



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



In the matter of: )  
)  
) ISCR Case No. 11-12343  
)  
Applicant for Security Clearance )

**Appearances**

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

05/31/2013

**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 January 18, 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 in writing on February 15, 2013, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 27, 2013. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns.

Applicant received the FORM on April 5, 2013. As of May 23, 2013, he had not responded. The case was assigned to me on May 24, 2013. The Government exhibits (GE) included in the FORM are admitted.

### **Findings of Fact**

Applicant is a 39-year-old part-time employee of a defense contractor. He has worked for his current employer since July 2011. He is applying for a security clearance for the first time. He attended college for a period. He is married with two stepchildren, ages 20 and 15.<sup>1</sup>

Applicant has not had steady full-time employment since the company where he worked closed its operations in February 2009. He was unemployed from February 2009 to June 2010. He has worked part-time for various employers since then. He also had medical bills related to his stepchild's medical condition. He was unable to pay all his bills; a number of debts became delinquent; and two cars were repossessed.<sup>2</sup>

The SOR alleges nine delinquent debts. All of the debts appear on at least one credit report. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a (telecommunications company - \$2,316), 1.c (deficiency on car loan - \$9,871), and 1.h (medical - \$7,629). He established that he paid the \$28 debt to a collection company on behalf of a telecommunications company (SOR ¶ 1.f). He stated the remaining debts were disputed or "awaiting confirmation."<sup>3</sup>

Applicant retained a credit protection company in February 2012 "for the purpose of improving [Applicant's] credit profile and helping [Applicant] establish and or obtain new credit." He paid the company \$1,500, and in return the company agreed to provide credit counseling and dispute items on his credit report. The company sent dispute letters on Applicant's behalf to nine creditors.<sup>4</sup>

Applicant contracted with a debt management company in February 2013 to assist him in resolving his debts. He enrolled the three debts alleged in SOR ¶¶ 1.a, 1.c, and 1.h in the company's debt resolution program (DRP). The three debts, with additional interest and fees, totaled \$20,589. The estimated duration of the DRP is 34 months. Applicant agreed to monthly payments of \$451 to an escrow account. The escrow account holder charges a monthly fee of \$9.85. The debt management company agreed to negotiate settlements with his creditors, and Applicant would use the accumulated funds in the escrow account to pay the settlements. Applicant agreed to pay the debt management company 23% "of the balance of each debt enrolled in the program," for a total of \$4,735 if all three debts are settled. Applicant did not respond to

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<sup>1</sup> GE 4, 7.

<sup>2</sup> GE 4, 7.

<sup>3</sup> GE 3-9.

<sup>4</sup> GE 7.

the FORM, so it is unknown if he made any of the \$451 monthly payments to the escrow account.<sup>5</sup>

Applicant denied owing the \$297 delinquent debt to a telecommunications company that is alleged in SOR ¶ 1.b. He admitted owing \$2,312 (SOR ¶ 1.a) to a collection company on behalf of the same telecommunications company. I am unable to determine that the \$297 delinquent debt represents a separate debt that is not included in the amount that was referred to the collection company.<sup>6</sup>

Applicant stated that he was “awaiting confirmation” of the \$330 delinquent debt to a collection company that is alleged in SOR ¶ 1.d. The debt is listed by Experian on the combined July 2011 credit report. The report indicates the original creditor was a telecommunications company and the debt became delinquent in 2008. The debt is also listed on the October 2012 Equifax credit report. The credit protection company disputed the debt on Applicant’s behalf. Applicant submitted a combined credit report obtained in December 2012. That report listed the debt as reported by Experian, TransUnion, and Equifax. The debt is not listed on the Equifax credit reports obtained in January 2013 and March 2013.<sup>7</sup>

SOR ¶ 1.e alleges a \$649 debt to a collection company on behalf of a telecommunications company. In his response to the SOR, Applicant stated that he was “awaiting confirmation” of the debt and that the collection company closed the account and transferred it to another collection company. The debt is listed by Experian on the combined July 2011 credit report. The credit protection company disputed the debt on Applicant’s behalf. The debt is not listed on any of the later credit reports.<sup>8</sup>

Applicant denied owing the \$972 delinquent debt to a collection company that is alleged in SOR ¶ 1.g. He stated that there was insufficient information to determine whether he owed the debt, and that the debt management company was unable to validate the debt as it is not on his credit report. The debt is listed by Experian on the combined July 2011 credit report. The report indicates the original creditor was a bank and the debt became delinquent in 2009. The credit protection company disputed the debt on Applicant’s behalf. The debt is not listed on any of the later credit reports.<sup>9</sup>

Applicant stated that he was “awaiting confirmation” of the \$503 medical debt that is alleged in SOR ¶ 1.i. The name of the creditor is not identified in the SOR. Applicant stated that there is a “lack of information on who it is owed to.” The debt is listed by TransUnion on the combined July 2011 credit report. The credit protection

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<sup>5</sup> GE 3.

<sup>6</sup> GE 3-9.

<sup>7</sup> GE 3, 5-9.

<sup>8</sup> GE 3, 5-9.

<sup>9</sup> GE 3, 5-9.

company disputed the debt on Applicant's behalf. TransUnion responded that the debt was "deleted."<sup>10</sup>

Applicant indicated that he would resolve his delinquent debts through the debt resolution program. However, he did not respond to the FORM, so there is no information as to how much, if any, progress he has made. The personal financial statement he submitted in December 2012 showed a net remainder of \$176 after subtracting his monthly expenses and two car payments from his net monthly income. That figure does not include any payments toward his delinquent debts.<sup>11</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 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

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<sup>10</sup> GE 3, 5-9.

<sup>11</sup> GE 3, 7.

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. The following 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 periods of unemployment and underemployment after his employer closed its operations in February 2009. He also had medical bills related to his stepchild's medical condition. Applicant's employment issues and his stepchild's medical condition were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant paid the \$28 debt alleged in SOR ¶ 1.f. There is no evidence that he made any payments toward any of his other debts. In February 2013, Applicant enrolled the three debts alleged in SOR ¶¶ 1.a, 1.c, and 1.h in a debt resolution program, but he did not establish that he made any of the \$451 monthly payments to the escrow account.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is not. AG ¶ 20(d) is applicable to the \$28 paid debt alleged in SOR ¶ 1.f. It is not applicable to any of the other debts. AG ¶ 20(e) is applicable to the disputed debts alleged in SOR ¶¶ 1.b, 1.d, 1.e, 1.g, and 1.i. I find that security 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 this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the factors that went into Applicant's financial difficulties. However, the limited information in the record has not convinced me that Applicant's 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge