



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



In the matter of: )  
)  
) ISCR Case No. 11-08995  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

06/17/2013

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On November 2, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 18, 2012, and requested a hearing. The case was assigned to me on April 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 10, 2013, setting the hearing for May 30, 2013. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objections. Applicant testified and offered exhibits (AE) A through

J, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 4, 2013.

### **Findings of Fact**

Applicant is 58 years old and has worked as an inspector for a government contractor since January 2011. He is a high school graduate with some college education. He is married and has two adult children. He retired from the Navy in 1995 after 20 years of honorable service in the pay grade of E-6. He does not currently hold a security clearance, but has held a secret clearance in the past.<sup>1</sup>

The SOR alleges Applicant was indebted on seven accounts, including a debt to the Internal Revenue Service (IRS). The debts were listed on a credit reports dated May 2013, October 2012, July 2012, and February 2011. Applicant admitted all the debts, but indicated that he had paid or was making payments on each of them.<sup>2</sup>

After Applicant retired from the Navy in 1995, he was hired by a commercial company and worked for them for seven years, until he was laid-off in 2003. Starting in 2003, he began working a series of temporary jobs with multiple contractors. He typically worked about six months at a time and then would be laid-off for four months. This is when his debts became unmanageable. Once he was hired in his present full-time position, he was able to make strides toward paying his past due debts. The debt to the IRS is for two tax years. He owed taxes for taking a loan from his retirement account that was not repaid and because he over claimed mileage expenses in another tax year. He has established a payment plan with the IRS to pay these debts.<sup>3</sup>

Applicant presented documentation showing the debt listed in SOR ¶1.a was paid in full in July 2012. He presented documentation that the debt listed in SOR ¶ 1.b was settled in May 2013. He introduced documentation showing that the debts listed in SOR ¶¶ 1.c and 1.d arose from the same transaction and are duplicate debts. The documentation also shows that the underlying debt was paid in full in May 2013. He provided documentation showing that the debts listed in SOR ¶¶ 1.e and 1.f arose from the same transaction and are duplicate debts. He also showed proof that he established a payment plan for the underlying debt and has been making payments for 18 months. He currently pays \$300 monthly toward this debt. He presented documentation showing his payment plan with the IRS has him making monthly payments of \$100, which he recently increased to \$200. Although not listed in the SOR, Applicant also provided documentation that he is current on his student loan payments. He is current on all his other debt and he has sufficient monthly disposable income to pay all his obligations (\$3000).<sup>4</sup>

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<sup>1</sup> Tr. at 6-7, 55-56; GE 1.

<sup>2</sup> Answer.

<sup>3</sup> Tr. at 38, 41-42; GE 2.

<sup>4</sup> Tr. at 39-40, 42, 44-45, 47-49, 52; GE 3; Answer; AE A-J.

## 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 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 had multiple delinquent debts. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

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

The delinquent debts attributed to Applicant were recent. He has either paid all debts or is making substantial payments toward the debts. Since he has made a

concerted effort to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant became indebted when he was underemployed for about seven years. Once he obtained full-time employment in 2011, he began paying off his delinquent debt. His underemployment was a condition beyond his control and once he was able to do so, he acted responsibly by paying most of his debts and establishing payment plans for the remaining debts. AG ¶ 20(b) applies.

There are clear indications that all the debts have been resolved through payment or are being resolved through payment plans. He made good-faith efforts to resolve all the debts listed on the SOR. He supplied documentary evidence showing the payments made and the payment plans established. 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 relevant 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.

I found Applicant to be honest and candid about the circumstances that led to his debts. He either paid the debts or established payment plans on the remaining debts. I found nothing to indicate a likelihood that Applicant would find himself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the 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.g:                      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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge