond his means. Applicant's finances are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

### **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-1.m:	For Applicant

### **Conclusion**

In light of all of the 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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Carol G. Ricciardello  
Administrative Judge