



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03301

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*

09/13/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 27, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 responded to the SOR on April 14, 2015, and elected to have the case decided on the written record in lieu of a hearing. He submitted another response on May 8, 2015, in which he requested a hearing before an administrative judge. The case was assigned to me on May 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 20, 2016, scheduling the hearing for June

21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 15 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE E through I and admitted without objection. DOHA received the hearing transcript (Tr.) on July 5, 2016.

### **Findings of Fact**

Applicant is a 52-year-old engineer employed by a defense contractor. He served on active duty in the U.S. military from 1981 until he retired with an honorable discharge in 2003. He has worked for his current employer since he was on terminal leave from the military in 2002. He seeks to retain a security clearance, which he has held since his time in the military. He has a bachelor's degree. He is divorced with a minor child.<sup>1</sup>

Applicant's and his ex-wife separated in 2008, which was the start of an extremely contentious and costly divorce and custody case. Their divorce decree was entered in March 2016 and their final property division order was entered in July 2016. Applicant was awarded custody of their minor child. He did not pay his bills and his taxes during the separation and divorce.<sup>2</sup>

Applicant filed a Chapter 13 bankruptcy case in September 2010. The case was dismissed in December 2010.<sup>3</sup>

Applicant filed another Chapter 13 bankruptcy case in July 2012. Under Schedule D, Creditors Holding Secured Claims, the petition listed mortgage loans of \$918,222 and \$145,000, and auto loans of \$11,484 and \$4,526. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed \$2,556 owed to Applicant's bankruptcy attorney and \$57,065 owed to the IRS for tax years 2008 through 2010. The petition listed debts totaling \$65,509 under Schedule F, Creditors Holding Unsecured Nonpriority Claims.<sup>4</sup>

Applicant's bankruptcy plan was approved in November 2012. The court approved \$74,429 in claims from the IRS. Applicant paid a total of \$46,578 into the plan over 21 months until the case was dismissed in April 2014. Applicant stated that he had to dismiss the bankruptcy in order to move forward with his divorce and custody battle. During the plan, \$5,903 was disbursed to the trustee and Applicant's attorney, and \$40,674 was disbursed to the IRS. None of the other creditors received anything.<sup>5</sup>

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<sup>1</sup> Tr. at 38-40, 67; GE 1, 2, 14, 15; AE C.

<sup>2</sup> Tr. at 18-25, 35, 41-42, 54; Applicant's response to SOR; GE 1, 2, 14, 15; AE C, G.

<sup>3</sup> Applicant's response to SOR; GE 9, 14; AE C, G.

<sup>4</sup> Tr. at 21; Applicant's response to SOR; GE 3-8, 14; AE H.

<sup>5</sup> Tr. at 21-22; GE 3-8; AE H.

While the bankruptcy court was addressing Applicant's taxes for tax years 2008 through 2010, Applicant did not pay his taxes for tax years 2011 through 2012, a pattern he has continued through the present. In July 2014, he signed an installment payment agreement with the IRS in which he agreed to pay \$584 per month on a total owed of \$44,362 for tax years 2010 to 2012. He indicated in his April 2015 response to the SOR: "My tax situation has been resolved with the IRS and I am currently on a payment plan and will no longer have tax issues."<sup>6</sup>

The evidence shows otherwise. Applicant failed to provide proof of how much he paid through the installment agreement before it was terminated. He stated that he is now in an installment agreement for tax years 2010 through 2014. His weekly pay statement for August 12, 2016, shows a court-ordered payment of \$338, with \$2,369 paid year-to-date via the court order. The final property settlement order from July 2016 reported that Applicant was ordered to pay his "federal income tax debts for the tax years 2009, 2010, 2011, 2012, 2013, and 2014" in the amount of \$85,730. He testified that he owed about \$84,000, which includes about \$4,400 owed for tax year 2015. In his post-hearing e-mail, he wrote that his tax debt is down to \$45,000. He did not provide anything from the IRS to corroborate that figure.<sup>7</sup>

The final property settlement order from July 2016 reported that in addition to his delinquent taxes, Applicant was ordered to pay 32 unsecured debts totaling \$112,569. He received a 2012 car, and he is responsible to pay the loan on the car. His ex-wife received the real estate and three vehicles, and she is responsible to pay the mortgage and car loans on the properties and vehicles. She was also ordered to pay 50 unsecured debts totaling \$543,585.<sup>8</sup>

The SOR alleges the two Chapter 13 bankruptcy cases (SOR ¶¶ 1.a and 1.b), two past-due mortgage accounts (SOR ¶¶ 1.c and 1.d, which are duplicate accounts), \$59,000 owed to the IRS (SOR ¶ 1.gg), and 28 miscellaneous delinquent debts totaling about \$108,000. Applicant denied owing the duplicate mortgage accounts because his ex-wife lived in the property after their separation and she is responsible for the mortgage payments. He admitted owing the remaining debts with the exception of the debts alleged in SOR ¶¶ 1.i (\$1,934), 1.j (\$1,220), 1.m (\$213), 1.n (\$211), 1.o (\$11,561), 1.w (\$702), 1.bb (\$5,589), 1.cc (\$65), 1.dd (\$11,886), 1.ee (\$15,716), and 1.ff (\$664), which he denied owing.<sup>9</sup>

Credit reports list that Applicant is only an authorized user of the account alleged in SOR ¶ 1.o (\$11,561). The reports further list the high credit on the charged-off account as \$11,561, but the balance is reported as \$0. I have doubts about the veracity or security significance of the debts alleged in SOR ¶¶ 1.j (\$1,220), 1.n (\$211), and 1.w

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<sup>6</sup> Tr. at 27-28; Applicant's response to SOR; GE 14; AE A.

<sup>7</sup> Tr. at 27-35; AE E-G.

<sup>8</sup> Tr. at 19; AE G.

<sup>9</sup> Tr. at 19, 43-52; Applicant's response to SOR; AE B, E.

(\$702). However, the remaining debts are established through a combination of credit reports, Applicant's admissions, the Chapter 13 bankruptcy petition, and the final property settlement order.<sup>10</sup>

Applicant received financial counseling as a requirement of his bankruptcy. His annual salary is about \$102,000, plus he receives a military retirement. He contributes 10% of his income to his 401(k) retirement account, which has a balance of about \$79,000. Except for his payments to the IRS, he has not paid any of the debts alleged in the SOR, including \$65 owed to a pizza restaurant for a returned check (SOR ¶ 1.cc) and \$664 owed to a government entity for what Applicant described as a ticket for fishing without a license (SOR ¶ 1.ff).<sup>11</sup>

Applicant stated that now that the divorce is final, he plans on paying his debts. He bought a used 2012 model car in April 2014, financed through a \$37,403 loan with payments of \$667 for 73 months. He stated that the price of the car was about \$30,000, which was about \$4,000 less than a new model, and the remainder of the loan was used to pay off the loan on the vehicle he traded. He stated that his old car was starting to cost more than it was worth and that the 2012 car was the only car on which he was able to obtain financing.<sup>12</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."

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<sup>10</sup> Tr. at 64; Applicant's response to SOR; GE 3-15; AE I.

<sup>11</sup> Tr. at 53-57, 64-67; GE 10-13; AE I.

<sup>12</sup> Tr. at 57-60, 71; GE 10, 11.

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 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; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

SOR ¶¶ 1.c and 1.d are duplicate mortgage loans. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicate allegations

should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). SOR ¶ 1.d is concluded for Applicant.

Applicant filed Chapter 13 bankruptcy cases in 2010 and 2012. That does not generate security concerns independent of the delinquent debts that are already alleged in the SOR. SOR ¶¶ 1.a and 1.b are concluded for Applicant.

Applicant is only an authorized user of the account alleged in SOR ¶ 1.o. I have doubts about the veracity or security significance of the debts alleged in SOR ¶¶ 1.j, 1.n, and 1.w. Those allegations are concluded for Applicant.

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;
- (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 contentious divorce and custody case were beyond his control. He denied owing the duplicate mortgage accounts because his ex-wife lived in the property after their separation and she is responsible for the mortgage payments. SOR ¶ 1.c is mitigated.

Applicant paid \$40,674 to the IRS through the Chapter 13 bankruptcy plan and an unknown amount through installment agreements and court-ordered payments. However, he continued his pattern of not paying his current taxes when due. His total debt to the IRS is not going down because of his payments, it is increasing because he does not pay the taxes due for the current year. I believe that his testimony and the final property settlement order showing that he owes the IRS about \$84,000 are more

accurate than his uncorroborated post-hearing statement that his tax debt is down to \$45,000. The Appeal Board has stated that “[f]ailure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information.” See e.g. ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

Except for his payments to the IRS, Applicant has not paid any of the debts alleged in the SOR, including \$65 owed to a pizza restaurant for a returned check and \$664 owed for fishing without a license. He stated that now that the divorce is final, he plans on paying his debts. The Appeal Board has further held that “intentions to pay off debts in the future are not a substitute for a track record of debt repayment or other responsible approaches.” See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d), and 20(e) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) (financial counseling) is applicable; the second section (clear indications that the problem is being resolved or is under control) is not applicable. I find that financial considerations concerns remain despite the presence of some mitigation.

### **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 Guideline F in my whole-person analysis.

I considered Applicant's honorable military service and his steady employment with a defense contractor. I also considered the contentious and costly nature of his divorce and custody case. However, he is in worse financial shape than when he filed a Chapter 13 bankruptcy case in 2012 and when he entered into an installment agreement with the IRS in 2014. His tax issues will never be resolved unless he changes his pattern of not paying his taxes when due.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the 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.d:	For Applicant
Subparagraphs 1.e-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k-1.m:	Against Applicant
Subparagraphs 1.n-1.o:	For Applicant
Subparagraphs 1.p-1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraphs 1.x-1.gg:	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 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