



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



In the matter of: )  
)  
) ISCR Case No. 11-14035  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

10/23/2013

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 5, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 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 16 and 26, 2013, and requested a hearing before an administrative judge. The case was assigned to me on August 19, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 20, 2013, and the hearing was convened as scheduled on September 10, 2013. The

Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibit (AE) A into evidence, which was admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE B through D, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 25, 2013.

### Findings of Fact

Applicant admitted the following SOR allegations: ¶¶ 1.a, 1.c, 1.e, 1.i, and 1.k. He denied ¶¶ 1.b, 1.d, 1.f – 1.h, 1.i, and 1.l – 1.n. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 51-year-old employee of a defense contractor. For the last eight years he has worked in information technology for his current employer. He is a high school graduate and has taken some college courses. He is married and has two children, the oldest of which has autism. He has no military experience. He does not currently hold a security clearance.<sup>1</sup>

The SOR alleges 14 delinquent debts by Applicant. The total for all the debt is about \$90,719. The debts were listed in credit reports from June 2011, January 2013, and March 2013.<sup>2</sup>

Applicant's financial problems began with the downturned economy in about 2009. In 2007 and 2008, he earned about \$250,000 and \$225,000 respectively. Then in 2009, his earnings were reduced to about \$142,000. Additionally, he had a part-time job that went away in March 2009. He also expended about \$30,000 to start a business out of his home that never really took off. His autistic child required special schooling that resulted in tuition fees of about \$36,000 over a three-year period. They have relocated and this child is now in a public school. Also in 2009, Applicant was required by his employer to relocate to another state. This resulted in additional expenses from the move.<sup>3</sup>

Applicant testified that because his job required frequent travel away from home, his wife was primarily responsible for paying the family bills. At some point, he found out that she was not paying their bills. He discovered this about the same time his income was reduced in 2009. However, he did not take financial control away from his wife until September 2013. He and his wife are now estranged, but are still residing in the same residence because they cannot afford to do otherwise. In early February 2013, Applicant sought out the services of a debt consolidation service (DCS). The DCS put

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<sup>1</sup> Tr. at 5, 22-24; GE 1.

<sup>2</sup> GE 4-6.

<sup>3</sup> Tr. at 25, 71, 74; AE A.

forward a plan to consolidate about \$59,000 worth of debt whereby Applicant would make monthly payments of about \$510 for 84 months. Most of the larger debts listed in the SOR would have been incorporated into this plan. The agreement between Applicant and the DCS was never executed. Applicant testified that the DCS dropped him from consideration. He claims to have contacted several other debt companies, although he did not enter into agreements with any of them. Applicant also had a home foreclosed resulting in a deficiency of about \$14,000, which he paid.<sup>4</sup>

The debts alleged in ¶¶ 1.a - 1.b, 1.e, 1.i, and 1.k are four delinquent credit card accounts and one personal loan from the same creditor (\$5,961; \$5,856; \$18,671; \$1,293; and \$10,328). Applicant was sued by the creditor for non-payment on three of these accounts (SOR ¶¶ 1.a, 1.b, and 1.i). A stipulation was reached between the parties in August 2010, whereby Applicant would make monthly payments of \$60 each on the debts listed in SOR ¶¶ 1.a and 1.b and \$30 monthly payments on the debt listed in SOR ¶ 1.i. He documented the payments he made on the debts listed in SOR ¶¶ 1.b and 1.i (AE B-D)<sup>5</sup>, but failed to produce any documentation showing his payments toward the debt listed in SOR ¶ 1.a. He did not provide documentation concerning the status of the debts listed in SOR ¶¶ 1.e or 1.k. Those debts, along with the debt listed in SOR ¶ 1.a, are unresolved.<sup>6</sup>

The debt alleged in SOR ¶ 1.c is a delinquent credit card debt that he could no longer afford to pay after his income was reduced (\$20,116). He acknowledged the debt, stated he plans to pay it, but has not made any effort to do so. This debt is unresolved.<sup>7</sup>

The debt alleged at SOR ¶ 1.d is a delinquent account of which Applicant claims no knowledge (\$848). He has not formally disputed this account. This account was a joint account opened in July 2004, whose last activity was in March 2009, and was closed in March 2010. The debt appears on all three credit reports. This debt is unresolved.<sup>8</sup>

The debts alleged at SOR ¶¶ 1.f and 1.g are two delinquent consumer accounts (\$18,413; \$8,118). Applicant listed the debt at ¶ 1.g on his security clearance application as a collection account arising from a homeowners' association debt and he admitted this debt in his security clearance interview. He also listed an account number. The debt at ¶ 1.f was listed as a charged-off account on all three credit reports. The account number associated with this debt is different than that of the debt at ¶ 1.g. Both

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<sup>4</sup> Tr. at 28, 34, 50-53, 70; GE 3.

<sup>5</sup> Note: AE B and C show payments for the same debt as reflected by the same Ledger Card number: (EN 261688) on the documents.

<sup>6</sup> Tr. at 35-38, 46-49, 67; GE 2, 4-6; AE B-D.

<sup>7</sup> Tr. at 59; GE 2, 4-6.

<sup>8</sup> Tr. at 60-61; GE 2, 4-6.

accounts were listed by the DCS when it was compiling Applicant's debts for the purpose of formulating a payment plan. Applicant disputed these debts in his hearing testimony, but did not provide documentation to support his dispute. These debts are unresolved.<sup>9</sup>

The debt alleged at SOR ¶ 1.h is a delinquent utility account (\$52). Applicant acknowledged this debt during his security clearance interview. It was also listed by the DCS when it compiled Applicant's debts. His hearing testimony disputed this debt, but he provided no documentation to support his dispute. This debt is unresolved.<sup>10</sup>

The debt alleged at SOR ¶ 1.j is a consumer debt (\$820). Applicant denied this debt, testifying that it was for cable equipment that he had returned to the company. He did not formally dispute this account or provide supporting documentation supporting his dispute. This debt was listed by the DCS when it compiled his debts. It was also included in the earliest credit report. This debt is unresolved.<sup>11</sup>

The debts alleged at SOR ¶¶ 1.l and 1.m are delinquent medical debts (\$44; \$60). Applicant acknowledged these debts in his security clearance interview. He provided a self-made spreadsheet indicating that he paid both accounts, but he did not provide receipts, cancelled checks, or bank statements verifying payment of these accounts. One account was disputed on a credit report (SOR ¶ 1.m), although the basis of the dispute is not indicated. These debts are unresolved.<sup>12</sup>

The debt alleged at SOR ¶ 1.n is a consumer debt (\$139). Applicant denied this debt in his testimony. He did not formally dispute this account or provide supporting documentation supporting his dispute. This debt was listed by the DCS when it compiled his debts. It was also included in the earliest credit report. This debt is unresolved.<sup>13</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 that are to be used in evaluating an applicant's eligibility for access to classified information.

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<sup>9</sup> Tr. at 62; GE 1, 2, 4-6.

<sup>10</sup> Tr. at 64; GE 2-3, 6.

<sup>11</sup> Tr. at 65-66; GE 3, 6.

<sup>12</sup> Tr. at 67-68; GE 3, 5-6.

<sup>13</sup> Tr. at 69; GE 2, 6.

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." 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, 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 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 about 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* Executive Order 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 as follows:

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 has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations 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.

Applicant's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant had a number of factors affect his finances over the last few years. His annual income was reduced substantially, he was required to relocate by his employer, and his wife did not keep up with paying the family bills when he was traveling. These were factors beyond his control. He contacted a DCS to assist him with his debts and establish a reasonable debt payment plan, but was unable to execute this arrangement.

He also established a payment plan as a settlement to a civil lawsuit involving three credit card debts. This shows some amount of responsible action by Applicant. AG ¶ 20(b) is partially applicable.

There is evidence of financial counseling. Applicant's contact with a DCS satisfied this criterion. Additionally, his regular monthly payments towards the debts listed at SOR ¶¶ 1.b and 1.i constitute a good-faith effort to pay those debts. However, the remaining debts are not covered by a good-faith effort, or otherwise resolved. Both AG ¶¶ 20(c) and 20(d) partially apply.

Applicant provided no documentation to support the disputed debts. AG ¶ 20(e) does not apply.

At this point, Applicant's finances remain a concern 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 relevant 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 the circumstances by which Applicant's financial situation was affected by his reduced annual pay, his job relocation and his wife's neglect in paying the family bills. However, I also considered that despite his payments on two accounts, the remaining accounts remain unaddressed. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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
Subparagraphs: 1.c – 1.h:	Against Applicant
Subparagraph: 1.i:	For Applicant
Subparagraphs: 1.j – 1.n:	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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Robert E. Coacher  
Administrative Judge