



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 11-14764  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

08/27/2012

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concerns. His past financial problems were due to a long period of unemployment and underemployment during which his wife divorced him after 19 years of marriage. Immediately after securing his current job in September 2011, Applicant started to resolve his debts – the vast majority of which are student loans. He submitted proof of a track record of consistent payments to satisfy his debts and demonstrated that his financial situation is under control. Clearance is granted.

**Procedural History**

On April 25, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline F (Financial Considerations).<sup>1</sup> On May 18, 2012, Applicant submitted his Answer to the SOR and requested a decision on the administrative record.

<sup>1</sup> DOHA took this action 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.

On May 30, 2012, Department Counsel submitted the File of Relevant Material (FORM), which contains Government Exhibits (GE) 1 through 8. Applicant submitted an undated Response to the FORM (Response). The Response contains proof of payments and a character reference, which were marked and admitted as Applicant's Exhibits (AE) A – G. I was assigned the case on July 19, 2012.

### Findings of Fact

Applicant is in his forties. He is a veteran of the U.S. military, who was honorably discharged in 1998. He has two children, who are 17 and 20 years old. He recently divorced after 19 years of marriage. In 2001, Applicant enrolled in an online college to pursue his bachelor's degree. He completed his studies and earned a degree in information technology in 2003. He previously held a security clearance while in the U.S. military, and for a short time in 2005, while working for a federal contractor.<sup>2</sup>

Applicant's financial trouble began in May 2005 when he decided to move closer to his family. He was then either unemployed or only able to find short term work until September 2011, when he was hired by his current employer. Applicant's financial trouble worsened as a result of his divorce, which was finalized in December 2010. During this period of financial instability, Applicant defaulted on his student loans and a few other financial obligations.<sup>3</sup>

The SOR lists approximately \$80,000 in delinquent debt. All but about \$4,500 of this debt is attributable to the student loans Applicant took out to pursue his bachelor's degree. Prior to the issuance of the SOR, Applicant resolved the majority of his debts by entering into payment arrangements with his creditors. The only SOR debts that are not currently being paid are Applicant's federal student loans. They are currently in forbearance status and a payment is not due until October 2012. He is making consistent, monthly payments on his other non-federal student loan debt. The chart below provides a summary of each SOR debt and its current status.

SOR ¶	Amount	Type of Debt	Status
1.a	\$1,045	phone service	Agreed to payment plan with creditor of \$50 per month and submitted proof of having made monthly payments totaling over \$175. (AE A)
1.b	\$2,861	credit card	In February 2012, settled for less than half of outstanding balance, agreed to a payment plan with creditor of \$50 per month, and submitted proof of having made monthly payments totaling \$150. (AE B)
1.c	\$8,244	student loan	In January 2012, consolidated student loans, agreed to a payment plan with creditor, and has been paying \$180 per month. (AE C)
1.d	\$10,521	student loan	In January 2012, entered into a payment plan and has been paying \$105 per month. (AE D)

<sup>2</sup> GE 5-6; Response.

<sup>3</sup> GE 5-6; Response.

1.e	\$11,062	student loan	In December 2011, entered into a payment plan. Paid \$600 the first two months and, thereafter, has been paying \$110 bi-weekly per agreement. (AE E)
1.f	\$520	phone service	Paid per settlement that was agreed to in March 2012. (AE F)
1.g	\$7,700	student loan	Consolidated and in forbearance status. Monthly payments of \$126 scheduled to start in October 2012. (Answer at 6 and 37; Response)
1.h - m	\$24,500	student loans	See 1.c above.
1.n - o	\$13,800	student loans	See 1.g above.

Applicant has been living with his parents since July 2010, which has allowed him to cut down on his living expenses. He has about \$1,000 a month left over, after paying his monthly expenses, to satisfy his debts. He has received financial counseling through his church and has not accumulated any further debt.<sup>4</sup> His employer writes:

(Applicant) has been one of my most reliable and trustworthy employees since being hired . . . (He) shows up for work each and every day on time and ready to work He takes on whatever challenge is in front of him, and does an excellent job. . . . The ability to manage and execute programs involving highly technical equipment requires personnel that are both trustworthy and stable. (Applicant) has both of these characteristics, and that is why I am providing my **strongest** recommendation to allow him to retain his clearance.<sup>5</sup>

### Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

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<sup>4</sup> GE 5-7; Response.

<sup>5</sup> AE G (emphasis in original).

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to financial problems is articulated 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.

“This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts.”<sup>6</sup> The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

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<sup>6</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See *also* ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012) (The Guideline F concern “is broader than a concern that an applicant might commit criminal acts in order to pay off his debts. Rather, Guideline F requires a judge to consider the totality of an applicant’s circumstances—the reasons underlying his financial problems and his efforts to address them—in order to arrive at a conclusion as to whether the applicant possesses the judgment and self-control required of those who have access to national security information.”)

Applicant accumulated a significant amount of student debt. A situation that is neither uncommon, nor sufficient on its own to raise a concern. However, Applicant defaulted on his student loans and became delinquent on his other debts. He did not address his debts for several years. It is this history of financial irresponsibility that raises the financial considerations concern and establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."<sup>7</sup> Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

- (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.

Applicant's financial situation is, in part, due to matters beyond his control. Specifically, a long period of unemployment and underemployment from May 2005 to September 2011 that was then compounded by a divorce. However, Applicant's inability to find full-time work until relatively recently is as much due to his initial decision to leave his former job and move closer to his family as it is the economy. Accordingly, AG ¶¶ 20(a) and (b) only partially apply.

On the other hand, AG ¶¶ 20(c) and (d) fully apply. Applicant initiated a good-faith effort to resolve his delinquent debts shortly after being hired by his current

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<sup>7</sup> ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

employer and well before the SOR was issued. He has either paid or been paying the vast majority of his debts for the past six months or longer per the terms of the agreements he entered into with his creditors. When the forbearance period on his federal student loan ends in October 2012, Applicant has the means to satisfy the \$126 monthly payment. He has received financial counseling and has not amassed any new debt. He is now in a position to satisfy his debts in part because he lowered his living expenses by moving in with his parents. A decision that demonstrates his commitment to satisfy his financial obligations and is the type of responsible conduct expected of those granted access to classified information. Applicant's past financial issues no longer casts doubt on his current reliability, trustworthiness, or good judgment.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>8</sup> I incorporate my above analysis herein and note some additional whole-person factors. Applicant's delinquent debts are not a result of frivolous spending or other matters that would themselves raise a security concern. Instead, his financial problems were due, in part, to high student debt and an inability to find full time employment over the past several years. He worked several temporary jobs between 2005 and 2011, but was never able to earn enough income to pay the high level of student debt he amassed pursuing his bachelor's degree. However, after starting at his current job, Applicant commenced actions to resolve his debts and provided documentary proof of a track record of consistent payments towards satisfaction of his debts. He is close to his family, especially his youngest daughter who he has taught the game of golf with the hope that she will be able to secure a scholarship and avoid similar financial hardship. Applicant served in the military honorably, previously held a security clearance for many years apparently without issue, and has the full support of his employer. These favorable whole-person factors, in conjunction with the mitigating conditions noted above, fully mitigate the financial considerations concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

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<sup>8</sup> The non-exhaustive list of adjudicative factors are: (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.

