



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-03855  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

06/02/2017

---

**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 January 8, 2016, 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 February 8, 2016, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 31, 2016, scheduling the hearing for December 7, 2016. The case was continued at Applicant's request and reassigned to me on January 18,

2017. DOHA issued another notice of hearing on February 27, 2017, scheduling the hearing for April 4, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on April 13, 2017.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since August 2013. He is applying for a security clearance for the first time. He attended college for about two years without earning a degree. He married in 1991, separated in 2012, and divorced in 2015. He has two minor children.<sup>1</sup>

In early 2012, Applicant's ex-wife emptied their bank accounts, took their income tax refund check of about \$5,000, and moved with their two children to another state. Applicant decided that he could not let the children suffer, so he sent her money each month while he lived frugally. A number of debts became delinquent.<sup>2</sup>

The SOR alleges an unpaid \$1,592 judgment, three medical debts totaling \$271, and four miscellaneous delinquent debts totaling about \$11,000. Applicant admitted all of the allegations. All of the debts are also listed on at least one credit report.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in August 2013. He reported the largest debt alleged in the SOR (SOR 1.c), a charged-off auto loan. He wrote that he was "[w]orking to make payment to pay the balance off."<sup>4</sup>

Applicant was interviewed for his background investigation in October 2013. He discussed his financial problems and most of the debts alleged the SOR. He stated that he intended to pay his past-due debts or bring them current.<sup>5</sup>

Applicant stated in his response to the SOR that he intended to file a Chapter 13 bankruptcy case to resolve his debts. He did not file bankruptcy, and he has not paid any of the debts alleged in the SOR. He continues to live frugally and gives more than what the court ordered for his children. He is concerned that his ex-wife and her husband cannot provide for the children.<sup>6</sup>

---

<sup>1</sup> Tr. at 17, 28, 44-45; GE 1, 2.

<sup>2</sup> Tr. at 17-18, 30; GE 2.

<sup>3</sup> Tr. at 22; Applicant's response to SOR; GE 2-6.

<sup>4</sup> GE 1.

<sup>5</sup> GE 2.

<sup>6</sup> Tr. at 17-26; Applicant's response to SOR; GE 1, 2; AE A.

In 2009, Applicant used a \$224,000 settlement from a vehicle accident to pay off a mortgage loan on his and his ex-wife's house. Applicant moved out of the house at some point, and his ex-wife moved back in with the children and the man who is now her husband. Applicant and his ex-wife sold that house after their divorce, and he used part of the proceeds to buy a house for his ex-wife, her husband, and Applicant's children to live in. He gave the remaining proceeds to his ex-wife to move her family to the new house, which is in the same area as Applicant. His ex-wife and her husband do not pay him rent, but they pay the property taxes. Applicant owes the IRS about \$2,000 for his 2015 taxes. He anticipated a refund of about \$200 for 2016, which would be withheld by the IRS for 2015. He hopes that he will be able to start paying his debts in about a year.<sup>7</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

---

<sup>7</sup> Tr. at 17-26, 31-40; Applicant's response to SOR; GE 1, 2; AE A. The SOR did not allege the unpaid taxes. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when looking at Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

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 has delinquent debts that he is 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.

Applicant's devotion to his children is commendable. I found him to be completely forthcoming. However, in addition to his children, he is supporting his ex-wife and her husband at the expense of his rightful creditors. He stated that he intends to start paying his debts in about a year. 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(c), and 20(d) are not applicable. AG ¶ 20(b) is partially 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.

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.h:	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.

---

Edward W. Loughran  
Administrative Judge