



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



In the matter of: )  
)  
) ISCR Case No. 14-03885  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

12/10/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On October 1, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on February 2, 2015, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October

29, 2015. I convened the hearing as scheduled on November 18, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and did not offer any exhibits. The record was held open until December 2, 2015, to allow Applicant to submit documents. He did not submit any and the record closed.<sup>1</sup> DOHA received the hearing transcript (Tr.) on December 2, 2015.

### **Procedural Issue**

Government Counsel moved to correct SOR ¶ 1.h, changing the word “discharged” to “dismissed.” There was no objection and the motion was granted.

### **Findings of Fact**

Applicant admitted all the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. He is a high school graduate. He has not served in the military. He married in 1984 and divorced in 2005. He remarried in 2005. He has three grown children ages, 35, 30, and 26. He has one stepchild who is 25 years old. He has been affiliated with the same company since 2000. He had his own company and worked as a subcontractor with this company, and later when he closed his business in 2006, he became a full-time employee of the company.<sup>2</sup>

Applicant filed a Chapter 7 bankruptcy case in October 2005. He attributed his financial difficulties to a divorce he was going through and a downturn in the economy. He testified that he and his wife separated in 2004, and the divorce was final in 2005. He was required to pay his wife \$65,000 as part of the divorce settlement. His parents gave him the money, as a gift, to make the payment. He paid his ex-wife in 2006. He testified that he believed he had about \$40,000 to \$50,000 of delinquent debt discharged in the Chapter 7 bankruptcy in March 2006. He believed at the time he was earning a salary of about \$70,000, but over \$100,000 when bonuses were included. He was paying \$380 in monthly child support.<sup>3</sup>

---

<sup>1</sup> Government Counsel sent an email on December 3, 2015, advising no documents were received from Applicant by the December 2, 2015, deadline. After the record closed, Applicant sent an email in response to Government Counsel’s email and requested he be granted additional time beyond December 8, 2015, to “get this together.” His request was denied as untimely. At his hearing, Applicant was informed that the record would be held open for him to provide any evidence he wanted considered and the date the record would close. Tr. 75, 90; Hearing Exhibits I and II.

<sup>2</sup> Tr. 32-35, 41-42, 77. On his security clearance application (SCA) Applicant listed his divorce was final in 2003, but he testified it was final in 2005.

<sup>3</sup> Tr. 28-37.

The SOR alleges six delinquent debts in amounts ranging from \$180 to \$190,892 for a total of \$210,972. It also alleges that Applicant has a history of bankruptcy, with a Chapter 7 case in 2005-2006 and a Chapter 13 in 2009-2010. The matters in the SOR are supported by credit reports from February 2014 and June 2015.<sup>4</sup>

In December 2007, Applicant purchased a recreational vehicle (RV) for \$225,000. His monthly payment was \$1,506. He made the payments until sometime in 2009, and then returned the RV to the company because he could not afford it. He believed the RV was sold sometime in 2011. The allegation in SOR ¶ 1.a (\$190,892) reflects that debt. Applicant does not deny he still owes the creditor money on this debt, but he has had difficulty finding the creditor that owns the current debt. He stated that he has contacted the bank several times and provided his contact information. He testified that he was in the process of working with the bank to arrange a payment plan. He believes after the RV was sold, the deficiency balance owed is about \$65,000 to \$70,000. Applicant confirmed that the RV was not used as his primary residence, but was for recreation. In 2006, Applicant purchased a car for \$50,000. In 2008, he purchased another car for \$50,000. The cars have since been sold. He admitted he was living beyond his means during this time. Applicant did not provide any documents to support that the RV balance is reduced, that a payment plan has been established, or other efforts he has taken to resolve the debt.<sup>5</sup>

In March 2006, after Applicant's debts were discharged in bankruptcy, his wife purchased a house in her name because Applicant could not get a loan. His wife did not have a job at the time. Applicant made the monthly mortgage payment of \$1,785. In 2009, Applicant's employment hours were reduced, and he and his wife filed for Chapter 13 bankruptcy protection in October 2009. In 2009, Applicant's wife forfeited the house to the bank, and it was sold in 2009. He indicated there was no deficiency owed. The bankruptcy petition was dismissed in March 2010 (SOR ¶ 1.h).<sup>6</sup>

Applicant testified the accounts alleged in SOR ¶¶ 1.b through 1.f are medical debts.<sup>7</sup> He stated some of the debts were originally not paid by his insurance, so he paid them by credit cards and others have been resolved and paid by insurance. He testified that he had a medical procedure in February 2015 and these debts were bills that the insurance did not pay initially. He indicated on his answer to the SOR that the debts alleged in SOR ¶¶ 1.b through 1.f were paid. He did not provide documents to show the debts are paid. Applicant was questioned at the hearing and advised that the debts in SOR ¶¶ 1.b (\$8,201) and 1.c (\$6,975) are both credit card debts. The last activity for the account in SOR ¶ 1.b was in July 2009. The last activity for the account in SOR ¶ 1.c was September 2009. Applicant stated he fully agreed these debts were for

---

<sup>4</sup> GE 2, 3.

<sup>5</sup> Tr. 20-28, 36-40, 58-64, 70.

<sup>6</sup> Tr. 40, 43-57; GE 4.

<sup>7</sup> Tr. 63.

credit cards that he used to pay medical bills, and the credit cards were not paid. He stated he was unable to pay his bills in 2009. He testified that in 2011 and 2012, his business began to improve, and these debts are a few that are left over. He has not contacted the creditors for the debts in SOR ¶¶ 1.b or 1.c. He stated he was waiting for the medical insurance company to pay these debts. He also stated he has not paid the credit cards because he is waiting for the insurance company to reimburse him first. He did not provide evidence of his actions to resolve these debts.

The medical debt in SOR ¶ 1.d (\$3,857) is reflected on Applicant's credit report as being assigned for collection in January 2013; ¶ 1.e (\$867) shows the date of first delinquency in February 2012; and ¶ 1.f (\$180) shows a date of first delinquency as March 2009.<sup>8</sup> Applicant's testimony was not credible.

Applicant and his wife purchased a house together in 2015. The purchase price was \$299,000, and their monthly mortgage payment is \$1,948. He purchased a new truck in 2013 that is paid. He also owns a 2004 car, a 2006 truck, and two motorcycles. He purchased one motorcycle in October 2015 for \$40,000 with a down payment of \$18,000. He testified that his current salary is \$130,000. Applicant's wife started a business about four years ago that is doing well. She earns about \$75,000 annually. He and his wife have \$50,000 in their checking account and \$50,000 in their savings account. They also have a retirement account, but he did not know its value. He and his wife do not discuss their finances, and she is responsible for them. He stated he will do whatever it takes to make his finances right.<sup>9</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 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(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

---

<sup>8</sup> Tr. 15-20, 63-77; GE 2, 3.

<sup>9</sup> Tr. 52-4, 57-62, 71-73, 77-78.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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 Executive Order 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**

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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (a) inability or unwillingness to satisfy debts;

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and

(c) a history of not meeting financial obligations.

Applicant had approximately \$40,000 to \$50,000 of delinquent debts discharged in a Chapter 7 bankruptcy case in March 2006. Applicant purchased a \$225,000 RV in 2007, and it was repossessed in 2009. The actual balance owed on this debt is unknown, but it is reflected as \$190,892 on his credit reports. He believes the deficiency balance is between \$65,000 and \$70,000, but did not provide evidence to support the amount. He again filed for bankruptcy protection in October 2009, and it was dismissed in March 2010. Applicant owns several vehicles. He also owns two motorcycles, one he purchased in October 2015 for \$40,000 and made an \$18,000 down payment. He has failed to pay two credit card debts that have been delinquent since 2009 and other delinquent medical debts. Based on Applicant's testimony about his current finances, the facts support that he is unwilling to satisfy his debts, and he has a history of not meeting financial obligations. In addition, there is evidence of Applicant's irresponsible spending and the absence of any evidence of willingness or intent to pay debts he admits he owes. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;

(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 testimony was not credible. He initially testified that all of the debts alleged were for medical accounts, when in fact two of them were credit card debts. When confronted with this information, he stated he had paid his medical debts with the credit cards and was waiting for the insurance company to reimburse him before he paid the credit card debts. The credit card debts in SOR ¶¶ 1.b and 1.c have been delinquent since 2009. He has owed a balance on his repossessed RV since at least 2011. Although he stated he could not determine the identity of the current creditor, he failed to provide any paperwork about the debt or credible evidence that he has actively pursued resolution of this debt. Applicant failed to provide any evidence that he has paid, resolved, or initiated payment plans for any of the debts in the SOR. Based on Applicant's testimony, he has the resources to pay his delinquent debts, but failed to provide evidence that he has done so or a credible explanation for why he has not. Applicant's conduct is recent because he failed to provide evidence of action he has taken to resolve his delinquent debts, and the debts remain unpaid. Based on his history, I cannot find that the circumstances are unlikely to recur. His failure to address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant had debts that were discharged in bankruptcy in 2005. His testimony reflects that he had financial difficulties when he went through a divorce 2005 and an economic downturn in 2009. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant failed to show he acted responsibly after his debts were discharged in bankruptcy, and he was given a clean financial slate. The evidence supports he was making large purchases. The credit card debts have been delinquent since 2009. He has the resources to pay his delinquent debts but has not. He claimed he had paid all of the alleged debts, but provided no documentary proof. Applicant has not acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he received financial counseling or that there are clear indications the problem is resolved or under control. He failed to provide evidence of a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant admitted all of the debts alleged, but it appears he disputes some because he claimed they were paid by insurance and he is no longer responsible for them. Applicant failed to provide documented proof to substantiate the basis of his disputes and failed to provide evidence of actions to resolve his claims. AG ¶ 20(e) does not apply.

### **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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 53 years old. He has worked directly for or as a subcontractor for a federal contractor since 2000. He had financial difficulties after his divorce in 2005 and had his debts discharged in bankruptcy in 2006. Despite having the resources and being aware of his delinquent debts, he failed to provide proof that he has paid them. Although he stated some of the medical debts were paid by his insurance, he did not provide documentary proof to substantiate his claims. Applicant has been aware of the security concerns regarding his finances since at least October 2014 when he received the SOR, but has neglected to take action to resolve the issues. Applicant has not met his burden of persuasion. His conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

### **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 a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge