



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-00010
	)	
Applicant for Security Clearance	)	

**Appearances**

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

03/12/2013

**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 December 19, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 January 5, 2012, and requested a hearing before an administrative judge. The case was assigned to me on January 28, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 1, 2013. I convened the hearing as scheduled by video teleconference on

February 20, 2013. Applicant was located in Jackson, Mississippi and Department Counsel and I were located at DOHA headquarters in Arlington, Virginia. The Government offered Exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant and one witness testified. Applicant offered Exhibits (AE) A and B, and they were admitted into evidence without objection. The record was held open until March 6, 2013, to allow Applicant an opportunity to submit additional documents. He submitted AE C through J. Department Counsel had no objections, and they were admitted into evidence.<sup>1</sup> DOHA received the hearing transcript (Tr.) on February 26, 2013.

### **Findings of Fact**

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 39 years old. He is a high school graduate and has one year of college. He married in 2010 and has no children. He has worked for his present employer, a federal contractor, since September 2011.<sup>2</sup>

In October 2010, Applicant experienced a medical emergency that required hospitalization. He was employed at the time, but was not afforded any medical benefits. His medical bills were about \$30,000. His wife negotiated with the hospital and reduced the bills to about \$12,000 to \$15,000. Applicant made some payments on the bills until he was laid off from his job in May 2011, and remained unemployed until September 2011. He was doing some part-time consulting work while he was unemployed to earn some money. He was living in state A and to accept the new job he was required to move to State B. He owns a house in state A. His disabled mother and 12-year-old half-sister lived with him and his wife in the house before they moved. His half-sister also has some medical issues. When Applicant moved to state B, he rented a room for a short period of time before his wife moved to state B, where they now rent an apartment. His wife gave up her job in state A to move. She now has a job in state B.<sup>3</sup>

Applicant has maintained the house in state A so his mother and sister have a place to live. His mother gives Applicant her pension and the disability payments she receives. He estimated that it is about \$1,500 a month, which covers the mortgage payment. His half-sister receives \$500 in child support. Applicant pays the other monthly utilities which are about \$700 to \$750. Applicant hopes to sell the house in the spring. It is in need of some repairs before he puts it on the market. If it sells, his mother has agreed to move to an apartment. It has been a financial burden to maintain two

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<sup>1</sup> Hearing Exhibit I is Department Counsel's memorandum forwarding the exhibits and noting there were no objections.

<sup>2</sup> Tr. 22-24.

<sup>3</sup> Tr. 24-27, 61-62, 73, 77.

households, but under the circumstances, Applicant feels responsible for ensuring his mother and half-sister have a place to live.<sup>4</sup>

When Applicant lost his job in May 2011, he prioritized his bills and focused on paying the mortgage on his house so his family would have a place to live. He was not receiving unemployment benefits. He paid other monthly expenses, but fell behind with credit card payments. He was using the credit cards to help pay his monthly expenses while he was unemployed. Sometime in late 2011, after he resumed working, he began addressing the debts that were delinquent.<sup>5</sup>

The debts in SOR ¶¶ 1.a through 1.c (\$3,753, \$1,734, \$5,982) are the medical debts Applicant incurred in October 2010 for his hospitalization. He made four payments before he stopped because he was unemployed. He resumed making payments in January 2013 and February 2013. He is making \$450 monthly payments automatically through his bank account. He intends to continue to make the payments until the debts are satisfied. He provided documentary evidence that shows his payments.<sup>6</sup>

The debt in SOR ¶ 1.d (\$10,438) is for a credit card. Applicant did not have the money to repay the debt when it was due. He has a payment plan. He made a payment of \$350 in July 2012, and he has been making regular monthly payments of \$250 each month since then. He provided documents that confirm his payments.<sup>7</sup>

The debt in SOR ¶ 1.e (\$2,036) is for a credit card Applicant used to help supplement living expenses when he was unemployed. Applicant made six payments between December 2011 and August 2012 as he was able. He began a payment plan in December 2012, and has been making payments to the creditor since January 2013. The plan is for him to pay \$170 a month. He has made his first two monthly payments and provided the supporting documents for all his past payments.<sup>8</sup>

The debt in SOR ¶ 1.f (\$5,556) is a credit card debt. Applicant has been making consistent payments of \$275 a month on this debt since December 2011. He provided the supporting documents for all of his past payments.<sup>9</sup>

The debt in SOR ¶ 1.g (\$9,177) is a credit card debt. Applicant started a payment plan in November 2012 and is required to pay \$200 a month. He has made all of his payments to date and provided supporting documents of his past payments.<sup>10</sup>

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<sup>4</sup> Tr. 26-27, 61-66, 86-87.

<sup>5</sup> Tr. 31, 74, 79-80.

<sup>6</sup> Tr. 25-32, 59-61; GE 2 at pages 20-21; AE A, B, I.

<sup>7</sup> Tr. 32-38; GE 2 at pages 22-27; AE E.

<sup>8</sup> Tr. 39-41; GE 2 at pages 28-34; AE C, D.

<sup>9</sup> Tr. 41-43; GE 2 at pages 35-46, AE F.

Applicant owed the Internal Revenue Service (IRS) \$786 for his 2011 taxes. He has been making monthly payments since April 2012 of at least \$100, some months more. He provided documents showing he has paid \$857 to the IRS for this debt.<sup>11</sup>

Applicant and his wife have numerous credit cards. They are making payments on them and they are current. Applicant has started a part-time consulting job to supplement his income and expedite paying his delinquent debts. The business is only two months old, and he estimated he earned about \$1,000 a month. He and his wife are reducing their living expenses as much as possible.<sup>12</sup>

Applicant's wife testified on his behalf. She explained that every two weeks she and Applicant review their financial history to ensure their expenses and delinquent debts are being adequately addressed. They keep a budget on an Excel worksheet. If they do not have any unexpected expense, they use whatever excess they may have each month to make an additional payment towards one of their delinquent debts. They have been using this strategy for about a year. They hope to have all of their delinquent debts paid in two to three years, which is their main goal.<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, 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

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<sup>10</sup> Tr. 43-45; GE 2 at page 47. AE G.

<sup>11</sup> Tr. 45-48; GE 2 at page 48-54; AE J.

<sup>12</sup> Tr. 55-59, 70-85.

<sup>13</sup> Tr. 81.

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.”

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 has numerous delinquent debts that he was unable 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's debts are numerous and recent, and he is still resolving them. Applicant experienced a medical emergency in October 2010. He was employed, but did not have health insurance and incurred medical debts. In May 2011, he was laid off from his job and was unemployed until September 2011. He owned a house where his wife, mother, and half-sister lived. He was required to relocate to a new state for employment. He kept the house so his family would have a place to live. His mother is paying the mortgage, but Applicant pays the other expenses associated with the house. He plans on selling it after he makes some repairs. All of these events were beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has been methodically resolving his delinquent debts. He did not ignore his debts and was paying some as he had funds. He now has payment plans and has been making consistent payments towards all of his delinquent debts. He has a plan to sell his house. He is also working a part-time job to supplement his income. He and his wife keep a detailed budget that they review to ensure they are living within their means and resolving their debts. AG ¶ 20(b) applies.

Applicant began resolving his delinquent debts before he received the SOR. He has payment plans and is resolving his delinquent debts. There are clear indications that his financial problems are being resolved and are under control. He provided substantial evidence to conclude that he is making a good-faith effort to pay his overdue creditors and resolve his debts. I find 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 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 39 years old. He began having financial problems after he had a medical emergency and did not have health insurance. He then had a period of unemployment and he was required to relocate when he got a new job. He is also helping his family with some living expenses until he can sell his house. Applicant did not ignore his debts. He accumulated delinquent debts due to conditions that were beyond his control. Once he started his new job he began addressing his debts. He has a realistic plan and has been making consistent payments to resolve his delinquent debts. Applicant's finances are not a security concern, and he has met his burden of persuasion. Overall, the record evidence leaves me with 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 F: FOR APPLICANT

Subparagraphs 1.a-1.h: 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