



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



In the matter of: )  
 )  
 ) ISCR Case No. 18-00265  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

11/02/2018  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

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 February 2, 2018, 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) effective June 8, 2017.

Applicant answered the SOR on February 12, 2018, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 4, 2018, and the hearing was convened as scheduled on September 20, 2018. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence. The Government's discovery letter was identified as

hearing exhibit (HE) I. Applicant testified, called one witness, and offered exhibits (AE) A through G, which were admitted without objection. The record remained open after the hearing and Applicant timely submitted AE H, which was admitted without objection. DOHA received the hearing transcript (Tr.) on October 2, 2018.

### **Findings of Fact**

Applicant admitted the sole SOR allegation with explanations. His admission is incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 53-year-old employee of a defense contractor. He has worked for various defense contractors since 2006 as an information technology (IT) analyst. He has held a security clearance, without incident, for 35 years. He served over eight years in the Army and was honorably discharged in 1991 for medical reasons. He has a high school diploma and has taken some college courses. He was married in 1995 and has two children.<sup>1</sup>

The SOR alleged Applicant had a charged-off debt to a bank in the amount of approximately \$66,429. The debt was listed in credit reports from June 2016 and January 2018.<sup>2</sup>

In approximately October 2014, Applicant was approached by a friend (JB) wondering if Applicant would be interested in making some extra money acting as a purchasing agent for an automobile company. JB was acting in such a capacity when he contacted Applicant. While continuing his principle IT job, Applicant decided to take JB up on the offer because the extra income would help with paying for his children's college expenses. In October 2014, Applicant signed a "non-exclusive purchasing agency agreement" (PAA) with an automotive company (G-auto). According to both Applicant and JB, G-auto was affiliated with another automotive group, which was also involved with these auto purchases (KC-auto). The agent who signed the PAA on behalf of G-auto was MS. Under the terms of the PAA, Applicant was to purchase luxury autos on behalf of G-auto. G-auto would supply the necessary funds for Applicant to make a down payment and Applicant would then secure a loan to pay the remaining balance. G-auto or KC-auto would then provide funds to Applicant to pay the loan. Applicant would receive a "fixed fee" for each auto procured on behalf of G-auto.<sup>3</sup>

Between October and November 2014, Applicant purchased four autos under the terms of the PAA, three without incident. He ran into difficulties with the fourth transaction, which led to the delinquent SOR debt. On November 5, 2014, Applicant purchased a luxury auto (A1) from a local dealership for \$86,325. The purchase of A1

---

<sup>1</sup> Tr. at 5-6, 22, 44; GE 1.

<sup>2</sup> Tr. at 22, 25-28, 30-31, 34, 49, 56, 61; Answer; AE A.

<sup>3</sup> GE 3-4.

was financed as follows: Applicant was provided \$20,000 by either G-auto or KC-auto, which he deposited into his bank account. He used that \$20,000 to obtain a bank check, which was tendered to the dealership as a down payment. Applicant also secured a loan from the same bank in the amount of the remaining balance of the auto purchase (approximately \$66,300). The auto was delivered to G-auto. Applicant was given a check by KC-auto, payable to Applicant's bank, in the amount of \$67,800 dated December 10, 2014. It is unclear when Applicant received this check, but he was instructed not to present it to his bank for 30 days. When he presented the check for payment to his bank, it failed to clear because of insufficient funds. It was at this point Applicant realized he was involved in something that was not quite right because when he contacted G-auto to inquire about the check, it had closed down. He then contacted local law enforcement. He never has been paid back by G-auto or KC-auto. He accepts full responsibility for the debt that he incurred because of this transaction. His total involvement as a purchasing agent lasted from late October to early December 2014, less than two months.<sup>4</sup>

The owner of KC-auto and MS (G-auto's agent who contracted with Applicant) were indicted, convicted, and sentenced on federal bank fraud conspiracy charges in May 2018. Both were ordered to pay monetary penalties in excess of \$5 million. JB, who recruited Applicant for this enterprise, was apologetic for involving him and corroborated Applicant's claim that he was unaware of the criminal aspect of the enterprise. There is no evidence in the record that either Applicant or JB were suspected of criminal activity.<sup>5</sup>

In February 2018, when Applicant initially contacted his bank about repaying the loan, he was told by the bank that it was not coming after him for the money. There is no evidence in the record that his bank was pursuing the debt before Applicant contacted them. He insisted on entering a payment plan to pay back the charged-off loan balance. His bank confirmed the agreement in March 2018, which has him making monthly payments of \$250 per month. Applicant documented his payments from March through September 2018. He intends to continue with his payments until this debt is resolved. Applicant's credit reports show that he is current on all other obligations. He has a track record of paying under an installment agreement as shown by his payments and resolution of a tax debt from 2009 (not alleged in the SOR). Applicant disclosed his action as a purchasing agent in his security clearance application and during his background interview. This debt is being resolved.<sup>6</sup>

---

<sup>4</sup> Tr. at 34-37, 41-42; Answer (including attachments); AE A, C.

<sup>5</sup> Tr. at 23, 49, 56, 61-62, 65; Answer (including attachments: See, U.S. District Court docket documents); AE H.

<sup>6</sup> Tr. at 23-24, 45-48; Answer; GE 1-2; AE B-H.

## 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 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, these guidelines are applied 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(a), 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 national security eligibility will be resolved in favor of the 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an 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 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**

AG ¶ 18 expresses the security concern for financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The evidence showed Applicant incurred a large debt which he was unable to pay. I find both the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant incurred his sole delinquent debt in 2014 when he became involved in a car purchase arrangement over a 30 to 60 day period that ultimately was a sham financial transaction. Although he should have explored the nature of what he was involved with in more detail, he accepted responsibility and initiated a plan to repay the loan he received as part of his involvement in the car purchasing business. He has made consistent payments since entering into an agreement to pay back the debt. His credit report reflects that he is current on all his other obligations. He is committed to making all remaining payments until the loan is satisfied, similar to what he did when he paid his taxes pursuant to an agreement with the IRS. He incurred this debt in 2014 and has not incurred any additional delinquent debt. The circumstances under which he became indebted are unlikely to recur and he has established a good credit record since that time. His current judgment, trustworthiness, and reliability have been established. AG ¶ 20(a) applies. Although there is no evidence of financial counseling, there are clear indications that his financial issue is being resolved. AG ¶ 20(c) partially applies. His initiation of payments to the bank, even though delayed and the bank told him he would not be held responsible, is indicative of his good-faith effort to resolve his debt. AG ¶ 20(d) is applicable.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 guideline 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(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, his federal contractor service, the circumstances surrounding his indebtedness, his initiation of his repayment plan, and his strong financial record since 2014. I also considered that Applicant accepted

responsibility for his part in the sham financial transaction with which he became entangled.

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

Subparagraph: 1.a: 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.

---

Robert E. Coacher  
Administrative Judge