



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



In the matter of: )  
)  
) ISCR Case No. 12-01185  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

01/07/2013

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated personal conduct security concerns, but he has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 2, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 010865, *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.

Applicant answered the SOR on June 7, 2012, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 20, 2012. DOHA issued a notice of hearing on November 5, 2012, scheduling the

hearing for November 28, 2012. The case was reassigned to me on November 26, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through R, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE S through RR and admitted without objection. DOHA received the hearing transcript (Tr.) on December 7, 2012.

### **Findings of Fact**

Applicant is a 46-year-old engineer for a defense contractor. He has worked for his current employer since October 2011. He has worked in the defense industry and held a security clearance for more than 20 years. He has a bachelor's degree. He is married with a child in college.<sup>1</sup>

Applicant started a limited liability company (LLC)<sup>2</sup> to do defense contracts in about 2004. Applicant reported that the company's revenue was about \$279,000 in 2005; \$688,000 in 2006; \$878,000 in 2007; and \$1,080,000 in 2008. He stated that the profit was about 8% of the revenue, and the LLC paid him a salary of \$120,000 to \$130,000. His income tax returns showed adjusted gross income of \$165,012 in 2007; \$75,185 in 2008; negative \$110,651 in 2009; \$14,854 in 2010; and \$10,675 in 2011. Applicant used business loans and lines of credit for the company.<sup>3</sup>

In 2006, Applicant bought a house for \$997,000 in a city where the real estate market was booming. Applicant made a down payment of about \$100,000, and the rest of the purchase price was financed with an \$800,000 mortgage loan and a \$100,000 second mortgage loan. Both mortgage loans were obtained from the same bank.<sup>4</sup>

When the real estate market crashed, several creditors closed or lowered the lines of credit Applicant used for his business. The company was awarded a government contract in 2008. The contract gave the government the right to do business with the LLC, but did not guarantee a set amount of work. The LLC did not receive enough work to remain viable. Applicant used his personal credit to pay

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<sup>1</sup> Tr. at 74-75, 93; GE 1, 2.

<sup>2</sup> A limited liability company is a business structure allowed by state statute. LLCs are popular because, similar to a corporation, owners have limited personal liability for the debts and actions of the LLC. Other features of LLCs are more like a partnership, providing management flexibility and the benefit of pass-through taxation. . . .The federal government does not recognize an LLC as a classification for federal tax purposes. An LLC business entity must file as a corporation, partnership or sole proprietorship tax return. See [www.irs.gov/businesses/small/article/0,,id=98277,00.html](http://www.irs.gov/businesses/small/article/0,,id=98277,00.html).

<sup>3</sup> Tr. at 23-29, 76-83; Applicant's response to SOR; GE 1, 3.

<sup>4</sup> Tr. at 22-23, 76-78; GE 1, 3.

company expenses. In early 2009, Applicant informed his employees that they needed to look for another job, and Applicant also started looking for new employment.<sup>5</sup>

Applicant interviewed with a defense contractor in 2009. He thought the company wanted to hire him as a consultant, but the company hired him as a regular employee in August 2009. Applicant still had his LLC. His employer felt it would be a conflict of interest for Applicant to work for the company and also work for the LLC. He was hired on the condition that he commit to giving up working for his LLC. Applicant had health problems, and he needed time to close the LLC. He closed the LLC's office space and sold much of the company's equipment. Applicant stated that the LLC did not do any business while he worked for his employer, but he did not terminate the LLC as a business entity.<sup>6</sup>

In about April 2010, Applicant's supervisor told him that Applicant would likely be laid off at the end of his current task in July 2010, and he encouraged Applicant to look for a new job. In May 2010, the U.S. Small Business Administration (SBA) informed Applicant of possible defense contracting work for his LLC. Applicant did not withhold this information from his employer. He invited his employer to attend a meeting on the potential contract. The meeting never took place. In early June 2010, Applicant's employer terminated his employment for violation of his agreement to give up his work with his LLC.<sup>7</sup>

Applicant was unemployed from June 2010 until August 2010. He worked as an engineer for a company from August 2010 until he was hired by his current employer in February 2011.<sup>8</sup>

Applicant's LLC is still in existence. He owes his state for LLC fees. He paid the \$800 that was owed for the last tax year, but he still owes almost \$10,000 for previous tax years.<sup>9</sup>

After he closed the LLC's office space in about August 2009, Applicant headquartered the LLC in his home. He stated that he "gave away [the] office furniture to other small businesses and stored [the] copier machine at [a self-storage facility]." His 2009 federal income tax return reported that the LLC had \$402,882 in gross sales and \$387,273 in cost of goods sold, resulting in gross income of \$15,609. He reported total expenses of \$138,761, plus \$29,732 for expenses for the business use of his home, resulting in a net loss of \$152,884. He reported that his house was 2,305 square feet and that 1,500 square feet of the home were "used regularly and exclusively" for the

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<sup>5</sup> Tr. at 24-32; Applicant's response to SOR; GE 3; AE D, E, I.

<sup>6</sup> Tr. at 33-43, 84-92; Applicant's response to SOR; GE 3; AE A.

<sup>7</sup> Tr. at 35-37, 40-43, 92-93; Applicant's response to SOR; GE 3.

<sup>8</sup> Tr. at 43-44, 96; Applicant's response to SOR; GE 1, 3.

<sup>9</sup> Tr. at 45-48; GE 3; AE S, AA.

business or for storage of inventory or product samples. Applicant also claimed that his two cars were each driven 10,000 miles for business purposes.<sup>10</sup>

On his 2010 federal income tax return, Applicant reported that the LLC had \$281,302 in gross sales and expenses of \$340,012, plus \$14,773 for expenses for the business use of his home, resulting in a net loss of \$91,538. He reported that 2,000 of the 2,305 square feet of his home were used for the business.<sup>11</sup>

Applicant stopped paying the mortgage loans on his home in about July 2009. He stated that he stopped paying because he was attempting to have the loans modified. His July 2010 request for a loan modification was denied. He paid about \$5,100 from August to October 2010, and then did not pay anything else toward the loans. The home was sold through a short sale for \$735,000 in July 2011.<sup>12</sup>

Applicant and his wife filed a joint 2011 federal income tax return, but they divided the business expenses into his expenses and her expenses. They reported the business address of the LLC as the apartment that was rented after their house was sold. Applicant reported that the LLC did not have any gross sales. He reported business expenses of \$31,539, plus \$10,500 for expenses for the business use of his home, resulting in a net loss of \$42,039. He reported that he used 2,000 of the 2,400 square feet of his home for business. He reported business depreciation of his house at \$11,261. Expenses for business use of his home were capped at \$10,500 for 2011, so he carried over \$7,783 in operating expenses and \$11,261 in depreciation for the business use of his home to tax year 2012,. His wife also reported that the LLC did not have any gross sales. She reported business expenses of \$6,523 resulting in a net loss of \$6,523. She reported that she used 600 of the 900 square feet of her apartment for business. She reported \$5,494 for expenses for the business use of the apartment. That amount was unable to be applied toward the 2011 tax return, so it carried over to 2012.<sup>13</sup>

The SOR alleges six delinquent debts with balances totaling about \$194,000 and a past-due second mortgage. Applicant denied owing the delinquent \$7,866 credit card debt alleged in SOR ¶ 1.g and the past-due second mortgage that is alleged in SOR ¶ 1.f. He established that the credit card debt was settled, and the second mortgage loan was resolved through a short sale of his house.<sup>14</sup> He admitted owing \$36,480 to the

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<sup>10</sup> Applicant's response to SOR; GE 3. Applicant's state LLC debt and questionable accounting practices were not alleged in the SOR, and they will not be used for disqualification purposes. They may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

<sup>11</sup> GE 3.

<sup>12</sup> GE 3.

<sup>13</sup> GE 3.

<sup>14</sup> Tr. at 66-68; Applicant's response to SOR; GE 1, 3; AE F, G, I, O-R.

creditor alleged in SOR ¶ 1.d, but he denied that the account is past due because he has been making monthly \$100 for the past year. He admitted owing the remaining debts, but he stated that he has been making payments on several of the debts. Individual debts are discussed below.

SOR ¶ 1.a alleges a delinquent debt of \$51,154 to a collection company on behalf of a bank. The collection company filed suit against Applicant and his wife in 2012, but only his wife was served. She retained an attorney who filed a general denial in August 2012. Applicant hopes to settle the debt and lawsuit for \$7,000 in April 2013.<sup>15</sup>

Applicant admitted owing the \$46,573 delinquent credit card debt alleged in SOR ¶ 1.b. He stated it was the LLC's credit card that he personally guaranteed. He made monthly \$100 payments from September 2010 to June 2012. In July 2012, he increased the payments to \$125 per month.<sup>16</sup>

SOR ¶ 1.c alleges a delinquent debt of \$19,292 to a company for the lease of a copier machine. Applicant's wife has been sending the company monthly \$50 payments. Applicant asked the creditor if it wanted to repossess the copier. The creditor indicated that it preferred to accept the monthly \$50 payments until Applicant could sell the machine and pay them what he received. Applicant has been unable to sell the copier. He stated that if his "LLC gets resurrected in the future, [he] plan[s] to pay off [the loan] and continue usage" of the machine.<sup>17</sup>

Applicant admitted owing the \$36,480 delinquent debt alleged in SOR ¶ 1.d for the lease of computer equipment, but he denied that the account was past due. He has been making \$100 monthly payments since 2011. He stated that he will continue to make monthly \$100 payments until a settlement can be negotiated. The creditor reported the debt as past due. Applicant did not submit anything from the creditor stating that the creditor was satisfied with his monthly payments.<sup>18</sup>

SOR ¶ 1.e alleges a delinquent debt of \$33,489 to a finance company. Applicant borrowed \$40,000 from the company in about 2006 to buy a grand piano. He stated that he bought the piano as an investment. He testified that he has been paying \$50 per month for several years. He sold the piano for about \$20,000. He used the proceeds to pay some other debts and to move his family to their current location. As of September 2012, the balance on the debt was \$31,996.<sup>19</sup>

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<sup>15</sup> Tr. at 48-53; Applicant's response to SOR; GE 3; AE H, J, S.

<sup>16</sup> Tr. at 53-58; Applicant's response to SOR; GE 3; AE B, F, G, K, S, QQ, RR.

<sup>17</sup> Tr. at 59; Applicant's response to SOR; GE 3; AE L, S, T, V, BB, CC.

<sup>18</sup> Tr. at 59-63; Applicant's response to SOR; GE 3; AE B, S.

<sup>19</sup> Tr. at 63-66, 89; Applicant's response to SOR; GE 3; AE M, N.

Applicant resolved his delinquent mortgage loans through a short sale of his house. The past-due second mortgage loan is alleged in SOR ¶ 1.f. Applicant established that the delinquent \$7,866 credit card debt alleged in SOR ¶ 1.g was settled in November 2011 for \$1,967. The account had a \$5,899 balance when the settlement amount was paid.<sup>20</sup>

Applicant has not received formal financial counseling. He has paid, or entered into agreements to pay, other debts that are not alleged in the SOR. He is working overseas and earns a good salary. He paid \$8,232 in November 2012 to pay off a car loan. He stated that “will free up \$450 per month to settle other creditors more aggressively.” He stated that he plans to settle his delinquent debts.<sup>21</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 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.

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.”

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 the applicant or proven by Department Counsel.” The applicant 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

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<sup>20</sup> Tr. at 66-67; Applicant’s response to SOR; GE 3; AE F, G, I, O-R.

<sup>21</sup> Tr. at 67-74, 101; GE 3-5; AE F, G, I, S-Z, EE-PP.

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 EO 10865 provides that adverse 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 under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. He spent beyond his means, as verified by the purchase of a \$997,000 house and a \$40,000 piano when his income could not justify purchases of those amounts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

The failure of Applicant's business qualifies as a condition that was outside his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant may have hoped that his business would generate enough income to justify his high-cost purchases, but he was unable to grow or sustain the business. He has made some strides in paying and settling his debts, but he still owes well in excess of \$150,000.

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts.<sup>22</sup> His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is not applicable; the second section is only applicable to the second mortgage loan alleged in SOR ¶ 1.f and the settled credit card debt alleged in SOR ¶ 1.g. I find that financial concerns remain despite the presence of some mitigation.

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<sup>22</sup> The Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).



## Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant was hired by a defense contractor on the condition that he commit to giving up working for his LLC. His employment was terminated for violation of that agreement. The above disqualifying conditions are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I am convinced that Applicant believed he was acting within the spirit of his employment agreement. The LLC was still in existence, but it did not conduct any business while Applicant was working for the defense contractor. He did not hide his actions from his employer. He thought he was going to be laid off, and he invited his employer to attend a meeting on a potential contract for his LLC. I find the conduct happened under such unique circumstances that it is unlikely to recur and it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(e) are applicable.

## 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 Guidelines E and F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I have considered Applicant's long employment history and his work in the defense industry, particularly his recent service overseas. Applicant is educated and accomplished. His financial problems were mostly related to his failed business. However, poor decisions also contributed to his financial problems. He does not yet have a track record of fiscally responsible behavior.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated personal conduct security concerns, but he has not mitigated financial considerations security concerns.

## 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.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant

Paragraph 2, Guideline E: For Applicant

Subparagraph 2.a: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge