



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12539
	)	
Applicant for Security Clearance	)	

**Appearances**

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

09/18/2013

**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 March 25, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and J, criminal conduct. 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 June 3, 2103, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 9, 2013. I convened the hearing as scheduled on August 27, 2013. The Government offered

exhibits (GE) 1 through 6 that were admitted into evidence without objection. Applicant and three witnesses testified. Applicant offered exhibits (AE) A through F, that were admitted into evidence without objection. The record was held open until September 10, 2013, to provide Applicant the opportunity to present additional exhibits, which he did. They are marked AE G through Q. They were admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on September 5, 2013.

### **Procedural Issues**

Department Counsel moved to withdraw the allegations under Guideline J and ¶ 2.c of Guideline F.<sup>2</sup> The motion was granted.

### **Findings of Fact**

Applicant admitted all SOR allegations 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 41 years old. He served as an active-duty Marine from 1992 to 1996, and was in the inactive reserve from 1996 to 1998. He was honorably discharged. He was married from 1993 to 2003. He has two children from the marriage. Applicant's 17-year-old son lives with him. His 12-year-old daughter lives with her maternal grandparents. He also has a 16-year-old son from a previous relationship. He pays child support for this child. His child support payments are current.<sup>3</sup> He remarried in 2007 and divorced in 2013. He has held a security clearance for 17 years.<sup>4</sup>

Applicant and his second wife purchased a home in 2007. She worked when they first married, and with their combined incomes, they were able to afford the house. After purchasing the house her income became unreliable. Applicant assisted his second wife both financially and by participating in developing new avenues of home-based businesses to earn income. The businesses were unsuccessful, and they continued to have difficulty affording the house. Unbeknownst to Applicant, his wife was keeping a separate account hidden from him. When he found out, he realized she was using money from their joint account for the business, but when money came in, she was depositing it in her separate hidden account. Applicant estimated he spent about \$20,000 on his second wife's failed businesses.<sup>5</sup>

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<sup>1</sup> Hearing Exhibit I is Department Counsel's email.

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

<sup>3</sup> AE H.

<sup>4</sup> Tr. 57-60.

<sup>5</sup> Tr. 47-49, 79-80, 83-90; AE N.

When Applicant began experiencing financial problems and difficulty paying his mortgage payments, he contacted the mortgage company and attempted to modify his loan. The mortgage company would not modify the loan until he was in arrears on his payments. He consulted an attorney who advised him to stop making payments on the loan, which he did sometime in 2009. He was also advised that there would likely be a long delay before the loan modification was negotiated because there were many others seeking to do the same. He was unsuccessful in getting his loan modified.

Applicant and his second wife separated in 2011. She remained in the family home during the separation. Applicant had to maintain a separate residence, which caused an additional strain on his finances. He contacted the mortgage company and attempted a short sale of the property, but was unsuccessful. He has maintained contact with the mortgage company and has not abandoned this debt. He is trying to find out if it is possible to attempt another short sale or find another way to resolve the debt. The home has been foreclosed. The debt is currently \$126,215 past due. Applicant is attempting to resolve this debt.<sup>6</sup>

The debts in SOR ¶¶ 2.a (\$260), 2.b (\$145) and 2.f (\$656) are medical debts. The debts are for care for his children. Applicant stated he was unaware of the debts because they were likely incurred when the children were with their mother. He became aware of the debts when he received the SOR. He provided proof that the debts in SOR ¶¶ 2.a and 2.f were paid in full. He stated he negotiated a settlement for the remaining debt and it was paid.<sup>7</sup>

The debt in SOR ¶ 2.d (\$10,105) is a vehicle loan that was past due. Applicant purchased the car three years ago for his wife, and the monthly payment was \$346. He believed the family finances were solvent at the time. He got behind on the payments during his separation. Applicant contacted the creditor and advised him of his financial situation. He continued to make monthly payments, but they were not always the full amount. When the payment was going to be less than the full amount he would contact the creditor, and the creditor agreed to accept the lesser amount. He provided a copy of the agreement he executed with the creditor.<sup>8</sup> He is presently current on his payments. He owes \$6,775 on the balance of the debt. He was advised to wait to sell the car until his divorce was final so there would not be any property division issues. His divorce was finalized this month. The car is now on the market for sale.<sup>9</sup>

The debt in SOR ¶ 1.g (\$5,237) is a credit card debt. It is approximately ten years old and left over from Applicant's first marriage. He did not use the card after his divorce. He has contacted the creditor and has an agreement to settle the debt with

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<sup>6</sup> Tr. 46, 49-55, 61, 96-97; AE N, O.

<sup>7</sup> Tr. 32-36; AE I, J.

<sup>8</sup> AE F.

<sup>9</sup> Tr. 37-46; AE M.

three monthly payments of \$785. He has made the first payment and provided supporting documentation.<sup>10</sup>

Applicant was working two separate jobs until 2011. The two employers joined contracts, and he was permitted to work only one of the jobs. Hence, he lost a significant amount of income when the companies merged. He also works cleaning up construction sites to earn extra money. He has reduced his expenses by no longer having cable services, and he maintains a minimal cell phone contract.

Applicant gave his father a short-term loan for a business venture in 2012. Applicant took a loan from his 401k to help his father. His father helped him in the past when he was in need, and Applicant felt obligated to reciprocate. He was hopeful at the time that his father would reimburse him quickly, but that did not happen. After the hearing, Applicant memorialized a loan repayment agreement with his father. The amount of the loan was \$38,000. The agreement calls for Applicant's father to begin making monthly payments of \$950 from September 2013 to October 2014. Interest of 3.5% will be paid on the unpaid principal. There is a balloon payment in October 2014 for the remaining balance of the loan. Applicant is confident that his father is capable of repaying the loan.<sup>11</sup>

Applicant took a loan from his 401k retirement account to help set up a new residence, for some legal expenses, and for the loan to his father. He is repaying the 401k loan. He is waiting for the distribution of a health care reimbursement account that was maintained by his union. The union voted to terminate the account and disburse the funds. Applicant estimates he will receive approximately \$21,000 after taxes when the disbursement is made. He anticipated the disbursement sometime in October 2013. Applicant intends on using this money to repay his 401k account and resolve any remaining outstanding debts. He provided documentation that substantiates the distribution should be forthcoming.<sup>12</sup>

Applicant stated that, since his divorce, he has been paying his bills consistently and he is acutely aware of where his money is being spent. He and his son will share a vehicle. He is attempting to sell both the vehicle that was his ex-wife's and a second vehicle he has. He is current on the car payments of both vehicles. Applicant believes he can maturely handle his finances in the future.<sup>13</sup>

Applicant's supervisor testified on his behalf. He has known Applicant since 1996 when he hired him after he was discharged from the Marine Corps. He considers Applicant reliable, trustworthy and loyal. He gives of his time for charitable endeavors.

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<sup>10</sup> Tr. 55, 55-57; AE G, K.

<sup>11</sup> Tr. 65-69, 91-9; AE L.

<sup>12</sup> Tr. 49, 69-72; AE F, P.

<sup>13</sup> Tr. 94-96; AE M, P, Q.

He was promoted in 2009 and is responsible for overseeing four crews. During Applicant's entire term of employment, he has always been the consummate professional and has performed admirably.<sup>14</sup>

Applicant provided numerous letters of appreciation and achievement reflecting on his performance while he was on active duty in the military. He was also awarded a Navy-Marine Corps Achievement Medal. He provided numerous letters of appreciation and achievement reflecting his performance for the past 17 years working with his employer. He provided a voluminous number of character letters and emails from supervisors, coworkers, and friends. They uniformly describe him as loyal, devoted, trustworthy, a team player, professional, honorable, generous, courteous, honest, knowledgeable, of good moral character, a person of integrity, and dependable.<sup>15</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."

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<sup>14</sup> Tr. 19.

<sup>15</sup> AE C.

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 had seven delinquent debts, including a foreclosed mortgage 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established because Applicant is still resolving his foreclosed mortgage. Applicant began having financial problems when his wife was not contributing to the family finances and during their separation and eventual divorce. Applicant was trying to maintain two households and pay other expenses. He lost his second job. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He has paid some of the smaller debts on the SOR. He is negotiating a settlement on another SOR debt. He admits he made mistakes in how he handled his finances. His foreclosed mortgage is not yet resolved, but he is actively working to resolve the debt. He is now making strides in getting his finances under control. I find AG ¶ 20(b) partially applies.

Applicant is addressing the debts that have not been paid. He is beginning to get back on track financially after his divorce and the loss of his second job. He has trimmed his budget and is making mature financial decisions. He is anticipating a lump-sum payout for his medical reimbursement account that should alleviate some of the financial strain. There is clear evidence that his financial problems are being resolved and are under control. I considered the advice he sought from an attorney on resolving the foreclosure as receiving some financial counseling. I find AG ¶ 20(c) applies. I find AG ¶ 20(d) partially 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 41 years old. He served honorably in the Marine Corps for four years. He takes care of his children and participates in charitable endeavors. He is well respected by his supervisors, coworkers and friends. Applicant's financial problems are attributed to his divorce and some poor financial decision making. He is still resolving some of his financial issues, including a foreclosure, but it appears he is on the right track. He has not abandoned his debts and is actively attempting resolution. Overall, the record evidence leaves me 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 J:	WITHDRAWN
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Subparagraph 2.c:	Withdrawn
Subparagraphs 2.d-2.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