



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



In the matter of: )  
)  
) ISCR Case No. 14-04664  
)  
Applicant for Security Clearance )

**Appearances**

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

05/11/2015

**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 October 20, 2014, 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 November 19, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2015, scheduling the hearing for March 30, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in

evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that were marked AE D through F and admitted without objection. DOHA received the hearing transcript (Tr.) on April 6, 2015.

### Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since 2011. He served in the U.S. military from 1985 until he retired in 2007. He seeks to retain his security clearance, which he has held for many years. He earned a bachelor's degree this year. He is married with three children, ages 24, 21, and 19.<sup>1</sup>

Applicant retired from the military as an E-7. He receives his retirement pay and 10% disability pay from the Department of Veterans Affairs (VA). He worked for the military as a civilian employee after he retired until October 2008. Even with his retirement pay, he was not earning as much as when he was in the military. He obtained a job that "really paid well" with a defense contractor in November 2008, at a salary that was "much more than [he] was making." The contract changed hands to Applicant's current employer in 2011, but Applicant's job remained the same. Applicant's wife has been unable to find suitable employment since his retirement in 2007.<sup>2</sup>

Applicant's last duty station before he retired was overseas. At the height of the housing boom, he agreed to buy a house at his present location without seeing it. When he saw it, he was disappointed but continued with the purchase because he already made school arrangements for his children and the realtor told him that he could resell the house in two years for a profit. Applicant bought the house for about \$291,000, which was completely financed through a mortgage loan.<sup>3</sup>

Shortly thereafter, the real estate market crashed and the house was worth far less than what was owed on the mortgage loan. Applicant was struggling financially because he was paying for his three children in high school or college, and his wife was not working.<sup>4</sup>

The SOR alleges four delinquent debts and that Applicant's mortgage loan was \$14,290 past due. The debts alleged in SOR ¶¶ 1.d and 1.e are duplicate accounts. The three non-duplicate debts total about \$28,800.

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<sup>1</sup> Tr. at 18-19, 47-48, 55, 66; GE 1.

<sup>2</sup> Tr. at 19, 23-24, 57, 59; Applicant's response to SOR; GE 1; AE A.

<sup>3</sup> Tr. at 19-22.

<sup>4</sup> Tr. at 25-31, 53-55, 58-59; GE 1, 2; AE A.

In about October 2012, Applicant retained a law firm to assist him in disposing of his home and the mortgage loan. His attorney advised him to stop paying the mortgage loan, which he did, and the attorney would attempt to negotiate a short sale of the property. The March 2013 credit report lists the loan as in foreclosure, \$14,290 past due, and a \$297,036 balance. The attorney was unable to negotiate a short sale, and the home was lost to foreclosure. It sold in August 2013 for \$166,000. There is no indication that the deficiency is being pursued by the mortgage holder. Applicant remained in the home throughout the process. After the sale, the new owner agreed to rent the property to Applicant. He still lives in the property and pays much less in rent than he did on the mortgage loan.<sup>5</sup>

Applicant admits he owes the \$25,319 charged-off credit card debt alleged in SOR ¶ 1.b. The March 2013 credit report lists the account as charged off for \$29,219 in July 2011. It reports the date of last action on the account as August 2012 with a \$25,319 balance.<sup>6</sup>

Applicant stated that he entered into a \$300 per month payment agreement with the creditor in December 2009, and paid \$300 each month for the next nine months. Applicant was unable to make the September, October, and November 2010 payments. Contacting the creditor was difficult. When he finally was connected to someone who would talk to him about the debt in December 2010, he was told the debt was charged off and transferred to a collection company. Applicant contacted the collection company, but he was offended by their aggressive tactics. Applicant contacted the original creditor to attempt to work with them on the account, but the creditor told him that he would have to deal with the collection company. Applicant was frustrated with the response, and he stopped attempting to resolve the debt.<sup>7</sup>

After the hearing, Applicant submitted an April 23, 2015 settlement agreement with the collection company handling the debt. The company agreed to settle the \$25,319 debt for \$8,861, which Applicant indicated would be paid through eight monthly payments of \$1,107.<sup>8</sup>

SOR ¶ 1.c alleges a delinquent debt to a bank for \$1,826. Applicant admits the account is his, but he denies that the account has a balance. He stated that he opened the credit card account, but he never used the card. He believes he may have been the victim of identity theft.<sup>9</sup>

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<sup>5</sup> Tr. at 30, 37-44, 48-54; Applicant's response to SOR; GE 1-3; AE B, C.

<sup>6</sup> Tr. at 30; Applicant's response to SOR; GE 2, 3.

<sup>7</sup> Tr. at 30-37; Applicant's response to SOR; GE 2.

<sup>8</sup> AE D, E.

<sup>9</sup> Tr. at 60, 64-65; Applicant's response to SOR; GE 2-4.

Applicant denies owing the \$1,713 debt to a collection company on behalf of a bank, as alleged in SOR ¶¶ 1.d. He denies ever having an account with the bank.<sup>10</sup>

The debts alleged in SOR ¶¶ 1.c and 1.d are both listed on the March 2013 and May 2014 credit reports.<sup>11</sup> Applicant was asked about the debts during his background interview in April 2013. He stated that he intended to pull his credit report and make payment arrangements if the debts were determined to be valid, or dispute the debts if they were not valid. Applicant sent dispute letters about the accounts to the credit reporting agencies on April 6, 2015.<sup>12</sup>

Applicant indicated that his finances are stable. He received financial counseling when he was in the military, and he has a budget and a plan to address his finances, which he learned from a nationally-known financial expert. His children are all still in college, and he is paying a large part of their education costs. His oldest child is set to graduate, and Applicant has recently graduated. His wife is still not working. He was on a payment plan for his 2012 federal taxes, which he completed. He is currently on a payment plan for his 2013 federal taxes. He believes that he owes about \$800.<sup>13</sup> He stated that he expected that he would be able to pay his 2014 taxes by the April 15 deadline.<sup>14</sup>

Applicant submitted letters attesting to his honor, loyalty, dedication, work ethic, trustworthiness, leadership, and reliability. He is recommended for a security clearance.<sup>15</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

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<sup>10</sup> Tr. at 62; Applicant's response to SOR; GE 2.

<sup>11</sup> "Credit reports are generally sufficient to establish the Government's prima facie case of Guideline F security concerns." See ISCR Case No. 10-03668 at 2 (App. Bd. Oct. 5, 2012).

<sup>12</sup> Tr. at 60-65; GE 2-4, AE F.

<sup>13</sup> Applicant's delinquent taxes were not alleged in the SOR, and they will not be used for disqualification purposes. They may be considered in the application of mitigating conditions and when conducting the whole-person analysis.

<sup>14</sup> Tr. at 50-52, 56-60, 66-67; AE A.

<sup>15</sup> AE A.

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:

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

Applicant was unable to pay his financial obligations. The above disqualifying conditions are applicable.

The debt alleged in SOR ¶ 1.e (\$1,360) is a duplicate of the \$1,713 debt alleged in SOR ¶ 1.d. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶ 1.e 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;
- (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 did not earn as much when he retired in 2007 as when he was in the military, but he has worked for federal contractors since 2008 in jobs that "really paid well." His wife has been unable to find suitable employment since Applicant's retirement in 2007, which is beyond Applicant's control. The greatest source of Applicant's financial problems is the high cost of education for his three children.

Applicant's home was lost to foreclosure while he lived rent-free until it sold. There is no indication that the deficiency is being pursued by the mortgage holder. He did nothing for several years about the \$25,319 debt because he was frustrated that the creditor charged it off and transferred it to an aggressive collection company. After the hearing, the collection company agreed to settle the debt for \$8,861, which Applicant indicated would be paid through eight monthly payments of \$1,107. The Appeal Board has held that a "promise to take remedial action in the future, however credible and sincere, is not evidence of actual rehabilitation." See ISCR Case No. 08-05379 at 2 (App. Bd. Nov. 24, 2009) (quoting ISCR Case No. 96-0544 at 5 (App. Bd. May 12, 1997)). He denies owing two debts. He was asked about the debts during his background interview in April 2013, but he did not submit dispute letters to the credit reporting agencies until after the hearing. Applicant states his finances have improved, but he had to pay his 2012 federal income taxes through a payment plan, and he is still paying his 2013 income taxes through a payment plan.

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 finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is not, except as it relates to the mortgage loan. AG ¶ 20(e) is not yet completely applicable because the investigation of Applicant's disputed debts has not been completed. I find that financial 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.

I considered Applicant's favorable character evidence and honorable military service. However, Applicant has a history of financial problems. It is too soon to conclude that he will resolve those problems within a reasonable period.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.d:	Against Applicant
Subparagraph 1.e:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge