



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



In the matter of: )  
)  
) ISCR Case No. 11-12222  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

01/10/2014

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On June 4, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 July 1, 2013. He did not request a hearing as part of his answer, but subsequently requested a hearing before an administrative judge. The case was assigned to me on September 20, 2013. Scheduling of the hearing was delayed due to the shutdown of the federal government. The Defense Office of

Hearings and Appeals (DOHA) issued a notice of hearing on October 30, 2013. I convened the hearing as scheduled on December 5, 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 and B, and they were admitted into evidence without objection. The record was held open until December 23, 2013, to provide Applicant the opportunity to present additional exhibits. He provided Applicant's Exhibit (AE) C through E, which were admitted into evidence without objection and the record closed.<sup>1</sup> DOHA received the hearing transcript (Tr.) on December 13, 2013.

### **Findings of Fact**

Applicant admitted all the allegations in SOR, except ¶ 1.d, which he denied. 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 1988. He married in 1991 and divorced in 1997. He has a son from the marriage. He is required to pay child support for the child until March 2014, when he turns 21. He remarried in 1999 and he has a son who is five years old. Applicant has worked for his present employer since January 2008.

Applicant filed Chapter 13 bankruptcy in 1999. He and his wife had debts and he fell behind in paying his bills due to his divorce. He did not have a good job at the time. His wife had medical bills and student loans. They completed the terms of the Chapter 13 bankruptcy. Applicant's wife continues to pay her student loans.<sup>2</sup>

Applicant served in the Marine Corps from 1989 to 1993 and was honorably discharged. He reenlisted in the Marine Corps in 2000 and intended to serve until he was retirement eligible. In 2005, Applicant hurt his back. He was medically discharged under honorable conditions in 2008. He was a staff sergeant (E-6) when he was discharged. While in the Marine Corps, Applicant served two combat tours in Iraq and held a secret clearance.<sup>3</sup>

Some of the medical problems associated with his injury were addressed by the military, but residual problems were not covered. He required surgery in December 2011 that was not related to his injury, and he was responsible for paying for his care. Applicant's medical insurance has a \$3,000 deductible. He receives \$548 monthly disability payments from the Department of Veterans' Affairs (VA). In late 2010, Applicant's wife was laid off from her job. At the same time, Applicant learned that his child support payments increased. In the state where Applicant's child lives, child

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<sup>1</sup> Hearing Exhibits I and II are Department Counsel's memoranda indicating he did not object to the documents.

<sup>2</sup> Tr. 36-37.

<sup>3</sup> Tr. 21.

support payments are mandated until the child is 21 years old. His child support payment increased by \$230 to \$620. Applicant's wife also had some medical issues during this time.<sup>4</sup>

Due to these issues, Applicant had difficulty paying his mortgage loan. He contacted his mortgage company in January 2011 to see what actions he could take. Applicant sent his \$3,000 income tax refund to the mortgage company. The mortgage company discussed a possible modification of the loan. Applicant credibly testified that he sent the requested paperwork to the mortgage company five or six times and each time he was told that some document was missing or the company lost the paperwork. The company sent back payments to Applicant because it was not sent by certified mail. Applicant was never informed payments had to be sent in this way. Applicant contacted a law firm to help him resolve the matter and was advised that the federal government was getting involved with this mortgage company in an attempt to resolve certain mortgages that were issued. Applicant continues to work with the law firm to prevent his house from foreclosure. He provided documents from the law firm to show he has been attempting to modify the mortgage loan and resolve the debt.<sup>5</sup>

The debts in SOR ¶¶ 1.b and 1.c are medical debts (\$33 and \$79) that have been paid. The debt in SOR ¶ 1.e (\$3,849) is for medical treatment related to his back injury. He has been unsuccessful in having the VA cover this debt. He has an agreement with the medical provider to pay \$40 a month on the debt. He is making payments and provided documentary proof of his action.<sup>6</sup> Applicant also has a payment agreement with the creditor for the credit card debt in SOR ¶ 1.g (\$2,368) to pay \$35 monthly.<sup>7</sup>

The debt in SOR ¶ 1.d (\$2,171) is a state tax lien from State A. The lien was imposed when Applicant was in the Marine Corps. He has contacted State A's tax office numerous times to show he was not a resident of the state and is not required to pay state taxes there. He was stationed in the State A, but he and his wife lived in neighboring State B. His wife worked in State B, and Applicant did not have any outside employment. Applicant commuted daily to the base in the State A. Applicant provided documents to show he listed State B as his state of residence at that time. He continues to dispute this lien.<sup>8</sup>

Appellant's wife recently was able to get a job as a part-time substitute teacher now that their son is in school. Along with working full-time, Applicant is attending college full-time and has one class left to complete his bachelor's degree. He is hopeful

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<sup>4</sup> Tr. 21, 25, 43, 47-48, 51.

<sup>5</sup> Tr. 26-30, 37-42, 52-58, 67-69; Answer to SOR; AE A.

<sup>6</sup> AE B.

<sup>7</sup> Tr. 23-25, 32-35, 49, 64, 66; AE C, D, E.

<sup>8</sup> Tr. 30-32.

that once he completes his degree he will be entitled to a raise in salary. Due to a mix-up, he did not receive his educational benefits through the military on time. He expects to receive a lump-sum payment in January 2014. Along with the discontinuation of his child support payments in March 2014, Applicant believes he will be in a better financial position in the near future. He and his wife maintain a written budget and are actively attempting to reduce their debt. Most of their disposable income goes toward medical debts that are not covered by insurance. They have paid other debts that are not alleged in the SOR.<sup>9</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.

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

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<sup>9</sup> Tr. 43-48, 58, 60-62, 67, 70, 72.

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 had six delinquent debts that he was 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 some of Applicant's debts are still being resolved. Applicant attributed his financial problems to medical issues and a high medical deductible, an unexpected increase in child support payments, his wife's medical issues and loss of income when she lost her job. These things were beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant paid two small debts and has payment agreements for two others. When he began having financial problems he contacted the mortgage company in an attempt to modify his loan. He has been working with a law firm to help him resolve this debt. He has not abandoned his debts and has acted responsibly. AG ¶ 20(b) applies.

Applicant resolved two delinquent debts and is making monthly payment on two others. (SOR ¶¶ 1.a, 1.b, 1.e, and 1.g). He is working with a law firm to help him modify his mortgage loan. AG ¶ 20 (d) apply to these debts. Despite his efforts to work with the mortgage company, he has been frustrated by its failures to follow through on its promises. Applicant is hopeful he will receive a raise after completing his college degree. His wife is now working, and he should receive payments owed to him in January 2014 for educational benefits. He and his wife maintain a budget. There are clear indications his financial problems are being resolved and under control. AG ¶ 20(c) applies. Applicant is actively disputing the debt in SOR ¶ 1.d. He has contacted State A and provided proof that he was not a resident and should not have to pay taxes in that state. AG ¶ 20(e) applies.

### **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 served his country in the Marine Corps for 12 years before being medically discharged due to an injury. Some of his financial problems are due to medical bills associated with his injury and his high medical deductible. He has not abandoned his debts and is slowly gaining financial stability. He has paid the small debts and has payment plans in place to resolve the larger ones. His wife is now employed and along with his child support payments discontinuing in March 2014, he anticipates he will be in a better financial situation. He has been working with a law firm to modify his mortgage. Applicant has met his burden. His finances are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: 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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge