



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-08936
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

05/06/2013

\_\_\_\_\_

**Decision**

\_\_\_\_\_

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On December 19, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 January 16, 2013, and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2013. I convened the hearing as scheduled by video teleconference on April 18, 2013.

The Government offered Exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified, and he offered Exhibits (AE) A through K, which were admitted into evidence without objection. The record was held open until May 2, 2013, to allow Applicant an opportunity to submit additional documents. He submitted AE L. Department Counsel had no objection, and it was admitted into evidence.<sup>1</sup> DOHA received the hearing transcript (Tr.) on April 25, 2013.

### **Findings of Fact**

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

Applicant is 34 years old. He served in the Army from 1998 to 2008 and was honorably discharged in the rank of staff sergeant (E-6). He has a daughter born in 2001 from a previous relationship. He pays child support for his daughter. He married in 2005 and divorced in 2007. There are no children from the marriage. He earned an associate's degree in 2009. He is enrolled in an online college and expects to earn his bachelor's degree in 2014.<sup>2</sup>

Applicant has numerous delinquent debts. He attributes his financial problems to periods of unemployment. He also admitted that he was immature in handling his finances. After leaving active duty, Applicant was employed with a federal contractor at an overseas facility from September 2008 to October 2010. He was underemployed and unemployed from October 2010 to November 2011. He was employed from November 2011 to April 2012 with a federal contractor at an overseas location. He stated he has been unemployed since April 2012. While employed overseas from 2008 to 2010 he was earning an annual salary of approximately \$85,000. He currently receives unemployment benefits and a stipend from his educational GI bill. He uses this money to pay his child support and for living expenses. He is currently living with a relative.<sup>3</sup>

The debt in SOR ¶ 1.a (\$3,552) is for a personal loan Applicant obtained in 2006 while he was still in the military. He used the money to pay bills. The loan became delinquent in late 2007 or early 2008. Applicant did not make payments while he was working overseas from September 2008 to October 2010. He contacted the creditor in approximately December 2010 and indicated he would begin making payments when he started working. In his statement to an Office of Personnel Management (OPM) investigator in May 2011, Applicant indicated he was not earning enough money to pay the debt. He stated that he anticipated getting an overseas job and intended to pay the loan. He did not get the job. In January 2013, Applicant began a repayment plan and is

---

<sup>1</sup> Hearing Exhibit I is Department Counsel's memorandum forwarding the exhibit and noting there were no objections.

<sup>2</sup> Tr. 12-14, 20-21, 23-24.

<sup>3</sup> Tr. 21, 24, 52-58.

to pay \$75 a month. He made two payments in January and February 2013. He did not provide proof of other payments.<sup>4</sup>

The debt in SOR ¶1.f (\$5,406) is a loan that has been charged off. Applicant obtained the loan in 2006 or 2007 while he was on active duty with the military. This loan was added to a previous loan balance that he obtained from the same creditor. He obtained the loan to catch up on bill payments. The account became delinquent sometime in 2009. In his statement to the OPM investigator, Applicant indicated that the loan was being repaid through a military allotment that stopped when he left active duty, and he did not realize it was no longer being paid. While working overseas, he learned the account was in a delinquent status. He contacted the creditor who was unwilling to negotiate a payment plan and demanded the loan be paid in full. Applicant could not pay the entire balance so he did not pay anything. He intended to pay the debt when he obtained employment. The debt remains unresolved.<sup>5</sup>

The debt in SOR ¶ 1.g (\$3,000) is to reimburse the Department of Veteran's Affairs for a loan he received. Applicant later learned he was not authorized to receive the loan and has been making payments to resolve it. His payments have reduced the balance to \$775. He is paying this debt from his GI stipend and has been making payments since September 2012.<sup>6</sup>

The debt in SOR ¶ 1.h \$2,853 is a credit card account that has been charged off. Applicant has a payment plan with the creditor. He stated the plan is to pay \$35 a month. He provided documents from the law firm handling the debt that shows payment coupons for \$50 a month. He believes this is an error. Applicant's documents show that he made one payment in February 2013 and a payment on April 1, 2013, was pending. He stated he missed his March payment because he did not have the money at the time to pay it. He stated he now has the money and intends to pay it. Applicant did not provide additional information to substantiate he is making regular payments and that \$35 is an acceptable payment to the creditor.<sup>7</sup>

Applicant disputed the debt in SOR ¶ 1.i (\$1,094) for cellular telephone service. He explained he contacted the company to place his phone in stand-by status while he was overseas. The company failed to do so, and Applicant disputed the debt on his credit report. His statement to the OPM investigator indicated the telephone company agreed that he was not obligated to pay the debt. The debt is resolved.<sup>8</sup>

---

<sup>4</sup> Tr. 25-28; AE E, F; GE 2 at 145.

<sup>5</sup> Tr. 39-42; GE 2 at 144.

<sup>6</sup> Tr. 42-44; AE A, H.

<sup>7</sup> Tr. 44-48; AE A, I, J.

<sup>8</sup> Tr. 49-50; GE 2.

Applicant has numerous student loan debts alleged in SOR ¶¶ 1.b (\$4,059), 1.c (\$1,754), 1.d (\$6,959), 1.e (\$3,217), 1.j (\$3,144), 1.k (\$4,390), and 1.l (\$8,415), for a total of \$31,938.<sup>9</sup>

The student loans in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e are being serviced by the same lender who has agreed to Applicant's participation in a loan rehabilitation program. Applicant obtained these loans when he was earning his associate's degree in 2009. He believes he made some payments before he stopped. The rehabilitation program requires Applicant to pay \$100 a month for all of the loans for nine consecutive months. If he successfully completes the rehabilitation program the loans will be removed from default status. Applicant has made four payments from January through March 2013.<sup>10</sup>

Applicant's student loans in SOR ¶¶ 1.j and 1.k appear to be from the same lender. Applicant stated the loans were in a deferred status for two years while he was stationed overseas.<sup>11</sup> He was to begin paying the loans in November 2010. At the time his annual income was \$85,000. He did not make the required payments. He stated he was using his income to pay child support, a car note, and to help family. These loans are now deferred until September 2014, when Applicant anticipates completing his degree.<sup>12</sup>

Applicant believed the student loan in SOR ¶ 1.l was consolidated with other loans. He failed to provide documents that reflect this balance has been consolidated with his other loans.<sup>13</sup>

Applicant provided additional information about his financial issues during his May 2011 interview with the OPM investigator. He has had two cars repossessed. Applicant was stationed overseas in 2006. He thought his wife was making their car payments. He does not know if she thought he was making the payments. This confusion resulted in no payments being made on the loan. He indicated in his interview with the investigator that the car was voluntarily turned back to the creditor. He also indicated that the car had mechanical problems and could not be driven. It was eventually auctioned for sale by the creditor. He indicated he has not received further correspondence from the creditor about any deficiency.<sup>14</sup>

---

<sup>9</sup> Tr. 28.

<sup>10</sup> Tr. 28-31, 33-38, 69-85; AE G, L.

<sup>11</sup> GE 2, at page 6; AE L.

<sup>12</sup> Tr. 53, 64-65, 69-85; AE K, D.

<sup>13</sup> AE L.

<sup>14</sup> Tr. 59-61; GE 2 at page 4. Any information that was not alleged in the SOR will not be considered for disqualifying purposes. It will be considered when analyzing Applicant's credibility, his history of financial stability, and in the "whole-person" analysis.

A second car was repossessed after Applicant was delinquent in his payments in 2010. He was stationed overseas and he could not make the payments because he had too many other bills and insufficient income. Later he was unemployed and could not make the payments. The vehicle was repossessed and sold at auction. Applicant told the OPM investigator that he was notified by the creditor that there was no deficiency on the account.<sup>15</sup>

Applicant has an installment payment plan with the Internal Revenue Service for unpaid federal taxes for tax year 2008. He stated that the person who prepared his 2008 federal income tax return failed to include his income from his work overseas. He admitted he signed the tax form, but did not notice the discrepancy. His tax return was audited in 2011, and it was determined he owed \$4,000 in federal income tax. He pays \$50 a month to resolve the debt. He has filed his 2012 federal income tax return and owes \$2,000. He is unable to pay the amount and anticipated it being added to the current installment payment plan.

Applicant stated he has worked with credit repair companies in the past. He provided character letters stating he is an honest, reliable, trustworthy and hardworking individual. He continues to live by military standards of loyalty, duty, respect, and integrity. He volunteers weekly at a local school as a “book buddy” to three students.<sup>16</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.

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

---

<sup>15</sup> Tr. 62, 65-68; GE 2 at 7.

<sup>16</sup> Tr. 62; AE B, C.

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 has numerous delinquent debts 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.

AG ¶ 20(a) is not established because Applicant's debts are numerous and recent, and he is still resolving them. Applicant's history of financial problems has not just been during his periods of unemployment, but he also had problems when he was on active duty, as evidenced by taking out loans to pay bills. After being discharged from the Army, Applicant was employed overseas. He was earning a salary of about \$85,000. During that period, he failed to use his income to pay his delinquent debts. When he returned from overseas he experienced periods of unemployment and was unable to pay his delinquent debts. His unemployment was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has not acted responsibly regarding his debts. When he had a substantial income he failed to address his overdue debts. His unemployment only exacerbated his already difficult financial state. I find AG ¶ 20(b) only partially applies.

Applicant did not begin to address his delinquent debts until he needed a security clearance for a pending job. He has made some small payments towards some debts, proving that when motivated he has some resources to address his finances. He does not appear to be in a stable financial position to conclude his financial problems are

under control. He has made some small payments to some creditors. He did not provide evidence he has received financial counseling. I find AG ¶ 20(c) does not apply. His student loans were in default status and he is now in a rehabilitation program for one group and the other group is deferred. His recent action of paying small amounts towards his debts is a good sign, but he has a short track record of consistent payments and a track record of failing to pay his debts, including from when he was in the Army and when earning a significant salary while he was working overseas as a civilian. I find AG ¶ 20(d) partially applies to the debts he has made consistent payments. AG ¶ 20(e) applies to the telephone debt Applicant disputed.

### **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 34 years old. He has a history of financial problems dating back to when he was in the Army. He attributes his financial problems to periods of unemployment and not having enough money. Applicant took out a loan while in the Army to help pay bills. He increased the loan to again help pay bills and then defaulted on the loan. He had two cars repossessed. One vehicle was repossessed while he was still in the Army and the other while he was working as a civilian overseas. He was earning approximately \$85,000 while serving overseas. He did not use his income to address his delinquent bills. He defaulted on his student loans that are now being rehabilitated or are in a deferred status. He is making payments to the IRS for taxes owed from 2008. He cannot afford to pay the \$2,000 he owes for his 2012 federal taxes and anticipated having to add it to his current installment agreement. Applicant also



attributes his financial problems to being immature. He was an E-6 in the Army and was 31 years old when he was working as a civilian overseas. Although his unemployment exacerbated his financial problems, his failure to address his delinquent debts when he was earning money shows a disregard for financial responsibility. Applicant's finances are a security concern, and he has not met his burden of persuasion. 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 failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.k:	For Applicant
Subparagraph 1.l:	Against 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 a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge