



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-08903
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

03/18/2013

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On December 5, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 effective within the DOD for SORs issued after September 1, 2006.

In an undated letter Applicant answered the SOR and elected to have his case decided on the written record. On January 31, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and

it was received on February 17, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. Department Counsel had no objection and the documents are included in the record. The case was assigned to me on March 12, 2013.

### **Findings of Fact**

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

Applicant is 54 years old. He married in 1979 and divorced in 1996. He remarried in 1996. He has four adult children and one adult stepchild. Applicant served in the U.S. Navy from 1978 to 1988 and received an honorable discharge. He has been employed since 2009 by a federal contractor.

Applicant has \$70,862 in delinquent debts alleged in the SOR. They all relate to unpaid medical expenses. He attributed the debts to his heart attack in 2006 and having no medical insurance. He indicated that at the same time his wife was diagnosed with Crohn's disease.

Applicant was unemployed from December 2008 to December 2009. He received unemployment benefits during this period and was supported by his spouse. He explained that until his current employment, he worked for several employers that "either failed or could not maintain business volume which caused me to deal with layoffs and unemployment." Since being employed, Applicant indicated he has been able to pay off smaller and more recent debts. He anticipated a substantial promotion in January 2013, which would allow him to pay off additional debts. He did not provide further information documenting whether he received the promotion. Applicant indicated he is currently meeting his monthly obligations. He provided a personal financial statement on August 31, 2012, that shows a \$21 remainder after deducting his expenses from his income, but it does not include payment to any of the creditors alleged in the SOR.<sup>1</sup>

In response to the FORM, Applicant provided a document verifying that on January 23, 2013, he paid the full amount of \$960.75 owed for the debt alleged in SOR ¶ 1.d. He also provided a letter with a settlement offer to the creditor in SOR ¶ 1.c (\$4,749). The creditor agreed to settle the debt for \$2,374.50 with two installments of \$1,187. The first installment was to be made on February 27, 2013, and the second on March 27, 2013. Applicant made an annotation on the letter noting that he made the first payment, but did not provide documentary proof of the payment.<sup>2</sup>

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<sup>1</sup> Items 4, 5.

<sup>2</sup> Record.

The debt in SOR ¶ 1.a is a judgment entered against Applicant in May 2007. The amount of the judgment is \$39,614, plus fees in the amount of \$9,997. The law firm that is handling the judgment verified an outstanding balance of \$61,934. It received one payment of \$50 in June 2008. At some point, Applicant offered to pay \$20 or \$25 a month on the debt, but the creditor refused. This debt was incurred by Applicant for medical services for his 2006 heart attack and his wife's condition, which were not covered by medical insurance. On April 4, 2011, Applicant provided a statement to an Office of Personnel Management (OPM) investigator. In the statement he indicated he planned to begin to make payments on this debt within seven years.<sup>3</sup>

The debt in SOR ¶ 1.b is a judgment entered against Applicant in approximately April 2007 in the original amount of \$2,466.25. The creditor verified the current outstanding balance as \$3,218.15. It received one payment of \$50 in June 2008. At some point, Applicant offered to pay \$25 a month on the debt, but the creditor refused. The debt was incurred by Applicant for medical services for his 2006 heart attack and his wife's condition, which were not covered by insurance. In his April 4, 2011 statement to the OPM investigator, Applicant indicated he would begin making payments on this debt within one year and have the debt satisfied within two years. The debt remains unpaid.<sup>4</sup>

In his response to the SOR, Applicant stated that a lawyer advised him to "walk away" from his home and declare bankruptcy, but he chose not to follow this advice.<sup>5</sup> In his statement to the OPM investigator, Applicant indicated he had some type of financial counseling, but failed to provide specific information as to when and the type.<sup>6</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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,

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<sup>3</sup> Item 6.

<sup>4</sup> Item 6.

<sup>5</sup> Item 3.

<sup>6</sup> Item 6.

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. Likewise, I have avoided drawing 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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 the following under AG ¶ 19:

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

Applicant has delinquent debts that have been unpaid and unresolved since 2006. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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 has one delinquent debt and two judgments that remain unpaid. He has a small amount of money remaining at the end of the month after he pays his expenses. He indicated he expected a promotion, but failed to provide any proof that he received a pay raise and is addressing his delinquent debts. AG ¶ 20 (a) does not apply because Applicant's debts are ongoing and not resolved. I cannot find his financial problems are unlikely to recur.

Applicant suffered a heart attack and his wife was diagnosed with a disease in 2006. They did not have medical insurance at the time. Applicant also experienced periods of unemployment that prevented him from resolving his medical bills. These were conditions that were beyond his control. In order for the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant has been employed since 2009. He paid one debt after receiving the SOR. He negotiated a settlement on another debt after receiving the SOR, but failed to provide proof he has made the first payment. The other judgments remain unresolved. Applicant did not

provide evidence of what actions he has taken to address the delinquent debts after he obtained employment. There is insufficient evidence that Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant did not submit evidence of his current efforts to resolve his remaining debts or when he last contacted the creditors. Based on his current budget, it does not appear that he has sufficient funds to address or manage the debts. There is insufficient evidence to conclude that there are clear indications that his financial issues are being resolved or are under control. There is marginal evidence that he had some financial counseling. AG ¶ 20(c) partially applies. Applicant's good-faith effort to pay one debt warrants the application of AG ¶ 20 (d) to that debt.

### **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 the 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 54 years old. He accumulated delinquent medical debts that he was unable to pay because he did not have medical insurance and was unemployed for a period of time. He has been employed since 2009, but did not take any action to resolve the debts until after he received the SOR. He has resolved only one debt. He has a settlement agreement with another creditor, but did not provide supporting documents to confirm he is paying the debt. His promise to pay the large judgment against him in seven years does not show a firm or realistic commitment to address this debt. His personal financial statement indicates he has minimal resources to pay his delinquent debts, or a plan to address them. The record evidence leaves me with questions and

doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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.c:	Against Applicant
Subparagraph 1.d:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge