



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



In the matter of: )  
)  
) ISCR Case No. 11-11652  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

05/30/2013

---

**Decision**

---

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 December 5, 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 on December 20, 2012, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 14, 2013. The FORM was mailed to

Applicant and he received it on March 20, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He responded on April 18, 2013 (FORM Response), by submitting additional material that I considered. The case was assigned to me on May 2, 2013.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations. 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 single, has never been married, and has no children. He has worked for his current employer, a defense contractor, since May 2011. He has a bachelor's degree. He has never served in the military and does not hold a security clearance.<sup>1</sup>

The debts listed in the SOR are supported by credit reports dated March 2013, September 2012, and June 2011. The SOR sets out 15 debts amounting to about \$50,146. Applicant accumulated most of the debt when he was working in the real estate industry. His debt included multiple credit cards, a car loan, and various other debts. When the real estate industry lost traction because of the declining economy, Applicant found himself in financial trouble. He has not paid any of the delinquent debts listed in the SOR and he has not set up any payment plans with the creditors. He recently retained counsel to file a Chapter 7 bankruptcy and have all his debts discharged, although he did not submit any bankruptcy pleadings. His current finances indicate that he only has \$21 after paying his expenses at the end of each month and that does not account for any payments toward his delinquent debt.<sup>2</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,

---

<sup>1</sup> Items 3-4.

<sup>2</sup> Items 3, 5-8; FORM Response.

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 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 income was reduced due to the economy, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. Although he recently retained an attorney to file a Chapter 7 bankruptcy for him, he presented no evidence that he proceeded with that action. Therefore, he failed to produce evidence that he was taking any action on his 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 the debts remain unpaid. There is no evidence that he has made a good-faith effort to pay the debts.<sup>3</sup> I find AG ¶¶ 20(c) and 20(d) do not apply.

---

<sup>3</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an Applicant must present evidence showing either a good-faith effort to repay overdue

## 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 that Applicant was impacted by the economic downturn. However, he has not shown a track record of financial stability. His financial worksheet shows that he barely has a remainder left after paying all his current obligations, which is an insufficient amount to address his past debts listed in the SOR. 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.

---

creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)) [note: mitigating condition 6 is now AG ¶ 20(d)].

### **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.o:	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.

---

Robert E. Coacher  
Administrative Judge