



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



In the matter of: )  
)  
) ISCR Case No. 11-10038  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

05/23/2013

**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 5, 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 27, 2013, and requested a hearing before an administrative judge. The case was assigned to me on April 16, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 29, 2013. I convened the hearing as scheduled by video teleconference on May 14, 2013.

The Government offered Exhibits (GE) 1 through 6, and they were admitted into evidence without objection. Applicant testified, and he offered Exhibits (AE) A through C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 21, 2013.

### **Procedural Issues**

Department Counsel moved to amend the SOR by withdrawing ¶¶ 1.s and 1.w. There was no objection and the motion was granted.<sup>1</sup>

### **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 43 years old. He graduated from high school in 1989. He married in 2001. He has three stepchildren ages 20, 19, and 16, and one child, age 13, with his wife. All of the children live at home. The eldest is out of school and does not contribute to the household income. His wife worked for periods of time, but then had difficulty finding a job due to a medical condition. Applicant worked for a federal contractor from February 2009 until January 2013, when he was laid off when his security clearance was suspended.<sup>2</sup>

The SOR alleges 21 delinquent debts totaling approximately \$21,016 dating from at least 2007. Applicant attributes his financial problems to periods of unemployment. He had a two-month period of unemployment sometime in 2003. He worked from 2005 to 2008 and was laid off for periods of 45 days, 21 days, and 7 days. He had a period of unemployment from November 2008 to February 2009, when he began working for his current employer. He has moved a couple of times to places where he was able to get a job. Applicant received unemployment benefits during the periods he was unemployed. He filed Chapter 7 bankruptcy in January 2013. The petition was dismissed because he could not afford the bankruptcy filing fees.<sup>3</sup>

Applicant was interviewed by a government investigator on May 5 and 16, 2011, about his delinquent debts. He was not familiar with many of the debts and others he questioned. He told the investigator he was going to look into the status and validity of the delinquent debts and after looking into the debts he intended to resolve some of them.<sup>4</sup>

---

<sup>1</sup> Tr. 14-15.

<sup>2</sup> Tr. 27-34.

<sup>3</sup> Tr. 29, 36-37, 39-53.

<sup>4</sup> GE 2.

Applicant admitted all of the SOR debts, but stated he believed he paid the judgment in SOR ¶ 1.q (\$1,508). He stated he had been making payments on the debts in SOR ¶¶ 1.g (\$717), 1.i (\$668), and 1.p (\$8,533). He thought the debts in SOR ¶¶ 1.p and 1.q received payments through garnishment. He did not provide supporting documents for any of the above debts. He has not made any other payments on any of the remaining SOR debts. He stated he contacted some creditors. He admitted there are some alleged debts that he is unfamiliar with and acknowledged they are likely from his wife. He has not researched the debts that he is unfamiliar with to determine their validity. Applicant does not have sufficient income to pay his delinquent debts. He stated he attempted to consolidate his delinquent debts, but did not provide supporting documents or proof of payments on any of the debts. He hopes to set up payment plans if he can retain his job.<sup>5</sup>

Applicant provided character letters that describe him as having an outstanding work ethic and attention to detail. He willingly works long hours. He is respected and admired. He is considered to be highly professional, trustworthy, and an upstanding citizen.<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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

---

<sup>5</sup> Tr. 53-68; GE 4, 5, 6.

<sup>6</sup> AE B, C.

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 21 delinquent debts dating from 2007 that he is 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, recent, and unresolved. Applicant attributed his history of financial problems to periods of unemployment. His unemployment was beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. He has been employed since 2009 and has made minimal effort to resolve even the smallest \$20 debt. He was made aware that his finances were a security concern when he was questioned about his delinquent debts during his background interview. He failed to provide evidence that he has acted responsibly addressing his delinquent debts. I find AG ¶ 20(b) only partially applies.

Applicant is not in a stable financial position, and his financial problems are not under control. He did not provide evidence he has received financial counseling. I find AG ¶ 20(c) does not apply. He stated that he believed some debts were paid, but did not have proof to substantiate their payment. He stated that he was unfamiliar with some of the debts, but did not provide evidence of what actions he took to substantiate the validity of the debts. I find AG ¶ 20(d) does not apply because he has not initiated a good-faith effort to repay his delinquent debts. AG ¶ 20(e) does not apply because Applicant did not provide documented proof to substantiate the basis of disputed or questionable debts.

## 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 43 years old. He has delinquent debts dating back to at least 2007 that remain unresolved. He has had periods of unemployment, but has been steadily employed since 2009. He failed to provide evidence to show progress he has made in resolving his debts. 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.r:	Against Applicant
Subparagraph 1.s:	Withdrawn
Subparagraph 1.t-1.v:	Against Applicant
Subparagraph 1.w:	Withdrawn

## **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