



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



In the matter of: )  
)  
) ISCR Case No. 11-08375  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

12/20/2012

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 1, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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.

Applicant answered the SOR on August 22, 2012, and requested a hearing before an administrative judge. The case was assigned to me on October 16, 2012. DOHA issued a notice of hearing on October 31, 2012, scheduling the hearing for November 16, 2012. The hearing was convened as scheduled. Government Exhibits

(GE) 1 through 5 were admitted without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. He submitted four pages of documents that were marked AE B through D and admitted without objection. DOHA received the hearing transcript (Tr.) on November 29, 2012.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since 1998. He seeks to retain his security clearance, which he has held since shortly after his employment began. He attended college for about a year and a half, but he did not earn a degree. He is married with a teenage child and two teenage stepchildren.<sup>1</sup>

In about July 2008, Applicant wrote a \$25 check that was returned for nonsufficient funds. He was charged with uttering a bad check. He appeared in court and paid about \$90 in restitution and costs.<sup>2</sup>

Applicant's wife has had medical problems for some time. She is unable to work or drive a car. He has medical insurance through his employer, but there were extensive copayments and deductibles. Applicant was unable to pay all his bills, and a number of debts, mostly medical debts, became delinquent. His company changed insurance carriers several times. Applicant believes several of the debts should have been paid by insurance.<sup>3</sup>

Applicant's wife's ex-husband is consistently delinquent on his child support. One of Applicant's stepchildren is extremely troubled. Applicant has incurred medical, legal, and other expenses for the care of the child.<sup>4</sup>

The SOR alleges the charge for uttering a bad check, and it also alleges 26 delinquent debts and unpaid judgments, with balances totaling about \$36,489. Applicant denied owing the \$792 debt for the balance owed on a car loan, which was alleged in SOR ¶ 1.j, and he established that the debt was paid in August 2012. He admitted owing the remaining debts. It appears that all of the remaining debts and judgments resulted from unpaid medical bills. Five judgments awarded to a hospital total more than \$31,000.<sup>5</sup>

Applicant paid other debts that were not alleged in the SOR. He followed the advice of a noted financial expert that he learned through a financial management class

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<sup>1</sup> Tr. at 18, 34, 44-47; GE 1.

<sup>2</sup> Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 18-24, 34-41; Applicant's response to SOR; GE 1-5.

<sup>4</sup> Tr. at 34-44.

<sup>5</sup> Tr. at 18, 27-28; Applicant's response to SOR; GE 1-5; AE A.

and instituted the “debt snowball” plan for paying his debts. He listed the debts in order from the smallest debt to the largest. He saves enough money to pay or settle the smallest debt, and then he moves on to the next debt on the list. He paid debts of \$20 (SOR ¶ 1.q), \$45 (SOR ¶ 1.f), \$56 (SOR ¶ 1.p), and \$59 (SOR ¶ 1.b). He attempted to pay the \$22 debt alleged in SOR ¶ 1.s, but the account was returned to the medical provider by the collection company.<sup>6</sup>

Applicant stated that he is in better shape financially. He drives an older-model car that he owns outright. His wife’s medical condition appears to have stabilized, and she is applying to receive Social Security disability. He credibly testified that he intends to continue to address the delinquent debts through his debt snowball plan. He also plans on using any income tax refunds to pay his debts.<sup>7</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 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.”

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 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

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<sup>6</sup> Tr. at 16-20, 24, 28-33; GE 1-5; AE C.

<sup>7</sup> Tr. at 24, 28-34, 40-42, 46, 52; AE C.

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 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* 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 under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. He was charged with uttering a bad check in 2008. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

The bad check offense happened more than four years ago. Applicant addressed the matter, and there is no evidence that he continued to write bad checks. AG ¶ 20(a) is applicable to that allegation.

Applicant's wife has had significant medical problems. She is unable to work, and she has medical bills that were not paid by insurance. Her ex-husband has been consistently delinquent on his child support payments. One of her children is extremely troubled, resulting in medical, legal, and other expenses. Those events were beyond Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has been attempting to resolve his financial problems. He paid several debts that were not alleged in the SOR. He paid the \$792 balance owed on a car loan. He instituted a plan to address his debts by paying the smallest debt first, and then moving on to the next debt.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant acted responsibly under the circumstances and started a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) are applicable. AG ¶¶ 20(a) and 20(d) are not completely applicable because Applicant is still in the process of paying his debts.

## 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 this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's stable work history, the factors that led to his financial problems, and the steps he has taken to remedy those problems. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations 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:	For Applicant
Subparagraphs 1.a-1.aa:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge