



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



In the matter of: )  
)  
) ISCR Case No. 14-03496  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2015

**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 December 24, 2014, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on January 30, 2015, and requested a hearing. The case was assigned to me on April 22, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 4, 2015, setting the hearing for May 19, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and

offered exhibits (AE) A and B (p. 1-20), which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE C through E in a timely manner. Those exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 27, 2015.

### **Findings of Fact**

Applicant is 50 years old and has worked for a government contractor for about 27 years. He has taken some college courses, but does not have a degree. He is married for a second time and has one adult son from his first marriage. He still provides about \$300 monthly to his son who lives in Germany. Appellant served in the Air Force for six years. He has held a security clearance since becoming a contractor employee.<sup>1</sup>

The SOR alleges Applicant was delinquent on multiple accounts. The debts were listed on credit reports from February 2013, March 2014, and December 2014. Applicant did not admit or deny any of the allegations, but rather stated the current status of each account. His responses will be treated as denials.<sup>2</sup>

Applicant's financial difficulties resulted from some student loan debt that he improperly managed and buying a home for \$170,000, right before the real estate market collapsed. The property decreased in value to about \$74,000. He sought a mortgage modification, but was not able to qualify. The property was ultimately foreclosed. He went through a divorce in 2007 that also impacted his finances. The status of the debts is as follows:<sup>3</sup>

#### **SOR ¶¶ 1.a and 1.b (\$137; \$348):**

These are medical debts that Applicant was unaware of until receiving the SOR. He provided documentation showing both debts were paid in April 2015. These debts are resolved.<sup>4</sup>

#### **SOR ¶¶ 1.c through 1.e (\$396; \$3,422; \$61):**

These are three student loan debts. Applicant provided documentation showing he set up a payment plan and has been making \$200 monthly payments since December 2014. These debts are being unresolved.<sup>5</sup>

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<sup>1</sup> Tr. at 6, 26-28; GE 1.

<sup>2</sup> Answer; GE 2-4.

<sup>3</sup> Tr. at 29, 33, 36-37; GE 5.

<sup>4</sup> Tr. at 52; AE A, B (p. 1), C.

<sup>5</sup> Tr. at 50-52; AE A, B (p. 2-4).

**SOR ¶ 1.f (\$295):**

This was an educational debt that Applicant was unaware of until receiving the SOR. He paid this debt in April 2015 and supplied supporting documentation. This debt is resolved.<sup>6</sup>

**SOR ¶¶ 1.g through 1.k (\$6,884; \$5,942; \$1,191; \$9,021; \$1,099):**

These are five student loan debts. Applicant provided documentation showing he paid all these accounts in August 2014 (one was paid in March 2015) by taking a loan against his retirement account (401k) payment plan. These debts are resolved.<sup>7</sup>

**SOR ¶ 1.l (\$10,837 past due, loan balance of \$184,551):**

This is the mortgage account referred to above. This property was foreclosed in 2010. Applicant received an IRS Form 1099-C, cancellation of debt, in the amount of \$95,630 for the same year. He reported that amount on his 2010 tax return. He has no further obligation for this property. This debt is resolved.<sup>8</sup>

**SOR ¶¶ 1.m through 1.o (\$769; \$361; \$232):**

These are three consumer debts. Applicant provided documentation showing he paid all these accounts in April 2015. These debts are resolved.<sup>9</sup>

**SOR ¶ 1.p:**

This is Applicant's Chapter 7 bankruptcy that was discharged in 2000. He provided documentation showing that his total liabilities subject to discharge were approximately \$20,000. This issue is resolved.<sup>10</sup>

Applicant testified that he currently has disposable income of about \$1,200 at the end of each month. He has \$90,000 in a retirement account. He borrowed \$25,000 from that account to pay his student loans. He is repaying that loan with \$300 monthly payments, which will pay off the loan in 2018 or 2019. He has no federal or state tax issues and is not overextended on any other debts.<sup>11</sup>

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<sup>6</sup> AE A, B (p. 5).

<sup>7</sup> Tr. at 49; AE A, B (p. 6-18).

<sup>8</sup> Tr. at 29, 36-38, 64-65; AE A, D.

<sup>9</sup> Tr. at 55-56; AE A, B (p. 20), C.

<sup>10</sup> Tr. at 58; AE E.

<sup>11</sup> Tr. at 35, 66-67, 69.

## 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 that 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." 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, 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 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant had multiple delinquent debts that he failed to pay over an extended period of time. The evidence is sufficient to raise both disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20 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.

The delinquent debts attributed to Applicant are recent, except for the 2000 bankruptcy. He has paid all but three of the listed debts, which were combined into a

single payment plan on which he has been making regular payments since December 2014. His mortgage foreclosure has been resolved and he met all of his legal requirements. Since he has made a concerted effort to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's home foreclosure, because of a bad real estate market, and his divorce were conditions beyond his control, however, his inaction to timely resolve his delinquent student loans was not responsible action on his part. AG ¶ 20(b) partially applies.

There is no evidence Applicant received credit counseling. He made a good-faith effort to resolve the debts by either paying them or setting up a payment plan. AG ¶ 20(c) partially applies and ¶ 20(d) fully applies.

### **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 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(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service and his 27 years of federal contractor service. I found Applicant to be honest and candid about the circumstances that led to his debts. He took action to resolve his debts. I find it unlikely that Applicant will find himself in a similar future situation.

