



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



In the matter of: )  
)  
) ISCR Case No. 12-03636  
)  
Applicant for Security Clearance )

**Appearances**

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

01/17/2014

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse incurred about \$70,000 in credit card debt paying for home improvements, household expenses, car repairs, and college costs for two of their three daughters. Since September 2010, they have been making monthly payments to a legal debt service to resolve four of Applicant’s larger credit card debts. Three of his debts have been settled, and the debt service is still working to resolve a \$17,157 charged-off balance. Clearance granted.

**Statement of the Case**

On September 10, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 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.

Applicant responded to the SOR allegations on September 26, 2013. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge, and on November 8, 2013, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. I issued a notice scheduling a hearing for December 5, 2013.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and four Applicant exhibits (AEs A-D) were admitted into evidence without objection. A chart, prepared by Department Counsel as a supplement to his oral closing argument, was marked as a hearing exhibit. Applicant testified, as reflected in a transcript (Tr.) received on December 13, 2013.

### **Findings of Fact**

The SOR alleges under Guideline F that as of September 10, 2013, Applicant owed a credit card debt of \$11,810 in collection (SOR 1.a) and a charged-off balance of \$17,157 to a bank (SOR 1.b). In response to the SOR allegations, Applicant denied the debts. He explained that the account in SOR 1.a was settled in August 2013 and that he has been paying \$745 a month to a debt resolution firm to resolve the account in SOR 1.b. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 64-year-old high school graduate with certificates in photography and marketing. He served on active duty in the United States military from July 1969 to June 1973, when he received an honorable discharge. (GEs 1, 2; Tr. 29-30.) Applicant held a Secret clearance while he was in the military. He has been working as a security officer for the same defense contractor since August 1983. Applicant initially held a Confidential clearance for his duties with his current employer. Around January 1984, his security clearance was upgraded to Secret. In February 2002, he was granted a Top Secret security clearance, which was renewed in December 2006. (GEs 1, 2; Tr. 31-32.)

Applicant and his spouse married in October 1975. They have three daughters, who are now ages 37, 34, and 25. (GE 1.) Their youngest daughter is still living at home. (Tr. 30.)

Applicant and his spouse have resided in their home since July 1983. (GE 1.) As they refinanced their mortgage over the years, they took on larger amounts of debt. In August 2003, their mortgage debt increased from \$80,000 to \$125,000. In January 2005, they refinanced with a new lender, taking out a mortgage of \$180,000. In February 2007, their current mortgage lender took over their primary mortgage, and they opened a second mortgage of \$22,500. (GEs 3, 4; Tr. 56.) Their monthly mortgage obligations currently total \$1,768. (GEs 3, 4.)

Over the years, Applicant and his spouse relied on consumer credit to pay for household expenses, home improvement, and car repairs. By 2010, they had incurred around \$40,000 in credit card debt for household expenses, \$18,000 of which was for siding and windows for their 60-year-old house. They incurred another \$30,000 in credit card debt paying college expenses for their two younger daughters. (GEs 2, 4; Tr. 46-48.) In September 2007, Applicant cosigned on a student loan of \$18,206 for his youngest daughter. (GE 4; Tr. 45-46, 50.)

Applicant and his spouse paid their debts on time until April 2010, when they stopped paying on a credit card account with a \$7,500 limit opened in February 2010 (not in SOR).<sup>1</sup> They struggled to make the payments on their other credit card debts through the summer of 2010, when “it was just getting to the point where it was not possible to catch up with the payments.” (Tr. 39.) In August 2010, Applicant and his spouse hired an integrated legal debt service to negotiate settlements of four of Applicant’s larger credit card balances. Applicant and his spouse agreed to pay the debt service \$735 a month for the next 48 months to resolve more than \$54,000 in credit card debt.<sup>2</sup> (GEs 1, 2; AE A; Tr. 32-34.) They opted not to include a credit card debt around \$14,000 in her name, or a VISA credit card with a credit union in his name.<sup>3</sup> They made separate payments to those creditors. (GEs 2-4; Tr. 33.)

On the advice of the debt service, Applicant and his spouse made no payments after September 2010 on the four accounts in their debt consolidation plan, and the accounts fell delinquent. (GE 4; Tr. 34.) They made timely payments of \$735 a month to the debt service, which negotiated settlement of a \$15,002.89 debt (not in SOR) for \$3,300 in March 2011. The creditor agreed to accept the funds in four installments. On receipt of the final payment in late May 2011, the creditor cancelled the remaining debt of \$11,702.89 on Applicant’s account. (GE 2; AE A.)

To renew his security clearance, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) on December 9, 2011. In response to the financial record inquiries, Applicant indicated that he was placing his funds into a special attorney-client trust account each month to pay his creditors. (GE 1.)

As of December 20, 2011, Applicant’s credit record showed that the student loan taken out in September 2007 for his daughter was in deferment. He and his spouse were making timely payments on their mortgage loans and on the two credit card accounts

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<sup>1</sup> Applicant testified that he was current in his payments on the account until he contacted a legal debt resolution service around August 2010. (Tr. 33.) Available credit record information shows last activity of April 2010. (GE 4.)

<sup>2</sup> The approximate balances of the four debts were \$7,354 (not in SOR, account opened in February 2010), \$15,002.89 (not in SOR, account opened in October 2007), \$17,196 (SOR 1.a, account opened in September 2008), and \$17,500 (SOR 1.b, account opened in September 1992). The credit card debt was incurred for household expenses as well as for their daughters’ educations.

<sup>3</sup> Applicant testified that the VISA account was held jointly by him and his spouse. (Tr. 51.) However, the account is listed as an individual revolving account on his credit record. (GE 4.)

excluded from their debt consolidation. Applicant's spouse's credit card account, on which Applicant was an authorized user, had a balance of \$13,188. His VISA account had a balance of \$6,717. Concerning his four accounts in debt consolidation, a \$15,002.89 credit card debt had been legally satisfied for less than the full balance, but his other accounts were in collection. (GE 4.)

On January 27, 2012, Applicant was interviewed by an authorized investigator for the Office of Personnel Management, partially about the adverse credit information on his record. Applicant believed that none of the debts included in his debt consolidation had become delinquent because the debt service was working on his behalf. He admitted that he made no payments directly to the creditors after he consolidated his debt, but he was making his payments to the debt service on time, and he intended to continue to make timely payments until all the covered debts were satisfied. (GE 2.)

In early February 2012, the debt service arranged to settle Applicant's \$7,354 credit card debt (not in SOR) for \$6,246. On a final payment in September 2012, his account was legally settled for less than its full balance. (GEs 3, 5; AE A.)

In late October 2012, the debt service arranged to settle the \$17,199.55 balance of Applicant's delinquent account with the creditor identified in SOR 1.a. The creditor agreed to accept \$7,000 in settlement, provided that \$1,082 was paid on or before October 31, 2012, followed by monthly payments of \$538 for the next 11 months. (AE A.) The debt was settled for less than its full balance around September 2013. (GEs 2, 5; Tr. 36-39.)

Around June 2013, Applicant estimated his household's monthly expenses at \$4,800, which included payments on three current credit card accounts and his first and second mortgages.<sup>4</sup> (AE B.) As of August 2013, Applicant was making monthly payments of \$250 and \$200 respectively on the credit card accounts that had been intentionally excluded from the debt consolidation. Both accounts were still rated as current. After paying household expenses of \$1,850 and debt payments of \$2,953, Applicant and his spouse had net household discretionary income around \$447.<sup>5</sup> (GE 2.)

In October 2013, Applicant's monthly payment to the debt service increased from \$735 to \$745. (AE B; Tr. 26-27, 34.) As of December 2013, Applicant was still paying \$745 a month to the debt service for its ongoing efforts to resolve his remaining credit card debt (SOR 1.b). To Applicant's understanding, the debt service wanted more funds in his

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<sup>4</sup> The three credit card payments consisted of a \$250 payment on a gasoline credit card account, which had a \$271 balance (GE 3), \$225 on his VISA credit card with the credit union, and \$300 on his spouse's credit card not included in the debt consolidation. (AE B.)

<sup>5</sup> Applicant listed five debt payments: \$250 on his VISA card, \$200 on his spouse's credit card, \$1,559 on their primary mortgage, \$209 on their second mortgage, and \$735 to the debt service. He estimated a monthly net remainder of \$2,935 after \$2,000 in debt payments and \$1,850 in expenses on income after deductions of \$5,250. (GE 2.) However, the amounts of his monthly debt payments, if accurate, total \$2,953, which gives him only \$447 remaining each month. Applicant confirmed at his hearing that their discretionary income was about \$450. (Tr. 42-43.)

account to make a reasonable settlement to the creditor in SOR 1.b. (Tr. 61.) The debt service agreement is scheduled to end in September 2014. (Tr. 39.) If the debt in SOR 1.b is not settled by that date, Applicant intends to extend his debt consolidation agreement until a settlement is accepted. (Tr. 62.) If necessary to resolve the debt, he is willing to borrow from his 401(k) account at work (Tr. 63), which had a balance around \$50,000 as of August 2013. (GE 2.)

As of December 2013, Applicant was making timely payments on a gasoline credit card balance of \$465, on his spouse's credit card account (balance \$10,000, down from \$11,127 in July 2013), on his VISA card account with the credit union (balance around \$5,000), and on his mortgages. (Tr. 52.) The lone credit card debt remaining in debt consolidation had a charged-off balance of \$17,157 (SOR 1.b). The student loan, on which he cosigned for his youngest daughter, was \$442 past due on a \$19,000 balance as of October 2013.<sup>6</sup> (GEs 3, 5; Tr. 50-51.) Applicant's daughter was working part-time to pay her student loans. (Tr. 50-51.)

Applicant has not had any formal financial counseling. Starting in mid-2012, Applicant and his spouse began reducing their discretionary expenses, such as entertainment and restaurant expenses, to be able to better manage their debt. (Tr. 41, 43.)

Applicant's immediate supervisor has worked closely with Applicant, initially as a co-worker, and for six years as his supervisor. He considers Applicant to be a "model Security Officer" and a very important asset to their department. Applicant is often tasked to train new employees and to perform sensitive jobs, at times at different facilities. With 30 years on the job, Applicant requires little to no supervision. (AE D.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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

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<sup>6</sup> Available credit information from Equifax did not include his VISA card account with the credit union. (GEs 3, 5.) Applicant estimated the balance at \$5,000. (Tr. 52.)

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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 the possible risk that the 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**

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.

Applicant and his spouse incurred about \$40,000 in consumer credit debt for household expenses, home improvement, and car repairs. They charged about \$30,000 in college expenses for their two younger daughters’ educations. Applicant is also legally liable for an \$18,206 student loan that he cosigned for his youngest daughter. Available credit information shows that Applicant stopped paying on one of his credit card accounts after April 2010. It became increasingly more difficult to cover the monthly payments on their credit cards. In August 2010, Applicant and his spouse chose to consolidate

approximately \$54,000 of consumer credit card debt in his name. On the advice of a legal debt resolution service, Applicant and his spouse stopped paying on four of his credit card accounts after September 2010, and the accounts were charged off or placed for collection. Applicant owed around \$17,196 (SOR 1.a), \$17,157 (SOR 1.b), \$7,354 (not in SOR), and about \$15,002 (not in SOR) on the four accounts. They kept two other accounts out of the debt consolidation plan, including her credit card that had a balance around \$14,000. Applicant did not intend to disregard his legitimate financial obligations, but he and his spouse had become so financially overextended to seek assistance in settling four of his accounts, hopefully for less than their full balances. Three disqualifying conditions under AG ¶ 19 are implicated, in whole or in part:

- (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.

Concerning AG ¶ 19(e), Applicant testified that \$30,000 of the debt was for his daughters' college educations, and that he bought siding and windows for his home on credit. It is unclear when those expenses were incurred. His and his spouse's overreliance on consumer credit is well established by the sizeable amount of credit card debt incurred over the years.

Applicant has the burden of mitigating the financial concerns. 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," cannot reasonably apply. Applicant incurred a \$7,354 debt over a few months in early 2010. He opened the credit card account identified in SOR 1.a in September 2008 and owed \$17,196 on that account by October 2010. The debt was not settled until September 2013. Between October 2007 and October 2010, he accumulated \$15,002 in consumer credit card debt on an account that was not settled until May 2011. As of December 2013, the \$17,157 debt in SOR 1.b was not resolved.

Applicant's use of consumer credit was within his control. Even so, car repairs are not a discretionary expense. In addition, given the age of his home, new windows and siding may have been necessary to maintain his home, on which he has two mortgages. A college education is a reasonable expense. 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," is partially applicable, but Applicant did not present enough information about his expenditures to full mitigate the financial judgment concerns raised by some \$70,000 in consumer credit debt.

The evidence supports partial application of 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,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has shown some good faith toward his creditors by arranging for debt consolidation and paying about \$28,685 to a legal debt service between September 2010 and November 2013.<sup>7</sup> As of December 2013, the debt service had settled about \$39,556 of his delinquent consumer credit debt for \$16,546. Settlement for significantly less than the full balance, such as the \$15,002.89 credit card debt for \$3,300, has income tax implications for Applicant, but it also carries less weight in mitigation than full satisfaction. It remains to be seen whether the creditor in SOR 1.b will be made whole. Moreover, Applicant has not had the financial counseling contemplated in AG ¶ 20(c).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>8</sup>

Applicant is a longtime defense contractor employee, who relied heavily on consumer credit in the past for unexpected car repairs, college costs for two of his daughters, and improvements for his older home. With limited exception, he made timely payments on his financial accounts before September 2010, when he arranged for debt consolidation. On the advice of a legal debt service, he stopped making direct payments to the four creditors covered by his debt consolidation. Three of the four debts in the plan have been settled. Applicant still owes a charged-off balance around \$17,157 on the account identified in SOR 1.b.

In making the whole-person assessment required under the Directive, the DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant intends to continue to make

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<sup>7</sup> Applicant testified that he has not missed a payment since September 2010. (Tr. 34.) Although only a few payments are documented in the record, in all likelihood, the debt service would not have settled the three debts that it has without the payments from Applicant. At \$735 per month from September 2010 through September 2013 and \$745 per month starting October 2013, Applicant made payments totaling \$28,685 through November 2013.

<sup>8</sup> The factors under AG ¶ 2(a) are as follows:

- (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.



his monthly payments to the debt service, which is legally obligated to negotiate on Applicant's behalf with the creditor in SOR 1.b. It is likely that the debt will be settled in the near future, before the debt consolidation agreement is scheduled to expire in September 2014. Should the creditor demand the full balance, Applicant is prepared to borrow from his 401(k), if necessary to resolve the debt.

Applicant's overall debt burden must be considered in determining whether his finances present an unacceptable security risk. He and his spouse owe a total of approximately \$15,465 on three credit card accounts that are rated as current. Applicant also cosigned on student loan debt for his youngest daughter. The account was \$447 past due on a \$19,000 balance as of December 2013, but his daughter has taken on repayment of that debt from her part-time earnings. Based on their joint take-home income, Applicant and his spouse can afford the recent increase in their monthly debt consolidation payment, now at \$745 per month, without falling behind on their other expenses. For the most part, Applicant has demonstrated that he can handle his financial affairs responsibly. He has held a DOD security clearance, at the minimum of the Secret level, for many years without incident, when he was under a heavier debt burden than presently. Based on the facts and circumstances in evidence, I conclude it is clearly consistent with the national interest to continue a security clearance for him.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge