



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 12-00725
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Bayard Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

06/25/2014

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated December 13, 2013, 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 DOD on September 1, 2006.

In a January 9, 2014, response to the SOR, Applicant denied all allegations raised, and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The case was assigned to me on April 2, 2014. DOHA issued a notice of video teleconference hearing on April 16, 2014, setting the hearing for May 1, 2014.

The hearing was convened as scheduled. The Government offered 14 documents, which were accepted as Exhibits (EX) 1-14 without objection. Applicant

offered testimony and two packets of documents, which were accepted without objection as Exhibits (EX) A-B. He was given until May 7, 2014, to submit any additional materials. On May 9, 2014, the transcript (Tr.) of the proceeding was received. On request, Applicant's deadline was later extended. He was given until May 13, 2013, to submit supplemental information, at which time a packet of documents was received and accepted into the record without objection as Ex. C. The record was then closed. Based on my review of the testimony and materials, I find that Applicant failed to mitigate financial considerations security concerns.

### **Findings of Fact**

Applicant is a 56-year-old senior software engineer who has worked in that capacity for his present employer for about a year, although he has previous experience working for that company. He earned a bachelor's degree in 1980. Applicant is single. He is currently in repayment on a Chapter 13 bankruptcy, discussed below. Applicant has been fully compliant on his bankruptcy obligations. (Tr. 55)

Up to 1999, Applicant worked as a process control engineer. He took out a mortgage and bought a house with proceeds from his stock margin account. (Tr. 91) He saved a lot of money and acquired about \$600,000 in available assets. He believed he had three choices: 1) to keep investing his assets; 2) pursue a doctoral degree; or 3) become an entrepreneur. He chose to become an entrepreneur. He then found a partner with a bachelor's degree in business, focused on a particular type of business, and spent nearly \$400,000 to buy an industrial building and equipment. He made stock purchases on margin. (Tr. 76) He became an "optimistic and aggressive entrepreneur" who attended "all the entrepreneurial meetings." (Tr. 77) Applicant "believed that, because [his] partner was a business major, how could [they] possibly not succeed." (Tr. 76)

Applicant's meetings and research on entrepreneurship taught him:

that the angel investors and venture capitalists, they like to see you maxed out on your credit cards and your home mortgage, you know, because that shows – that shows commitment. That shows that you really are doing what it takes, you have no choice but to succeed. I personally think that the other reason they like to see that is because you will be desperate enough to take any deal they give you. (Tr. 79)

Things did not work out with Applicant's first partner, and the two parted ways. Applicant then invented a product with potential and recruited multiple business partners with memoranda of understanding. He pursued this business while continuing to operate his original business. By 2005, he stopped buying stock on margin. (Tr 132) Around the same time, he sold his original business and the industrial building, and he applied the proceeds to his new venture. At the same time, he accepted a part-time position with his current employer in order to raise more money for his investment. During this time, he possessed a security clearance. (Tr. 15) In 2006, he "saw the stock market going up

[and] figured this is foolishness, you know, what could go wrong,” and he took two loans on his home, which he ultimately merged together. (Tr. 91-92) He then refinanced that loan in 2007, resulting in the debt noted in the SOR at ¶ 1.c. (\$94,000 mortgage)

Despite such efforts, Applicant could not raise sufficient funds and attract as many investors as his project demanded. In 2008, Applicant left the part-time job when the funding for his position was depleted. He decided to devote himself further to his own business. Then, he developed chronic fatigue syndrome. Being inspired by a celebrity investor’s comment that “marketable winners . . . never, never, never give up,” he persevered on his project. (Tr. 84) His fatigue made him functionally unemployable for about nine months in 2008 or 2009, although he had sufficient energy to do some work for his own business. (Tr. 135-136)

During this time, Applicant was living off credit cards, using them for everything from work-related expenses to his personal mortgage. (Tr. 85) He noted, “I am living off the credit cards and trying to push the business through, and that is exactly what the venture capitalists and angel investors want you to do. That is what I was expected to do. . . . And that is what my business partners expected me to do.” (Tr. 85-86) His decision to proceed in this manner led to his receiving repeated calls from his creditors. Meanwhile, the economy sputtered. Applicant consulted a bankruptcy attorney, who encouraged him to file for Chapter 13 bankruptcy protection. (Tr. 87) Seeing no other option, Applicant did so in April 2010. He listed over \$200,000 in unsecured debts and over \$100,000 in secured debts. The court-approved repayment plan called for him to continue paying his secured creditors during the five years of the plan. He was also to repay the unsecured creditors less than \$15,000, which was about 7.3% of his unsecured debt, over the same period.

Applicant maintains that the four debts noted at SOR allegations ¶¶ 1.a-1.d, which represent nearly \$150,000 in delinquent debt, were included in his bankruptcy petition. The debt at SOR allegation ¶ 1.c was included in the bankruptcy. (Tr. 124-125) SOR ¶ 1.a represents a debt of \$17,796; SOR ¶ 1.b represents a debt of \$12,617; SOR allegation ¶ 1.d represents a debt of \$23,000. It is unclear whether ¶¶ 1.a and 1.d are related or duplicative, and whether they are related to the bankruptcy entries with the same creditor name noted in the petition. Applicant failed to provide documentary evidence showing the debt at ¶ 1.b was made part of the bankruptcy repayment plan, although that creditor is named in the Notice of Creditors matrix.

During the hearing, Applicant was told documentary evidence was needed to confirm his assertion that all four debts at issue were being satisfied under the bankruptcy plan. (See, e.g., Tr. 110-111, 114-125) After the May 1, 2014, hearing, Applicant was given until May 7, 2014, to submit any relevant documentation he wished to have considered. He later requested an extension of an additional two weeks. Applicant, instead, was given until May 13, 2014, to submit any additional materials. (Case File, Procedural History, Emails of May 2014)

In a letter dated May 13, 2014, Applicant's attorney wrote an explanation as to the claims after reviewing Applicant's full bankruptcy file. This included documents not introduced in this proceeding. For example, regarding SOR ¶ 1.b, which he stated "is identified in [Applicant's] Schedule F, page 2, as a debt owed [to that creditor] in the amount of \$12,612.62." (Ex. C) The attorney also referenced Schedule F in reference to SOR allegation ¶ 1.d. Like other cited documents in his correspondence, Schedule F was not offered into evidence or identified as such. No alternative creditor names, collection agents, or successors were identified or demonstrated to be linked to the SOR-identified creditors. There is no evidence indicating any of the debts cited in the SOR are duplicative. No evidence was submitted showing that any creditor ultimately decided not to file a claim.

Applicant admits that he "burned through" cash from at least 2005 through 2010 in pursuit of his entrepreneurial dreams and in order to show his commitment to his business. (Tr. 144) The cash he "burned" was borrowed cash, a type of behavior he noted is "what an entrepreneur is supposed to do." (Tr. 144-145) In 2006, Applicant did not know such behavior could be considered antithetical to the behavior of one maintaining a security clearance. (Tr. 152)

### **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 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.

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**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had acquired multiple delinquent debts amounting to about \$300,000 in secured and unsecured debts. This is sufficient to raise two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

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 does not dispute any of the debts at issue. He was functionally unemployable for about nine months during his period of debt acquisition due to chronic fatigue syndrome, although he had sufficient energy to make some progress on his personal business. During that time of partial disability, Applicant admits he continued to “burn through” borrowed money. There is no evidence he has received financial counseling, although it is generally required as a prerequisite to a bankruptcy filing. Regardless, Applicant does not appear to have benefitted from counseling.

Without more information about Applicant’s income at the time of the bankruptcy filing and the results of the “best interests” of the creditors test, it cannot be determined whether 7.3% repayment to unsecured creditors represents a good faith effort at repayment. The plan has been in place for several years, demonstrating progress has been made on at least a majority of the debts included. It remains unclear, however, whether the debts noted at SOR allegations ¶¶ 1.a, 1.c, and 1.d (representing over \$53,000) were fully included in the bankruptcy for satisfaction or otherwise resolved. To his credit, Applicant seems to now understand that what he believed to be the entrepreneurial mindset is inconsistent with financial good judgment and reliability. Given his bankruptcy filing to free himself of tremendous debt, I find mitigating condition AG ¶ 20(d) has partial applicability.

### **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). 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.

Despite the low rate of repayment for unsecured debts, Applicant did avail himself of Chapter 13 bankruptcy protection to address those obligations. This is a legally available avenue for individuals faced with high debt. It remains unclear whether three of the four debts in the SOR, however, were properly included in Applicant's bankruptcy petition and repayment plan. The lack of clarity is based in large part on an evidentiary deficiency by Applicant. This deficiency becomes problematic in this process since the burden is placed squarely on an applicant to mitigate cited security concerns.

Regardless, aside from the specific debts noted in the Guideline F allegations, Applicant's actions are worrisome with regard to his general handling of his finances. His description of his purposeful behavior from 2005 through at least 2010 as an "entrepreneur" demonstrates reckless and disturbing behavior. His practice of purchasing stock on margin similarly reflects a willingness to take unnecessary risks. These kinds of activities, which clearly reflect poor judgment, are not the type of behavior expected of one who maintains a security clearance. Common sense should indicate that such risk-taking is antithetical with the protection of classified information. Applicant appears to now understand this to be the case. However, more time is needed for him to show that he is capable of maintaining his finances in such a way as to establish a track record of responsible financial management. I find security concerns remain unmitigated. Clearance is denied.

### **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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For 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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge