



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



In the matter of: )  
)  
) ISCR Case No. 12-12160  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

10/05/2016  
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**Decision**  
\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 30, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered (Answer) the SOR on July 10, 2015, and requested a hearing. The case was assigned to me on February 18, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2016, setting the hearing for March 31, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. I

marked Department Counsel's exhibit list as hearing exhibit (HE) I. Applicant testified, but did not offer exhibits at the hearing. The record was held open to allow Applicant to submit additional evidence. He submitted Applicant exhibits AE A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 12, 2016.

### **Findings of Fact**

Applicant denied all the SOR allegations, except for ¶ 1.c, which he admitted. The admission is incorporated as a finding of fact. After a review of the pleadings, transcript, and evidence, I make the following additional findings of fact.

Applicant is 58 years old and has worked for his current government contractor-employer since 2008. He has a high school diploma and has taken some college courses. He is married and has two children and a step-child. He retired from the Army in 2002 as a staff sergeant (pay grade E-6) after 21 years of honorable service. He also deployed at various times since 2002 to both Iraq and Afghanistan as a contractor. He held a security clearance while in the Army and as a contractor beginning in 2002.<sup>1</sup>

The SOR alleges Applicant incurred 10 delinquent debts totaling over \$55,000. His debts were listed on credit reports from March 2012, August 2012, and December 2014, and referenced during his personal subject interview (PSI) from August 2012.<sup>2</sup>

Applicant experienced financial difficulties starting in about 2007. From August to September 2007 he was unemployed. His step-daughter required extensive medical care during this same time. When he gained employment, it was for a position where he was separated from his family thereby incurring the additional expenses of paying for two households. Applicant's wife handled the family's finances when Applicant began to deploy overseas. She tried to work with the creditors to set up payment plans, but they refused. She did not present documentation to show such contacts. She hired a debt relief service (DRS) to assist in disputing debts and in general to clean up their credit. She paid a monthly fee to this service and it successfully had some of the debt entries removed from the credit reports. She was advised by the DRS to stop paying on the debts because they were quite old and would soon be removed from their credit reports. She followed that advice. Some debts were removed from their credit reports, and they have not been contacted by those creditors in the past eight years. None of the SOR debts have been paid. In 2015, Applicant purchased a home and is current on the payments. Applicant's most recent credit report shows that all debts are current and no past-due or collection accounts appear on the report. His yearly income is about \$145,000, including his military retirement pay. The status of the debts is as follows:<sup>3</sup>

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<sup>1</sup> Tr. at 5, 20-21; GE 1.

<sup>2</sup> GE 2-5.

<sup>3</sup> Tr. at 41-43, 46-47, 51, 58, 59; Answer; AE B, E-F.

**SOR ¶ 1.a (credit card--\$7,011):**

This charged-off account no longer appears on Applicant's most recent credit report. The debt has not been paid.<sup>4</sup>

**SOR ¶¶ 1.b, 1.c, 1.f (medical debts--\$1,126; \$113; \$965):**

These charged-off accounts no longer appear on Applicant's most recent credit report. These debts have not been paid.<sup>5</sup>

**SOR ¶¶ 1.d – 1.e, 1.g – 1.j (consumer accounts--\$7,698; \$16,988; 1,118; \$1,439; \$1,752; \$16,868):**

These charged-off accounts no longer appear on Applicant's most recent credit report. These debts have not been paid.<sup>6</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 that 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." 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

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<sup>4</sup> Tr. at 29; AE A.

<sup>5</sup> Tr. at 30; AE A.

<sup>6</sup> Tr. at 32; AE A.

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 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. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant had 10 debts that he failed to pay over an extended period of time. The evidence is sufficient to raise the above disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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's debts remain unpaid even though they do not appear on his recent credit report. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. Applicant presented some evidence that the debts were due to circumstances beyond his control (unemployment for a few months in 2007, medical expenses for his daughter, supporting two households), but he failed to provide documentation showing that he acted responsibly under the circumstances. Taking the advice of the DRS, to let the debts fall off the credit report due to the passage of time, is not responsible action in the security context. I find AG ¶ 20(b) partially applies. He did not provide documentation showing that the debts had been paid or that he established payment plans, on the contrary, he admitted that none of the debts were paid. There is no evidence of financial counseling, other than the hiring of the DRS. Allowing aged delinquent debts to fall off credit reports because of the passage of time, does not equate to a good-faith effort to pay. AG ¶¶ 20(c) and 20(d) do not apply. He did not produce documentary evidence to support a dispute of any debts. AG ¶ 20(e) does not 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, civilian contractor deployments, and the personal circumstances that contributed to his financial problems. However, I also considered that Applicant failed to pay these debts, rather he chose to let them be removed from his credit report through the passage of time. While that approach may make financial sense, from a security perspective it does not, because his actions are not reliable or trustworthy.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the financial considerations security concerns 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
Subparagraphs 1.a – 1.j:	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