



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



In the matter of:

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-04833

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel

For Applicant: *Pro se*

11/29/2016

**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 March 19, 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 April 9, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 11, 2016, scheduling the hearing for September 23, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on October 3, 2016.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since September 2014. He attended college and trade schools, but he has not earned a degree. He is married for the second time after his first marriage ended in divorce. He has a 12-year-old child.<sup>1</sup>

Applicant had recurring periods of unemployment and underemployment before he obtained his current job. He supported his wife while she was in nursing school. He was unable to pay all his bills, and a number of debts became delinquent.<sup>2</sup>

The SOR originally alleged 13 delinquent debts, but Department Counsel withdrew SOR ¶ 1.f because it is a duplicate of SOR ¶ 1.e. I further find that the child support debts alleged in SOR ¶¶ 1.d (\$5,639) and 1.g (\$7,508) are duplicates. The 11 non-duplicate debts total about \$15,800, including \$1,904 owed to the IRS for tax years 2010 and 2011. Applicant admitted owing all the debts.

Applicant reported a number of delinquent debts on his Questionnaire for National Security Positions (SF 86), which he submitted in November 2014. He stated that he would start to repay his debts when his wife completed school in January 2015. He discussed his finances when he was interviewed for his background investigation in February 2015. He stated that he would pay his debts when his wife started working.<sup>3</sup>

Applicant's wife has been working as a nurse for more than 18 months. He is paying his child support, but it is unclear how much he is paying towards the arrearages. He paid other debts, but he has not paid any of the debts alleged in the SOR. He estimated his federal tax liability to be about \$15,000, which includes additional unpaid taxes from tax years 2012 through 2015. He also owes about \$3,000 in state taxes.<sup>4</sup> He retained a law firm for financial counseling and to assist him in repairing his credit. He went on short-term disability in about May 2016, and he did not anticipate returning to work until about November 2016. He has a round-trip commute to work of about three to four hours, which is expensive and places wear and tear on his vehicle. He stated that he intends to repay his debts after he returns to work.<sup>5</sup>

---

<sup>1</sup> Tr. at 26, 29; GE 1.

<sup>2</sup> Tr. at 18-19, 25; GE 1, 2.

<sup>3</sup> GE 1, 2.

<sup>4</sup> The SOR only alleged delinquent federal taxes from tax years 2010 and 2011. It did not allege state taxes. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

<sup>5</sup> Tr. at 17-24, 27-28, 30-33; GE 3, 4.

## 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 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 accumulated delinquent debts and was unable or unwilling to pay his financial obligations. The above disqualifying conditions are applicable.

SOR ¶¶ 1.d and 1.g are duplicates. 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.g is 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's unemployment and underemployment were beyond his control. He supported his wife through nursing school. He has been on short-term disability since about May 2016. However, he did little to address his debts during the period when both he and his wife were working. His finances are worse than when he applied for a security clearance in 2014 because he did not pay his 2014 and 2015 taxes. He stated that he intends to pay his debts when he returns to work. 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)).

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) and 20(d) are not applicable. 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. 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 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.e:	Against Applicant
Subparagraph 1.f:	Withdrawn
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.m:	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