



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



In the matter of: )  
)  
) ISCR Case No. 11-12276  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

06/25/2013

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On February 11, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on March 12, 2013, and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 31, 2013, scheduling the hearing for June 12, 2013, and the hearing convened on that date. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection.

Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 19, 2013.

### **Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor. He has worked for his current employer since March 2008. He is applying for a security clearance for the first time. He has a Ph.D. He is married with a nine-year-old child. He also has an adult child from a previous relationship.<sup>1</sup>

Applicant's finances were unremarkable until about 2006. He had a good job, and his wife received her degree in December 2005. He thought he might lose his job through downsizing, so he started looking in other geographic areas. His wife received a job offer in a state with a lower cost of living than the area where they were living, and at a salary that was close to what he was earning. Applicant was confident that he could find a job at the new location. He quit his job in February 2006, and they moved to where she was offered the job.<sup>2</sup>

Applicant's wife developed medical problems that prevented her from working at her new job. Applicant was unable to find a job that was commensurate with his education and experience, and he had to accept a low-paying job. He was unable to pay all his bills, and a number of debts became delinquent.<sup>3</sup>

In March 2008, Applicant moved again to accept a job with his current employer. He once again was earning a good salary, but his wife was unable to find a job. She decided to further her education with a post-graduate degree. She received her degree in 2011, but still could not find a good job. In about 2009 and again in 2011, Applicant moved to different homes, but continued to work at the same location.<sup>4</sup>

In 2012, Applicant moved at his company's request to a job site that was about 200 miles from where he was living and working. He probably would have lost his job if he did not accept the move. Applicant's wife found a job at their new location. After about a month, her employer realized that there was not enough work, and cut her hours back to about eight hours every two weeks. Her employer let her out of her two-year contract, but required that she repay a \$5,000 bonus that she had received.<sup>5</sup>

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<sup>1</sup> Tr. at 30-33, 42; GE 1.

<sup>2</sup> Tr. at 27-28, 33-35; GE 1, 2.

<sup>3</sup> Tr. at 28, 33-39; GE 2.

<sup>4</sup> Tr. at 28, 33, 39-43, 46-48; GE 1, 2.

<sup>5</sup> Tr. at 24-26, 29, 48-52; GE 1, 2.

The SOR alleges 17 delinquent debts. All of the debts appear on at least one credit report. Applicant denied owing the debts alleged in SOR ¶¶ 1.m (\$726) and 1.n (\$3,393). He admitted owing the remaining debts, which total about \$9,700.

On April 13, 2013, Applicant paid the \$341 debt to a utility company that is alleged in SOR ¶ 1.a. On May 30, 2013, he paid the \$25 medical debt that is alleged in SOR ¶ 1.p.<sup>6</sup>

Applicant denied owing the \$726 debt to a telecommunications company that is alleged in SOR ¶ 1.m. He credibly testified that he was released from his contract for cell phone services when he moved to a location where the company did not provide service.<sup>7</sup>

SOR ¶ 1.n alleges a \$3,393 delinquent debt to a credit card company. Applicant admitted that he had an account with the credit card company that he has not paid. The credit card company sued him, but the case was dismissed without prejudice upon the plaintiff's motion to dismiss. It is unclear why the credit card company moved to dismiss the suit.<sup>8</sup>

Applicant has not paid any of the other debts alleged in the SOR. He testified that he paid some debts to family members. His wife has debts that are in her name alone. He stated that they have concentrated on paying the debts in her name. They want to increase his wife's credit score and save for a down payment so that they can buy a home. He has not received formal financial counseling, but he has discussed his debts with a financial counselor. He stated that he intends to pay or settle debts that are still on his credit report. He was told that his credit score could go down if he pays or settles debts that are no longer on his credit report. He stated that he plans to eventually attempt to settle the debts that are no longer on his credit report. He stated that he has learned from the experience, and that his financial problems will not be repeated.<sup>9</sup>

Applicant's supervisor has known him for more than 15 years. They attended graduate school together, and he hired Applicant. He praised Applicant's excellent job performance, trustworthiness, dependability, loyalty, reliability, and honesty.<sup>10</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

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<sup>6</sup> Tr. at 53-54, 61-62; AE A, B.

<sup>7</sup> Tr. at 57-59; Applicant's response to SOR.

<sup>8</sup> Tr. at 59-61; Applicant's response to SOR; GE 2.

<sup>9</sup> Tr. at 29-30, 44-46, 50-51, 62-69, 73-74; GE 2-5.

<sup>10</sup> Tr. at 20-23.

disqualifying conditions and mitigating conditions, which 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."

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 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 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* 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 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 accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 had a good job in 2006, but he thought he might lose his job through downsizing. His wife received a job offer in a state with a lower cost of living than the area where they were living, and at a salary that was close to what he was earning. They moved to the new location, but Applicant was unable to find a job that was commensurate with his previous job, and his wife developed medical problems that prevented her from working at her new job. They moved again in 2008 so that Applicant could accept a job with his current employer. In 2012, they had to move again at his

company's request to a job site that was about 200 miles from where he was living and working. His wife's medical problems and their employment issues were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has worked for his current employer since 2008. In that time he has made minimal payments toward his delinquent debts. He stated that he has paid some loans to family members and some debts that are solely in his wife's name. They want to increase his wife's credit score and save for a down payment so that they can buy a home. He discussed his debts with a financial counselor. He was advised not to pay debts that are no longer on his credit report as that would lower his credit score.

Applicant is credited with paying two debts totaling \$366. However, I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his other debts. His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) and 20(d) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. AG ¶ 20(e) is applicable to the disputed telecommunications debt. It is not applicable to the credit card debt that resulted in a dismissed lawsuit. I find that financial concerns remain 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 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.

I considered Applicant's favorable character evidence. However, he has not convinced me that his finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	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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Edward W. Loughran  
Administrative Judge