



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02551

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

10/14/2016

**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 November 2, 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 19, 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 June 13, 2016, scheduling the hearing for July 21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. Department Counsel's motion to amend the SOR by withdrawing SOR ¶ 1.d was granted. DOHA received the hearing transcript (Tr.) on July 28, 2016.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since 2003. He served on active duty in the U.S. military from 1986 until he was honorably discharged in 1991. He seeks to retain a security clearance, which he has held since at least 2004. He has two associate's degree that were awarded in 2006 and 2010 and a bachelor's degree that was awarded in 2010. He is married for the second time. He has three children, ages 24, 11, and 9.<sup>1</sup>

Applicant's wife left her job in about 2009 and became a stay-at-home mother until she reentered the workforce in 2011. Applicant was out of work for about 10 weeks in 2012 when his company's employees went on strike. He was unable to pay all his bills, a number of debts became delinquent, and his car was repossessed.<sup>2</sup>

The amended SOR alleges 14 delinquent debts. Applicant admitted owing all the debts with the exception of two unidentified medical debts totaling about \$228 (SOR ¶¶ 1.f and 1.h) and \$9,987 owed on the balance due on an auto loan after the car was repossessed in about 2010 (SOR ¶ 1.m). Applicant admitted that he fell behind on his car loan, but he stated that he caught up on his payments and the creditor cashed his check right before the car was repossessed. He is bitter about the experience and refuses to pay anything to the creditor. The debt is listed on multiple credit reports.<sup>3</sup>

The SOR alleges three student loans (SOR ¶¶ 1.a, 1.i, and 1.l). However, it appears the loans have been transferred and consolidated. The most recent credit report lists one defaulted student loan owed to the creditor alleged in SOR ¶ 1.a with a balance of \$32,021. Applicant admitted that he had not paid his student loans since about 2010, and he estimated the balance due as about \$30,000.<sup>4</sup>

Applicant is only an authorized user of the debt alleged in SOR ¶ 1.j and not personally responsible for the debt. The debts alleged in SOR ¶¶ 1.b (\$2,782) and 1.k (\$2,781) are duplicate accounts. The credit reports list two accounts to the creditor identified in SOR ¶ 1.k. Applicant is only an authorized user of one of the accounts. The SOR does not allege the authorized-user account. The remaining five miscellaneous debts (SOR ¶¶ 1.c, 1.e, 1.g, 1.n, and 1.o) total \$2,128.<sup>5</sup>

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<sup>1</sup> Tr. at 17-18, 43; GE 1, 5.

<sup>2</sup> Tr. at 14, 18-23; GE 1, 5.

<sup>3</sup> Tr. at 37-40; GE 1-5; Applicant's response to SOR; AE C, D.

<sup>4</sup> Tr. at 30-35; GE 2-4; Applicant's response to SOR; AE C, D.

<sup>5</sup> Tr. at 29-31; GE 2-4; Applicant's response to SOR; AE C, D.

Applicant and his wife were able to bring their mortgage loan current before they sold the house for a profit. He and his wife settled a judgment that was solely in her name for about \$4,500. He may have paid other debts that were not alleged in the SOR, but he has not paid any of the debts alleged in the SOR. He still has about \$55,000 that he received from the sale of their house. He retained a company in November 2015 to assist him in repairing and restoring his credit. The company advised him not to pay his debts until his finances are sorted out. He plans to buy another house and intends to use at least some of the \$55,000 as a down payment. He and his wife went on a cruise in 2015. Applicant testified that he thought he was doing the right thing by working to have his debts removed from his credit report, but he realized he needs to do more and he plans to pay his debts.<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, 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."

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

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<sup>6</sup> Tr. at 14-16, 20-21, 24-27, 35-37, 40-44; GE 2-4; AE A-D.

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 has 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.a, 1.i, and 1.l are duplicates. SOR ¶¶ 1.b and 1.k are also duplicates. When the same conduct is alleged more than once in the SOR under the same guideline, 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.i, 1.l, and 1.k are concluded for Applicant.

Applicant is only an authorized user of the debt alleged in SOR ¶ 1.j and not personally responsible for the debt. SOR ¶ 1.j is concluded for Applicant. The unidentified medical debts do not raise a security concern. SOR ¶¶ 1.f and 1.h are concluded for Applicant.

Conditions that could mitigate the 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 wife left her job in about 2009 and became a stay-at-home mother until she reentered the workforce in 2011. Applicant was out of work for about 10 weeks in 2012 when his company's employees went on strike. Since that time, he brought his mortgage loan current and he settled a judgment in his wife's name for \$4,500. He may have paid other debts that were not alleged in the SOR. He retained a company in November 2015 to assist him in repairing and restoring his credit. He still has about \$55,000 that he received from the sale of their house, but he has not paid any of the debts alleged in the SOR. He has not paid his student loans since 2010, and he owes more than \$30,000. He stated that he plans to pay his debts. The Appeal Board has 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)).

Applicant's financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his judgment, reliability, and trustworthiness. AG ¶¶ 20(a), 20(d), and 20(e) are not applicable. AG ¶ 20(b) has minimal applicability. The first part of AG ¶ 20(c) (financial counseling) is applicable; the second part (clear indications that the problem is being resolved or is under control) is not applicable. I find that financial 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 stable work history. However, he has unresolved financial problems.

Overall, the record evidence leaves me with questions and doubts about 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.c:	Against Applicant
Subparagraph 1.d:	Withdrawn
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.l:	For Applicant
Subparagraphs 1.m-1.o:	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