



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



In the matter of: )  
)  
) ISCR Case No. 11-14379  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

01/15/2015

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 6, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 3, 2014, and requested a hearing. The case was assigned to me on September 11, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014, setting the hearing for October 7, 2014. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection.

Applicant testified and offered exhibits (AE) A through H, which were admitted into evidence over Department Counsel's objection to AE G. The record was held open for the parties to submit additional evidence. Applicant submitted AE I through S, which were admitted into the record without objection. DOHA received the hearing transcript (Tr.) on October 17, 2014.

### **Findings of Fact**

Applicant is 42 years old and has worked for a government contractor for 22 years (with breaks in service caused by layoffs). He has a high school diploma and has taken some college courses. He is married and has two children. He has held a secret security clearance since 1999 without incident.<sup>1</sup>

The SOR alleges Applicant was indebted on eight accounts and filed a bankruptcy petition in 2001 that resulted in a discharge of his indebtedness. The debts were listed on credit reports from August 2011, February 2013, and March 2014. Applicant essentially admitted all the debts in his answer to the SOR. During his testimony he provided documentary evidence showing that SOR ¶¶ 1.d and 1.i were the same debt.<sup>2</sup>

Applicant's financial difficulties began when he was laid off from his employment in the early 2000s. He incurred expenses during that time when his income was substantially less, resulting in debt that he could not pay. He filed for bankruptcy protection in April 2001 and his debts were discharged by the bankruptcy court in August of 2001. He was recalled by his employer and has continuously worked for his employer since then. In 1999, his wife was diagnosed with multiple sclerosis (MS). Her condition caused her to quit her job in 2006. Although she receives disability for her medical condition, it is a lesser amount than her job provided. His wife was in charge of the family's finances during this time, but because of her MS she failed to pay their bills when they were due. This led to Applicant taking over the finances and working with a debt relief company (DRC-1) to pay their bills. The first debt relief company was not a reputable business and Applicant paid about \$300 to \$400 per month to it for two years, but the money was not distributed to creditors. This occurred in about 2007. Applicant admitted that he failed to timely pursue another option after his bad experience with DRC-1. In 2010, he contacted another debt relief company (DRC-2) and began working with it to resolve his delinquent debts. He has worked with DRC-2, who was settled several debts, and established payment plans for the remaining outstanding SOR debts. The status of the debts is as follows:<sup>3</sup>

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<sup>1</sup> Tr. at 6, 34; GE 1.

<sup>2</sup> Tr. at 44-45; Answer; AE G, J.

<sup>3</sup> Tr. at 34-37, 52, 58; Answer; AE P.

**SOR ¶ 1.a:**

This is a credit card debt that has been repeatedly sold to collection companies in the amount of \$739. Applicant presented documentation showing he settled this debt with a payment of \$295.66 in June 2014. This debt is resolved.<sup>4</sup>

**SOR ¶ 1.b:**

This is a credit card debt in the amount of \$580. Applicant presented documentation showing “settlement in full” with a payment of \$353.30 in June 2014. This debt is resolved.<sup>5</sup>

**SOR ¶ 1.c:**

This is a credit card debt in the amount of \$4,926. Applicant settled this debt for \$2,955 by establishing a monthly payment plan in the amount of \$246. He made his first payment in July 2014 and has made payments through September 2014. This debt is being resolved.<sup>6</sup>

**SOR ¶ 1.d:**

Applicant presented documentation from DRC-2 indicating that this is a credit card debt that is duplicative of SOR debt ¶ 1.i. He is still working with DRC-2 towards settlement with the creditor. He also received an IRS Form 1099-C indicating a cancellation of debt, which he claimed on his 2013 income tax return. This debt is being resolved.<sup>7</sup>

**SOR ¶ 1.e:**

This is a credit card debt in the amount of \$4,899. Applicant is in the process of settling this debt and tendered a check for \$1,500 in October 2014 towards that effort. This debt is being resolved.<sup>8</sup>

**SOR ¶ 1.f:**

This is a credit card debt in the amount of \$1,898. DRC-2 verified that this debt was settled for \$855 when Applicant made three payments of \$285 in the months of July, August, and September 2014. This debt is resolved.<sup>9</sup>

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<sup>4</sup> Tr. at 40; AE A, Q.

<sup>5</sup> Tr. at 42; AE C, R.

<sup>6</sup> Tr. at 46; AE I.

<sup>7</sup> Tr. at 44-45; AE G, J.

<sup>8</sup> Tr. at 43; AE M.

**SOR ¶ 1.g:**

This is a credit card debt in the amount of \$6,649. Applicant has directed DRC-2 to engage in settlement discussions with the creditor. This debt is unresolved.<sup>10</sup>

**SOR ¶ 1.h:**

This is a credit card debt in the amount of \$250. Applicant presented documentation showing he settled this debt with a payment of \$307 in July 2014. This debt is resolved.<sup>11</sup>

**SOR ¶ 1.i:**

See SOR ¶ 1.d above.

Applicant's current income is about \$6,000 per month, and he is current on all his other debt. He has a mortgage on his home, which is current, and he has no new credit card debt. He has disposable income at the end of the month of about \$1,300.<sup>12</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.

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

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<sup>9</sup> Tr. at 46; AE B, S.

<sup>10</sup> Tr. at 47.

<sup>11</sup> Tr. at 48; AE F, K.

<sup>12</sup> Tr. at 53-54; GE 5; .

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 had multiple delinquent debts and a prior bankruptcy. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

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; and

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

The delinquent debts attributed to Applicant were recent, however, the bankruptcy is over ten years old. He has paid several debts and set up payment plans for others. Since he has made a concerted effort to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant became indebted when his wife was diagnosed with MS, stopped working because of her condition, and was unable to keep up with the family's financial responsibilities. These were conditions beyond his control and, once he was able to do so, he acted responsibly by first contacting DRC-1 and made payments to the company for two years believing that those payments were going to his creditors. However, that was not the case and Applicant later turned to DRC-2, which assisted him in paying several creditors and setting up payment plans for other creditors. AG ¶ 20(b) applies.

Applicant received credit counseling from DRC-2. He is making a good-faith effort to resolve all the debts listed on the SOR. He supplied documentary evidence showing the settlement payments and payment plans. AG ¶ 20(c) and ¶ 20(d) apply.

### **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 Applicant's long-term service to his employer, as well as his wife's medical condition, which affected their financial status. I found Applicant to be honest and candid about the circumstances that led to his debts. He is committed to settling all of his outstanding SOR-related debts. I found nothing to indicate a likelihood that Applicant would find himself in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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: FOR APPLICANT

Subparagraphs 1.a – 1.j: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge