



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02078

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

08/03/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On November 19, 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 December 23, 2015, and 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 22, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 9 were admitted in evidence without

objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 5, 2016.

### **Findings of Fact**

Applicant is a 54-year-old employee of a defense contractor. He has worked for his current employer since 1986. He seeks to retain a security clearance, which he has held since about 1987. He has a bachelor's degree that was awarded in 1985 and a master's degree that was awarded in 1993. He is married with four children between the ages of 16 and 21.<sup>1</sup>

Applicant and his wife struggled financially when she was a stay-at-home mother to their four young children, and they had unexpected medical expenses. They filed a Chapter 13 bankruptcy case in 2001. They completed their plan and any remaining dischargeable debts were discharged in 2006.<sup>2</sup>

Applicant's finances stabilized after the bankruptcy. His wife was self-employed for a period in an industry in which her annual income was about \$82,000. With a bad economy and much of the industry moving overseas, Applicant's wife was unable to remain profitable and she left the industry in about 2008. She was unemployed and underemployed for an extended period. Applicant had major surgery in 2013, which caused him to be out of work for several months and resulted in about \$4,000 in unreimbursed medical expenses. His wife went back to school in 2013 to become a licensed realtor. She recently started having some success, but they were already behind on their mortgage loan and other debts became delinquent.<sup>3</sup>

The SOR alleges the mortgage loan that was \$85,100 past due and in foreclosure and 15 delinquent debts totaling about \$39,200. Applicant admitted owing all the debts except for the \$28 debt to a satellite television provider alleged in SOR ¶ 1.p. That debt is listed by Equifax and Experian on the March 2014 combined credit report, with an activity date of February 2012. It is not listed on the February 2015 Equifax credit report.<sup>4</sup>

Applicant and his wife filed a Chapter 13 bankruptcy case in November 2015. Under Schedule D, Creditors Holding Secured Claims, the petition listed a \$338,669 mortgage loan with a \$90,000 arrearage and \$14,195 owed on an auto loan. The petition listed \$3,500 owed to Applicant's bankruptcy attorney under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding

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<sup>1</sup> Tr. at 16, 31, 35; GE 1.

<sup>2</sup> Tr. at 21-22, 37-38; GE 2; AE C, D.

<sup>3</sup> Tr. at 17-20, 23-25; Applicant's response to SOR; GE 1, 9; AE C.

<sup>4</sup> Tr. at 33; Applicant's response to SOR; GE 7, 8.

Unsecured Nonpriority Claims, the petition listed debts totaling \$29,402, which included \$2,406 owed to the IRS for tax year 2011.<sup>5</sup>

Applicant's bankruptcy plan was approved in February 2016. The plan calls for 60 monthly payments, with payments of \$2,030 for 12 months, followed by \$2,092 payments for 48 months. The total to be paid through the plan is \$124,776. The bankruptcy payments are being garnished from Applicant's paycheck. He submitted documentation that he has made all required payments since the plan went into effect in March 2016. As of June 24, 2016, he had paid a total of \$7,026 into the plan.<sup>6</sup>

Applicant received financial counseling as a requirement of his bankruptcy. He also completed additional courses. His finances are in better shape. His annual salary is about \$142,000. His wife sold two houses that were due to close shortly after the hearing. He and his wife have cut down on the non-essentials. Applicant and his wife both credibly testified that they will make all the required payments under the plan until the bankruptcy is discharged.<sup>7</sup>

Applicant submitted numerous documents and letters attesting to his excellent job performance. He is praised for his moral character, honesty, work ethic, professionalism, trustworthiness, loyalty, and integrity.<sup>8</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.

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<sup>5</sup> Tr. at 18; Applicant's response to SOR; GE 3-5; AE D.

<sup>6</sup> Tr. at 32; GE 1, 6; AE A, D.

<sup>7</sup> Tr. at 18-20, 25-26, 29, 32-35, 39, 47-48; AE C.

<sup>8</sup> AE B, C, E.

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.”

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.

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 recent financial problems were primarily the result of his wife's unemployment and underemployment. He also had major surgery in 2013, which resulted in him being out of work for several months and about \$4,000 in unreimbursed medical expenses.

Applicant successfully completed a Chapter 13 bankruptcy plan in 2006. He is once again resolving his debts through a Chapter 13 bankruptcy case. He has consistently paid \$2,030 per month into the plan since the plan went into effect in March 2016. As of June 24, 2016, he had paid a total of \$7,026 into the plan. His current finances are stable. He and his wife both credibly testified that they will continue with the bankruptcy plan until completion.

AG ¶¶ 20(a) and 20(d) are not completely applicable because the bankruptcy has only been in effect since March 2016. AG ¶¶ 20(b) and 20(c) are applicable. AG ¶ 20(e) is applicable to the successfully disputed debt alleged in SOR ¶ 1.p.

## **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 favorable character evidence, the nature of his financial problems, and the steps he has taken to resolve them. He has a plan to resolve his financial problems, and he has taken significant action to implement that plan.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. 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.p:	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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Edward W. Loughran  
Administrative Judge