



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



In the matter of: )  
)  
) ISCR Case No. 12-01973  
)  
Applicant for Security Clearance )

**Appearances**

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

02/07/2014

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On August 14, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD 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 DOD on September 1, 2006.

Applicant answered the SOR on May 30, 2013, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 24, 2013. The FORM was mailed to Applicant on

November 18, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted an undated response to the FORM (Response). The case was assigned to me on January 15, 2014.

### **Findings of Fact**

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

Applicant is 44 years old. He is divorced from his first wife whom he pays monthly alimony. He also has two children from this marriage for whom he pays child support. He remarried in 2008. He has worked for his current employer, a defense contractor, since July 2008. He received a bachelor's degree in 1999. He served on active duty in the Navy from 1987 to 2008 and retired with an honorable discharge. He has held a security clearance, without incident, since 1988.<sup>1</sup>

The SOR lists thirteen delinquent debts, including a foreclosure totaling about \$46,000. The debts are listed in credit reports dated October 2011, and May 2013.<sup>2</sup>

Applicant's financial difficulties resulted from his retirement from the Navy in 2008, causing him to earn less money at the time, and the financial consequences of his divorce. He was required to pay his ex-wife alimony, which is automatically deducted from his retirement pay, and child support. He became delinquent on his child support in January 2008, but resumed paying in August 2008 and is currently paying the support amount and arrearages. He was unable to pay the debts listed in the SOR for a long period of time because he did not have the capacity to do so. He recently borrowed from his retirement account (401k) and began paying the debts or setting up payment plans. He acknowledged that he was negligent in not contacting the creditors in a timely fashion, but he was unsure how to proceed because he was confused by which collection company to pay.<sup>3</sup>

### **Status of Debts:**

1. **SOR ¶ 1.a:** A collection account for a telecommunications debt in the amount of \$398. Debt became delinquent in June 2012. Documentation shows six payments of \$40 per month since June 2013. Current balance is \$150. Debt is being resolved.<sup>4</sup>

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<sup>1</sup> Items 3-4.

<sup>2</sup> Items 1, 6-7.

<sup>3</sup> Item 4.

<sup>4</sup> Response; AE A (1-5), B (2, 14-21).

2. **SOR ¶ 1.b:** A collection account for a utility debt in the amount of \$542. Debt became delinquent in August 2011. Documentation shows account settled for \$390.89 with a current balance of zero. Debt resolved.<sup>5</sup>

3. **SOR ¶ 1.c:** A collection account for a credit card debt in the amount of \$2,321. Debt became delinquent in August 2008. Documentation shows account settled for \$1,703 in August 2013, with a current balance of zero. Debt resolved.<sup>6</sup>

4. **SOR ¶ 1.d:** A collection account for a consumer debt in the amount of \$938. Debt became delinquent in February 2009. Documentation shows account settled for \$788 in July 2013, with a current balance of zero. Debt resolved.<sup>7</sup>

5. **SOR ¶ 1.e:** A collection account for a consumer debt in the amount of \$5,946. Debt became delinquent in December 2009. Documentation shows account settled for \$4,378 in August 2013, with a current balance of zero. Debt resolved.<sup>8</sup>

6. **SOR ¶ 1.f:** A collection account for a credit card debt in the amount of \$626. Debt became delinquent in October 2009. Documentation shows account settled for \$566 in August 2013. Debt resolved.<sup>9</sup>

7. **SOR ¶¶ 1.g and 1.h:** Collection accounts for student loan debts in the amount of \$2,544 and \$5,541. Debts became delinquent in July 2008. Documentation shows five payments of \$80 per month since June 2013. Debts are being resolved.<sup>10</sup>

8. **SOR ¶ 1.i:** Collection account for a student loan debt in the amount of \$22,642. Debt became delinquent in June 2010. Documentation shows seven payments of \$70 per month since June 2013. Debt is being resolved.<sup>11</sup>

9. **SOR ¶ 1.j:** Mortgage account where property was foreclosed for delinquency. Guarantor (Department of Veterans Affairs) is paying a partial payment. Credit report shows a zero balance. Debt is unresolved.<sup>12</sup>

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<sup>5</sup> Response.

<sup>6</sup> Response.

<sup>7</sup> Response.

<sup>8</sup> Response.

<sup>9</sup> Response.

<sup>10</sup> Response.

<sup>11</sup> Response.

<sup>12</sup> Response.

10. **SOR ¶ 1.k:** Collection account for a home equity loan debt in the amount of \$31,988 with a past due balance of \$1,471. Debt became delinquent in December 2008. Documentation shows four payments of \$200 per month since August 2013. Debt is being resolved.<sup>13</sup>

11. **SOR ¶¶ 1.l and 1.m:** Delinquent Federal tax debts for tax years 2010, 2011, and 2012, in the respective amounts of \$6,392 (2010 and 2011) and \$258 (2012). Debts became delinquent in April of the next tax year. Documentation shows Applicant entered into a payment plan with the Internal Revenue Service (IRS) and began making monthly payments of \$85 beginning in June 2013. He has made four payments. Beginning in December 2013, his payments increase to \$130 monthly. Debt is being resolved.<sup>14</sup>

Applicant contacted a credit counselor in August 2013. The counselor provided him with information and advice on how to negotiate payments and settlements for his delinquent debts.<sup>15</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.

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<sup>13</sup> Response.

<sup>14</sup> Response.

<sup>15</sup> Response.

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 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 the following potentially apply:

- (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. 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 the following potentially apply:

- (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's debts are recent, but are resolved or being resolved through payment plans. It is unlikely that similar debts will recur given Applicant's current income producing ability. I find mitigating condition AG ¶ 20(a) partially applies. Applicant provided evidence that his retirement from the Navy and divorce contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He readily admits that he was slow to react to his financial problems, but beginning in June 2013, he took affirmative steps to resolve his debts by contacting his creditors and arranging settlements and establishing payment plans. This demonstrates responsible behavior. I find AG ¶ 20(b) applies. Applicant presented evidence of financial counseling, and there is sufficient evidence to show that Applicant's financial problems are being resolved. Although Applicant failed to make his mortgage payments which led to foreclosure, and he has not subsequently initiated any good-faith effort to resolve this debt, his status as a veteran allowed for its resolution without any further liability on his part. There is sufficient evidence that he is making a good-faith effort to resolve his other debts. I find both 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 the 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 guideline 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 past military service, including his holding of a security clearance for over 20 years without incident, and his divorce's effect on his finances. I also considered his good-faith attempts to resolve his debts and begin making payments to his creditors. Additionally, he has not incurred any new delinquent debts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a – 1.m:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge