



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 11-14832
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

01/28/2016

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On September 3, 2014, 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 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 Department of Defense after September 1, 2006.

On July 11, 2014, Applicant answered the SOR and requested a decision on the record. Department Counsel issued a File of Relevant Material (FORM) on July 7, 2015. Applicant received the FORM on August 14, 2015. He had 30 days from his receipt of the FORM to submit additional information in response to the FORM. Applicant requested an extension until October 19, 2015, to submit matters in response to the FORM. His Response to the FORM and attached documents are admitted as Item 12. Department Counsel had no objection to Applicant's Response to the Form. (Item 13) On November 5, 2015, the FORM was forwarded to the Hearing Office and assigned to me on November 9, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## Findings of Fact

In his response to the SOR, Applicant admits to all SOR allegations. (Item 2)

Applicant is a 43-year-old employee of a DOD contractor seeking to obtain a security clearance. He has worked for his current employer since July 2011. Previously, he owned his own construction company from October 2007 to July 2011. He has been married and divorced twice. He is currently married to his third wife and has a five-year-old son and a three-year-old daughter. He also has a stepson. (Item 3; Item 12)

On July 20, 2011, Applicant submitted an electronic questionnaire for investigation processing (e-QIP). (Item 3) A subsequent background investigation revealed Applicant encountered financial problems. Specifically, Applicant was approximately \$95,326 past due on a mortgage (SOR ¶ 1.a: Item 6 at 2; Item 7 at 2); he owed a \$654 judgement entered against him in November 2009 on behalf of a hospital (SOR ¶ 1.b: Item 6 at 1; Item 7 at 1; Item 9 at 1); and he filed for bankruptcy under Chapter 7 in June 2010. The Chapter 7 bankruptcy was converted to a Chapter 13 bankruptcy. (SOR ¶ 1.c: Item 5 at 1; Item 6 at 1; Item 7 at 1; Item 10).

In his response to the SOR, dated December 11, 2014, Applicant admits to all allegations, but claims the debts alleged in SOR ¶¶ 1.a and 1.b are included in his bankruptcy. The Chapter 13 bankruptcy repayment plan required him to pay \$164 payments over a period of 60 months. Applicant indicated he is timely making payments and will continue to do so until the plan is complete in August 2015. (Item 2 at 6)

In a response to Interrogatories, dated July 15, 2013, Applicant indicated that he filed for bankruptcy because of his divorce from his second wife in 2009 and as a result of business deal that went bad. He built seven houses for a contractor and was never paid. He believes one of the creditors (a mortgage) included in his bankruptcy is the same as the mortgage alleged in SOR ¶ 1.a. (Item 4 at 9)

Applicant received financial counseling as a requirement of his bankruptcy process. (Item 4 at 13, 25-29) In July 2013, he also completed a personal financial worksheet. His net monthly income was \$2,851. He had \$2,297 in total monthly expenses. After expenses, he had \$554 left over in discretionary income. (Item 4 at 22)

In his response to the FORM, Applicant provided all of his Chapter 13 bankruptcy paperwork. He completed his payment plan and the Chapter 13 bankruptcy is complete. He provided a copy of the Discharge of Debtor After Completion of Chapter 13 Plan, dated September 28, 2015. He provided a copy of his payment history. He also provided a portion of a TransUnion credit report which indicates the debt alleged in SOR ¶ 1.b was included in the Chapter 13 bankruptcy. He is still not sure where the mortgage debt came from. It is no longer on his credit report and his attorney assures him that it was included in the bankruptcy. (Item 12)

He said he has made his share of mistakes, but has done everything he could to rectify the situation. Everything he does is motivated by making his children's lives better. He explained he became bankrupt as a result of his previous job in the construction business. Applicant built houses. His business partners backed out when the real estate business slowed down and left Applicant with thousands of unpaid bills. At the same time, his ex-wife incurred some bills that he could not afford to repay. Applicant is now able to pay his bills. His pay has increased an additional \$8 an hour. (Item 12)

## **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 must be considered when determining 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered financial problems since 2008, which resulted in a bankruptcy filing in 2010.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(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);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶ 20(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 financial problems were caused by a business downturn and expenses related to his divorce from his second wife in 2009. His business partners broke their agreements with Applicant during the real estate downturn, leaving Applicant with thousands of unpaid bills. He attempted to resolve the situation on his own until he determined he had no option other than bankruptcy. He successfully completed his payment plan under Chapter 13 and his debts were discharged in September 2015. His salary has increased an additional \$8 per hour and he is able to pay his bills. His financial problems are unlikely to recur and no longer cast doubt on his reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(b) apply.

AG ¶ 20(c) applies. Applicant was required to attend financial counseling as part of his bankruptcy. He completed financial counseling as well as the terms of his Chapter 13 repayment plan. Applicant's financial situation is now under control.

AG ¶ 20(d) applies because Applicant demonstrated he made a good-faith effort towards resolving his delinquent accounts. He completed his Chapter 13 repayment plan. All payments were made on a timely basis. AG ¶ 20(e) is applicable because Applicant disputed the debts alleged in SOR ¶¶ 1.a and 1.b, claiming they were part of

his bankruptcy. The debt alleged in SOR ¶ 1.b was verified to be a part of his bankruptcy. The mortgage debt alleged in SOR ¶ 1.a is no longer on his credit report.

Applicant resolved any doubts raised by his financial situation. He successfully demonstrated that his financial situation is under control.

### **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 the 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 considered several circumstances beyond Applicant's control adversely affected his finances, including divorce and the real estate downturn that adversely affected his construction business. He successfully completed his Chapter 13 repayment plan and his financial situation has stabilized. Applicant mitigated the security concerns raised under financial considerations.

### **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.c:	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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ERIN C. HOGAN  
Administrative Judge