



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09246
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace L. Garcia, Esq., Department Counsel  
For Applicant: *Pro se*

07/05/2013

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**Decision**

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COACHER, Robert E., 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 November 20, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted 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 DOD on September 1, 2006.

Applicant answered the SOR (undated), and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 20, 2013. The FORM was mailed to Applicant and he

received it on April 5, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any information. The case was assigned to me on June 21, 2013.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations, except for the debt listed in ¶ 1.j, which he denied. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 35 years old. He is currently employed by a defense contractor and is working in a deployed location. He has worked for his current employer since December 2003. He is married and has two children. He is currently living separately from his wife and is seeking a divorce. He continues to provide financial support for his wife and family. He holds a high school diploma. From 1999 until 2003, he served in the Air National Guard for his state of residence.<sup>1</sup>

The debts listed in the SOR are supported by credit reports from April 2010, June 2011, July 2012, October 2012, and March 2013. The SOR sets out 11 debts amounting to about \$205,884. The bulk of this delinquent debt is a home foreclosure occurring in 2011 in the amount of about \$201,000 (SOR ¶ 1.k). Applicant's job has kept him deployed on a regular basis since 2003. As a result of his deployments, his wife maintained the family finances. At some unrecalled date, his variable rate mortgage increased and his monthly payments rose from \$1,500 per month to \$2,400. Unbeknownst to Applicant, his wife stopped making the mortgage payments and eventually the property was foreclosed. Once Applicant became aware of his mortgage delinquency, he attempted to seek a loan modification, but was unsuccessful. There are no details in the record about the foreclosure, any resulting deficiency amount, or debt forgiveness, other than what is indicated in the credit reports. Applicant's wife also failed to pay the remaining debts listed in the SOR, which included multiple medical debts, two automobile payments, and a commercial debt.<sup>2</sup>

The delinquent debts alleged in SOR ¶¶ 1.a through 1.g are medical accounts. Applicant stated that he was unaware why his wife would accrue these debts because he had health insurance that covered his family's medical costs. He later admitted the debts in his answer. In August 2012, Applicant's wife entered them into a settlement agreement with a debt company to pay all the medical debts. There is no evidence that any payments were made. These debts are unresolved.<sup>3</sup>

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<sup>1</sup> Items 4, 6.

<sup>2</sup> Items 6-11.

<sup>3</sup> Items 3, 6-11.

The delinquent debt alleged in SOR ¶ 1.h is a consumer account in the amount of \$250. This debt is unresolved.<sup>4</sup>

The delinquent debts alleged in SOR ¶¶ 1.i and 1.j are automobile loans. The record indicates that a \$505 payment was made in July 2012 toward the amount owed on SOR ¶ 1.j; however, a delinquent balance remains. These debts are unresolved.<sup>5</sup>

Applicant's personal financial statement shows that he receives a sizable monthly net income (\$10,747); however, his monthly expenses of about \$8,400 and his debt payments of about \$3,500 surpass that income and leave him with a negative balance. He also has a long history of delinquent debts relating back to 2000. He has deployed to hostile areas in support of U.S. forces. No further information is available about his activities.<sup>6</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 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

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<sup>4</sup> Items 6-11.

<sup>5</sup> Items 6-11.

<sup>6</sup> Items 6, 12-13.

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 that an 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 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**

AG ¶ 18 expresses the security concern for financial considerations:

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 them under AG ¶ 19 and the following potentially apply:

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

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

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

(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.

All of Applicant's debts remain unresolved. He did not provide sufficient evidence to show that the debts are unlikely to recur. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence that his home mortgage payments increased because of an interest rate increase and that his wife failed to pay their debts while he was deployed. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. Other than seeking a loan modification and setting up a payment plan for the medical debts, but failing to make any of the required payments, Applicant provided insufficient evidence to show he acted on the remaining debts. This demonstrates a lack of responsible behavior. I find AG ¶ 20(b) partially applies. Applicant failed to present evidence of financial counseling and there is no clear evidence that Applicant's financial problems are being resolved or under control because several debts remain unpaid and his monthly disposable income is in the negative range. There is no evidence that he has made a good-faith effort to pay the remaining debts. I find AG ¶¶ 20(c) and 20(d) do not 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 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 guideline 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 considered Applicant's service to the U.S. military in hostile territory and the impact his wife's inaction had on his debt situation. However, he has not shown a track record of financial stability. The record lacks evidence that Applicant has made an overall good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

Overall, 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.k:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge