



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



In the matter of: )  
)  
) ISCR Case No. 15-00972  
)  
Applicant for Security Clearance )

**Appearances**

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

10/12/2016

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 27, 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 November 22, 2015, and requested a hearing. The case was assigned to me on March 2, 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 6, which were admitted into evidence without objection. I

marked Department Counsel's exhibit list as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through D, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE E through J, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 13, 2016.

### **Findings of Fact**

Applicant denied all SOR allegations and offered detailed explanations concerning the status of each account. After a review of the pleadings, transcript, and evidence, I make the following findings of fact.

Applicant is 44 years old and has worked for government contractors since 2001. He has a Ph.D. He is married, but has no children. He served in the Navy for three years before he was discharged. He has held a security clearance since 2003.<sup>1</sup>

The SOR alleges Applicant incurred a judgment against him in the amount of \$1,648; incurred two federal tax liens, one in 2010 for \$29,031, and a second in 2011 for \$75,590; incurred 19 delinquent medical debts in the amount of \$7,296; and filed for Chapter 7 bankruptcy protection in 1995 and 2005. Debts were discharged as a result of both bankruptcies. His judgment, tax liens, debts, and bankruptcies were listed on credit reports from May 2014, January 2015, and August 2015, bankruptcy court records, and his personal subject interview (PSI) from July 2014.<sup>2</sup>

Applicant explained that the 1995 bankruptcy was due to making bad decisions when he was young and incurring significant credit card debt. He estimated the total amount of debt discharged was approximately \$20,000. The primary cause of his second bankruptcy in 2005 was debt incurred by his former significant other. That relationship broke-up, but Applicant was saddled with approximately \$155,000 worth of debt and thus sought bankruptcy protection.<sup>3</sup>

In 2012, Applicant experienced significant medical issues, some requiring multiple surgeries. His insurance paid the majority of the expenses, but approximately \$10,000 worth of medical expenses remained his responsibility. The status of the judgment, liens, and debts is as follows:<sup>4</sup>

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<sup>1</sup> Tr. at 5, 25-26, 48; GE 1.

<sup>2</sup> GE 2-6.

<sup>3</sup> Tr. at 53-56; Answer; GE 5.

<sup>4</sup> Tr. at 29-31; Answer; GE 1; AE A, E.

**SOR ¶ 1.a (judgment \$1,648):**

Applicant documented an established payment plan for this judgment. He has paid \$20 monthly since September 2014. This judgment includes the debts that are listed in SOR ¶¶ 1.g, 1.h, 1.s, and 1.t. This debt is being resolved.<sup>5</sup>

**SOR ¶¶ 1.b-1.c (federal tax liens for 2011 and 2010 \$75,590; \$29,031):**

Applicant explained that he incorrectly filed his tax returns from about 2002 to 2010 when some of his income was from self-employment. This resulted in the filing of the two tax liens. He entered a payment agreement with the IRS in 2009 and was making monthly payments of \$2,100, but had to stop when he became ill in about 2012. He presented documented proof that from 2014 through 2015 he made monthly payments of \$1,500 to the IRS. From August 2015 through the present his payments are \$1,150 and he provided documentation that he has made those payments up through March 2016 and will continue to make them. The tax lien reflected in SOR ¶ 1.c was released in April 2015. He has reduced his total tax debt down to approximately \$45,000. This tax issue is being resolved.<sup>6</sup>

**SOR ¶¶ 1.d-1.v (medical debts \$7,296):**

Applicant incurred a number of debts resulting from his medical issues. When he could not pay the original medical providers in a timely manner many of the debts were passed on to collection agencies, sometimes more than once. Applicant attempted to negotiate settlements or payment plans with the original providers only to find out that he needed to contact some collection agency. Applicant documented proof of several payment plans he established to pay these debts. He also documented payments of medical debts that may not be listed on the SOR. Although each specific SOR medical debt may not be addressed by his payments, it is clear that he is making a good-faith effort to pay his medical debts and supported that effort with documentation. These debts are being resolved.<sup>7</sup>

**Current Finances:**

Applicant's most recent credit report shows he is in good standing. His monthly income after taxes is approximately \$6,716. He has \$3,000 in his checking account and \$13,000 in a 401K retirement account. He provides about \$300 monthly to his parents to supplement their Social Security. He did not seek any financial counseling.<sup>8</sup>

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<sup>5</sup> Tr. at 58; AE A-B, E-F.

<sup>6</sup> Tr. at 31, 49-52; Answer; AE A, G.

<sup>7</sup> Tr. at 58, 63-65, 71, 74; Answer; AE A-F, H-I.

<sup>8</sup> Tr. at 88-89, 93, 101; AE D.

## 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 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 two bankruptcies, a judgment, federal tax liens, and medical 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had debts discharged from two earlier bankruptcies. Applicant is paying his SOR debts and is reducing his tax liability. Since he has made efforts to repair his

financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

The circumstances that led to Applicant's financial problems, his medical condition, was a condition beyond his control. He acted responsibly by setting up payment plans to resolve his judgment, medical debts, and tax liability. He has reduced his tax liability by approximately \$60,000. AG ¶ 20(b) applies.

Applicant did not receive financial counselling. He made good-faith efforts to pay his debts with the resources he had at the time. He continues to resolve his medical and tax debts. AG ¶ 20(c) partially applies and ¶ 20(d) fully applies.

### **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 and the personal circumstances that contributed to his financial problems. I found Applicant to be honest and candid about the circumstances that led to his debts. He took reasonable actions to resolve them. I find it unlikely that Applicant will be in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

Subparagraphs 1.a – 1.x: 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