



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



In the matter of: )  
)  
) ISCR Case No. 12-01224  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

09/24/2012

**Decision**

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On March 5, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 on September 1, 2006.

Applicant answered the SOR on April 17, 2012, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on June 27, 2012. The FORM was mailed to Applicant and

he received it on July 17, 2012. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide any additional material. The case was assigned to me on September 7, 2012.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted every SOR allegation. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 58 years old. He is married and has two adult children and four adult stepchildren. He has worked for his current employer, a defense contractor, since December 2007. Before that, he worked as a consultant for a defense contractor from December 2000 to June 2006. He had periods of unemployment from July 2006 to April 2007, and from October 2007 to November 2007. He is a reliability engineer. He is a high school graduate with some college courses completed. He retired from the Navy after serving honorably from October 1975 to September 1997.<sup>1</sup>

The three Chapter 13 bankruptcies and debts listed in the SOR are supported by a credit report dated October 11, 2011, and bankruptcy records. The debts alleged in the SOR are debts that were outstanding at the time his Chapter 13 bankruptcy petitions were dismissed in 2008 and 2011. Those debts total \$44,917 (from the 2008 dismissal) and \$30,524 (from the 2011 dismissal). Additionally, there is a second mortgage loan that was charged off in the amount of \$53,973. Applicant presented no proof of payment for any of these debts. These debts remain unresolved.<sup>2</sup>

Applicant began having financial difficulties in June 2006 when he was laid off from his full-time position. He could only find work doing part-time jobs. His wife was also laid off in 2010 from a job she held for 15 years. There is no additional information in the record about what his wife was doing. Applicant filed his first Chapter 13 bankruptcy petition in February 1998. In April 2005, Applicant was discharged from all his listed debts. In September 2007, he filed another Chapter 13 bankruptcy petition. In December 2008, this petition was dismissed for failure to make payments under the bankruptcy plan. He paid about \$4,276 on obligations totaling \$73,729. In September 2009, he filed a third Chapter 13 bankruptcy petition. In February 2011, this petition was dismissed for failure to make the bankruptcy plan payments. He paid about \$9,974 on obligations totaling about \$90,911.<sup>3</sup>

Applicant bought a home in November 2003 and at some point he could not make the mortgage payments. He sought a loan modification several times, but was

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<sup>1</sup> Item 3.

<sup>2</sup> Items 7-10.

<sup>3</sup> Items 6, 8-10.

refused. Finally in October 2011, his loan modification was approved for his first mortgage. He is currently trying to get a loan modification on his second mortgage (SOR ¶ 1.d). Once that is approved, he then plans to re-file his Chapter 13 bankruptcy petition. Applicant's personal financial statement indicated a net monthly income of about \$3,650 and monthly expenses of about \$3,260. The expenses do not include payments on any SOR debts or the debts not discharged in the dismissed bankruptcy cases. Applicant received financial counseling through the bankruptcy process.<sup>4</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 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, 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>4</sup> Items 4, 6, 8-10.

extrapolation about 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**

AG ¶ 18 expresses the security concern for Financial Considerations:

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 them under AG ¶ 19 and found the following relevant:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. He has also filed three Chapter 13 bankruptcy petitions since 1998. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and found the following relevant:

- (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.

Applicant provided no evidence that he paid or resolved his delinquent debts. Therefore, his behavior is recent and remains a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain unresolved. Applicant provided evidence that he and his wife experienced periods of unemployment, which were due to circumstances beyond his control. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He failed to produce evidence of his responsible behavior other than seeking a loan modification and filing for bankruptcy protection. I find AG ¶ 20(b) does not apply. Although Applicant presented evidence of financial counseling by complying with the bankruptcy counseling requirement, there is no clear evidence that Applicant's financial problems are being resolved or under control. There was no documented evidence that he has made a good-faith effort to pay or has attempted to resolve any of the debts. Although he made some payments under the last two Chapter 13 bankruptcy plans, he ultimately stopped making payments and the petitions were dismissed with the debts still unresolved. I find AG ¶¶ 20(c) and 20(d) partially 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 considered Applicant's 21 years of honorable service to his country. However, he has not shown a track record of financial

stability; quite the opposite is the case. He was discharged from all his debts by a bankruptcy court in 2005, yet found himself filing bankruptcy petitions again in 2007 and 2009. Both were dismissed and all the underlying obligations remain unpaid. The record lacks evidence that Applicant has made significant of good-faith effort to resolve his debts. Therefore, he failed to provide sufficient evidence to mitigate the security concerns alleged in the SOR.

Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge