



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09571
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

03/27/2013

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 3, 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 (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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on January 7, 2013, and requested a hearing before an administrative judge. The case was assigned to me on February 2, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 12, 2013, and the hearing was convened as scheduled on February 27, 2013.

The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Applicant testified and submitted exhibit (AE) A (AE A was further sub-tabbed by Applicant using A through F), which was admitted into evidence without objection. The record was kept open to allow Applicant to submit additional evidence. He submitted AE B through D, which were admitted into the record without objection. DOHA received the hearing transcript (Tr.) on March 7, 2013.

### **Procedural Issue**

Applicant affirmatively waived the 15 day notice requirement contemplated by the Directive, Additional Procedural Guidance, paragraph E.3.1.8. Additionally, Department counsel indicated she verbally notified Applicant on February 5<sup>th</sup> and 6<sup>th</sup> about the hearing date and location, which is more than 15 days from the date of the hearing (February 27<sup>th</sup>).<sup>1</sup>

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.b – 1.j. He denied ¶ 1.a. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 49-year-old employee of a defense contractor. He has worked for his current employer since January 2011. He is an evaluation engineer. He has a master's degree. He is married (his second). He has three children from his first marriage and two stepchildren from his second marriage. He is required by court order to pay alimony to his ex-wife, but he is currently about \$40,000 to \$50,000 delinquent in those payments. The arrearages for his alimony payments are not alleged in the SOR. He retired from the Navy after 24 years of honorable service. He retired as a lieutenant, after first serving as an enlisted member for 13 years.<sup>2</sup>

The SOR alleged 10 delinquent debts totaling about \$58,903. The debts were listed on credit reports obtained in November and July 2012, and May 2011.<sup>3</sup>

Applicant retired from the Navy in 2004. Shortly thereafter, he obtained employment in the state where he was residing. The job paid well, but the cost of living was extremely high. He worked in this position from 2004 to 2006. He sought employment elsewhere, in a less costly area, and was hired for a position in another state. He moved and took this position in the spring of 2006. His income was about \$30,000 less than his previous job. In December 2006, he was promoted within the company, but the promotion required a move to a new location in a different state. He

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<sup>1</sup> Tr. at 10.

<sup>2</sup> Tr. at 6, 25-26, 31, 57; GE 1. Note: The non-alleged debts will not be considered in applying the disqualifying conditions, but may be considered in applying the mitigating conditions and in making a whole-person assessment.

<sup>3</sup> GE 4-6.

purchased a home in this new location. By his own admission, he bought a home, "much larger than I needed." He was terminated from his job in July 2008. The reason for the termination was that he fraternized with another employee (his future second wife). He initially contacted an attorney about the possibility of a wrongful termination lawsuit, but was advised not to pursue it and he did not. He was making about \$100,000 at the time he was terminated. From about August 2008 until about July 2009, he was unemployed and was supporting himself with his military retirement income. It was at this point that his delinquent debts began to accrue.<sup>4</sup>

Applicant eventually took several hourly wage jobs, beginning in September 2009. He could not keep up with his mortgage payments and began missing payments. His last mortgage payment was in August or September 2008. He attempted to work with the lender on alternative options, but according to him, they refused to do so. The home was foreclosed in January 2009. He believes there was no deficiency accruing to him after the foreclosure. He obtained his current position in January 2011 and earns about \$80,000 annually. His wife does not work. He has not sought any financial counseling.<sup>5</sup>

The debt alleged in SOR ¶ 1.a (\$1760) is a collection account for past due rent. In November 2012, Applicant settled this debt by paying less than the full balance. This debt is resolved.<sup>6</sup>

The debt alleged in SOR ¶ 1.b is a collection account for a delinquent telephone debt in the amount of \$353. Applicant admitted this debt in his answer. He has taken no action concerning this debt. This debt is unresolved.<sup>7</sup>

The debts alleged in SOR ¶¶ 1.c and 1.d are delinquent accounts to a credit union in the amounts of \$8,072 and \$20,504 respectively. Applicant admitted both debts and he supplied documentary proof that he was issued an IRS Form 1099-C, cancellation of debt, for SOR ¶ 1.d. He stopped making payments on SOR ¶ 1.c in 2008 and has not made any payments since then. Both debts are unresolved.<sup>8</sup>

The debt alleged in SOR ¶ 1.e is a collection account for a delinquent credit card debt in the amount of \$2,163. Applicant admitted this debt in his answer. He has taken no action concerning this debt. This debt is unresolved.<sup>9</sup>

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<sup>4</sup> Tr. at 27-30; GE 3.

<sup>5</sup> Tr. at 28, 30, 32-33, 38, 58, 61; GE 3.

<sup>6</sup> Tr. at 36; AE A (B-1).

<sup>7</sup> GE 3-6; AE A (B-2).

<sup>8</sup> Tr. at 38, 41, 47; GE 3-6; AE A (B-3, B-4), C.

<sup>9</sup> Tr. at 49; GE 3-6; AE A (B-5).

The debt alleged in SOR ¶ 1.f is a collection account for a delinquent consumer debt in the amount of \$4,638. Applicant admitted this debt in his answer. He has taken no action concerning this debt. He supplied documentary proof that he was issued an IRS Form 1099-C, cancellation of debt, for SOR ¶ 1.f. This debt is unresolved.<sup>10</sup>

The debt alleged in SOR ¶ 1.g is the first mortgage on his home, which was foreclosed in January 2009. Applicant admitted this debt. He testified that he does not owe a deficiency on this debt. This debt is unresolved.<sup>11</sup>

The debt alleged in SOR ¶ 1.h is a delinquent collection account for an automobile repossession in the amount of \$11,609. Applicant admitted this debt and provided documentation showing one payment for \$305 made on February 28<sup>th</sup>. He had a second payment due on March 5<sup>th</sup>, but he did not present documentation that he made that payment. This debt is unresolved.<sup>12</sup>

The debt alleged in SOR ¶ 1.i is a delinquent collection account for an automobile repossession in the amount of \$5,397. Applicant admitted this debt and indicated no further action by him. This debt is unresolved.<sup>13</sup>

The debt alleged in SOR ¶ 1.j is a collection account for a delinquent credit card debt in the amount of \$4,407. Applicant admitted this debt in his answer. He testified that he did not recognize this debt and that his ex-wife may have opened this account during their marriage. He also admitted that their property settlement for the divorce did not allocate responsibility for debts. He has taken no action concerning this debt. This debt is unresolved.<sup>14</sup>

Applicant provided a budget showing that after expenses he has a monthly disposable income of about \$293. This budget does not allocate any funds for the back alimony he owes. He presented documentary evidence showing that he repaid a delinquent credit account that was not alleged in the SOR. He offered documents showing he was rehabilitating his credit. He presented character letters from three work supervisors. All attest to his work ethic and integrity. All recommend him for a security clearance. He also offered his work appraisals which characterize him as a “better than expected” employee, which is the second highest appraisal category. He also provided copies of several company awards and certificates that he received.<sup>15</sup>

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<sup>10</sup> Tr. at 50-51; GE 3-6; AE A (B-6), C.

<sup>11</sup> Tr. at 32-33; GE 3-6; AE A (B-7).

<sup>12</sup> Tr. at 35-36; GE 3-6; AE A (B-8), C.

<sup>13</sup> Tr. at 52; GE 3-6; AE A (B-9).

<sup>14</sup> Tr. at 53-54; GE 3-6.

<sup>15</sup> Tr. at 21; AE A (B-12, C-F).

## 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 that 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 has multiple debts that are delinquent. He was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

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;
- (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.

Applicant's debts are recent and multiple. He has paid just one debt and has only made one payment under a plan to pay one other debt. The remaining debts have not been addressed. His poor financial record and his failure to establish a plan to pay the remaining debts casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant was impacted by one year of unemployment and two years of underemployment. However, the unemployment was caused by his own misconduct at a former job, which led to his termination. It would be difficult to argue that his unemployment was caused by a condition beyond his control under these circumstances. AG ¶ 20(b) does not apply.

Applicant did not receive financial counseling. The debt that was paid is resolved, however, the remaining debts are not resolved or under control. Even though he received a Form 1099-C cancelling two of the debts for tax purposes, this does not constitute a good-faith effort to resolve them or absolve him of those debts for the security clearance implications arising from them. AG ¶ 20(c) partially applies to the paid debt. AG ¶ 20(d) applies to the paid debt, but does not apply to the remaining debts since no good-faith effort was made toward paying those debts. Applicant did not provide documentation to dispute the debts. AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

### **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 considered Applicant's military service, the character evidence on his behalf, his job appraisals and awards, and his current service to his employer. I must also consider that beyond resolving one debt, he has done very little to resolve the remaining debts. Additionally, he admitted to owing as much as \$40,000 to \$50,000 in back alimony to his ex-wife. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

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 has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.j:	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