



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



In the matter of: )  
 )  
----- ) ISCR Case No. 12-00956  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

02/18/2014

**Decision**

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

Applicant failed to mitigate security concerns related to Guideline F. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On August 28, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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 an October 2, 2013, response, Applicant admitted four of the five allegations raised in the SOR and offered brief comments. He also requested a decision without hearing. Counsel for DOD prepared a Form of Relevant Material (FORM) containing 13 attachments to support the Government's position in this matter. Applicant did not submit a response or any additional information within the specified time period following his receipt of the FORM. The Defense Office of Hearings and Appeals (DOHA)

assigned the case to me on January 31, 2014. I have thoroughly reviewed the FORM and other case file materials. Based on the materials submitted, I find that Applicant failed to meet his burden in mitigating financial considerations security concerns. Clearance is denied.

### **Findings of Fact**

Applicant is a 56-year-old engineering technician who has worked for the same employer since at least September 2002. He has been continuously employed since September 1998. Applicant served on active duty in the United States Navy from 1975 to 1977, when he was honorably discharged. Applicant has a high school education. He has been separated from his wife since 1995. He has three grown children.

At issue are five delinquent debts noted in the SOR:

1.a Collection Account - Telecommunications Account (\$871). Unpaid. In his response to the SOR, Applicant admitted that this debt is unpaid, noting that he is "working out a payment plan to get this matter resolved as quickly as possible." (FORM, Attachment 4) He previously stated that he had called the collection agent for this debt in 2009, and was told the agency had no record of the debt. (FORM at 6 of 13)

1.b Collection Account - Medical Account (\$229). Unpaid. In his response to the SOR, Applicant wrote, "account is still unpaid, I have been in touch and currently have payment plan to get this matter resolved as quickly as possible." (FORM, Attachment 4) No documentation supporting this assertion was submitted. There is no evidence the bill was related to emergency care. Applicant's references to medical bills largely concern routine visits and tests, noted as generally covered by his health insurer.

1.c Collection Account - Credit Card-Related Account (\$627). No Evidence of Payment. In his response to the SOR, Applicant related that he had negotiated a settlement of \$418.43, and that the negotiated balance was paid in full in 2010. He presented no supporting documentation, however, substantiating his assertion that a settlement had been negotiated or that the obligation had been satisfied.

1.d Charged-Off Account - Automobile Repossession (\$18,092). Unpaid. In his response to the SOR, Applicant conceded that this debt was unpaid and wrote, "I am working with lender for affordable repayment options. The multiple maintenance issues that were extremely expensive and ultimately caused me to fall behind in payments led to repossession of this vehicle." (FORM, Attachment 4) Applicant submitted no evidence of efforts to work with this creditor, nor did he provide any documentation reflecting any extraordinary expenses related to the maintenance of the vehicle at issue.

1.e Delinquent Account - Credit Card-Related Account (\$968). Unpaid. In his response to the SOR, Applicant wrote that this account is still unpaid, adding, "I am working out a payment plan to get this matter resolved as quickly as possible." (FORM, Attachment 4)

With regard to these delinquent debts, in general, Applicant wrote:

I have worked hard to try and resolve all debts and I am currently making a good-faith effort to negotiate a payment plan on all accounts not currently resolved which are listed above. My financial obligations and trust are being re-established slowly and I have as always continued a solid record of excellent job performance, and will continue to the best of my ability to demonstrate my dependability and trustworthiness. (FORM, Attachment 4)

With regard to the SOR, Applicant's answers and comments were considered in the FORM. He provided no response or additional materials in relation to the FORM's contents. His Personal Financial Statement reflects that he has a monthly net remainder of about \$713.84, after expenses and about \$400 in payments on some of the debts at issue. There is no documentary evidence, however, of regular monthly payments being made on those debts in the past few years.

Financial issues have dogged Applicant since the mid 1990s, when he filed for Chapter 7 bankruptcy. In 2001, his credit report reflected nearly \$18,000 in debt and he was subject to a substantial Federal Tax Lien. (FORM at 10-11 of 13) He did not disclose any delinquent debts in either his 2011 or 2012 security clearance applications, although he discussed his delinquent debts and general finances in a 2011 personal subject interview. (FORM at 10-11 of 13) There is no documentary evidence showing that Applicant has received financial counseling. Applicant made reference to an investigator in late 2012 that he "was taking care of his ill mother," but the comment lacks additional specificity. (FORM, Attachment 7, Subject Interview at 7)

### **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 has multiple delinquent debts. Applicant admitted the majority of the debts cited were unpaid and he submitted no documentary evidence refuting the Government’s evidence. Therefore, the following financial considerations disqualifying conditions apply:

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

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

Five conditions, however, could mitigate the security concerns raised 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 has experienced intermittent financial issues since the mid 1990s. During that time, he has been continuously employed. The origins of, and circumstances related to, the multiple debts at issue are largely unexplained. The only references to facts potentially suggesting his financial difficulties were caused by something out of his control are to unelaborated automotive maintenance costs and an allusion to caring for his ill mother. In neither case does he document efforts to act financially responsibly under the circumstances. Moreover, there is no evidence Applicant received financial counseling or has disputed the delinquent debts at issue. Furthermore, there is no documentary evidence reflecting his purported efforts to address the debts at issue. Therefore, none of the mitigating conditions available under this guideline 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). 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 limited facts and circumstances noted in this case. I incorporate my comments under

Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, others may have warranted additional comment.

Applicant is a 56-year-old engineering technician who has worked for the same employer since late 2002. He has been continuously employed since 1998. Applicant served on active duty in the United States Navy for two years before being honorably discharged. He has a high school education. Applicant has been separated since 1995 and has three adult children.

Applicant has a history of adverse financial issues dating back to the mid-1990s, although he has been continuously employed for over 15 years. He has known the debts at issue have caused concerns since at least 2011. It can be deduced from the scant evidence presented by Applicant that his plan for addressing his debts is through negotiated settlements or repayment plans. However, no documentary evidence was submitted reflecting such efforts have been made. At present, there is no documentary evidence of progress on any of the debts noted in the SOR. The burden in these proceedings is placed on the Applicant. Based on the limited materials in the case file, I conclude that Applicant failed to carry his burden in this matter. Consequently, I conclude Applicant failed to mitigate security concerns arising under Guideline F.

### **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
Subparagraph 1.a-1.e:	Against 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