



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



In the matter of: )  
)  
) ISCR Case No. 14-04964  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

11/15/2015

**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 February 10, 2015, 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 March 5, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on July 23, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the

FORM on August 4, 2015. As of October 7, 2015, he had not responded. The case was assigned to me on October 13, 2015. The Government exhibits included in the FORM are admitted in evidence.

### **Findings of Fact**

Applicant is a 65-year-old employee of a defense contractor. He has worked for his current employer since 2002. He is married with an adult child.<sup>1</sup>

Applicant stated that his finances were stable until 2012 when his father-in-law became sick. Applicant helped pay some of his father-in-law's medical expenses, and Applicant and his wife traveled on numerous occasions to another state to visit his father-in-law. In 2013, Applicant's mother became sick. He helped with her medical expenses and traveled to a third state to visit his mother. Applicant's daughter was in college. Her roommate stole money from his daughter's bank account and property from their apartment. In addition to the normal costs of a child in college, Applicant incurred additional expenses replacing his daughter's stolen property.<sup>2</sup>

The SOR alleges 26 delinquent debts. However, the January 2014 credit report indicates that Applicant was only an authorized user for the delinquent \$3,977 debt alleged in SOR 1.t. The balance of the remaining delinquent debts total about \$38,000. The debts include a past-due second mortgage loan, a defaulted student loan, credit card accounts, telecommunications debts, and 13 medical debts totaling about \$8,200. Applicant admitted owing all the debts. Credit reports from January 2014, August 2014, and July 2015 also substantiate the debts.<sup>3</sup>

Applicant reported his financial issues on his December 2013 Questionnaire for National Security Positions (SF 86). He wrote that he retained a law firm "to help [him] restructure [his] debt in forms of lowering interest amounts and updating accounts to become current." He stated that he was working with the law firm to negotiate with his creditors, and he would address his debts one at a time. He also wrote that he and his wife planned to sell the house that his wife inherited from her parents in about six to eight months and use the proceeds to pay their debts.<sup>4</sup>

Applicant discussed his finances and his delinquent debts during his background interview in February 2014. He did not mention the law firm. He stated that he inadvertently reported that he had used a financial credit counseling service when he had not. He stated that his wife handled most of the family's finances, and she had a better grasp on their finances than he did. He stated that he inherited his mother's

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<sup>1</sup> Items 4, 8.

<sup>2</sup> Items 2, 8.

<sup>3</sup> Items 2, 5-7.

<sup>4</sup> Items 4.

house, and he would sell the house after it cleared probate.<sup>5</sup> He anticipated receiving about \$50,000 from the sale, which he would use to pay his debts.<sup>6</sup>

Applicant responded to the SOR in March 2015. He stated that the house his wife inherited from her parents was for sale, and that they planned to use the proceeds to pay most of their debts. He wrote that he started repaying his student loan. He stated that he cosigned the student loan for his daughter, but the credit reports indicate the loan was solely in his name. He did not provide any documentation of his payments. The August 2014 credit report lists the loan with a \$9,301 balance. The July 2015 credit report lists the loan with a \$9,716 balance and a \$25 payment made in June 2015.<sup>7</sup>

In his response to the SOR, Applicant indicated that he retained a law firm (a different law firm than the one identified in the SF 86), and that he “consolidated most of his bills into one payment.” He did not provide a copy of the contract with the law firm or how much he was paying. He provided settlement agreements negotiated by the law firm for the \$1,144 debt alleged in SOR ¶ 1.i and the \$3,977 debt alleged in SOR ¶ 1.t, which is the debt in Applicant’s wife’s name with Applicant as an authorized user.<sup>8</sup>

The settlement agreement for the \$1,144 debt alleged in SOR ¶ 1.i called for a settlement of \$413, payable in five monthly payments of \$82 from January through May 2015. The July 2015 credit report indicates the balance was \$731, which is \$413 less than the previous balance of \$1,144. I am satisfied that this debt is resolved. He did not provide any documentation to corroborate any payments toward the \$3,977 debt. The debt is not listed on the August 2014 and July 2015 credit reports.<sup>9</sup>

The January 2014 credit report indicated that Applicant’s primary mortgage loan was \$5,593 past due with a \$55,800 balance. The loan was modified under a federal government plan. The August 2014 credit report indicated Applicant was current on his payments under the modified plan. The July 2015 credit report lists an additional delinquent debt of \$3,205 to a payday loan institution. It listed the first delinquency on the loan as occurring in August 2014.<sup>10</sup>

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<sup>5</sup> OPM did not take a statement from Applicant. The interview was summarized in a report of investigation (ROI). It is possible that Applicant was talking about his mother-in-law’s estate and the ROI misstated it as his mother’s.

<sup>6</sup> Item 8.

<sup>7</sup> Items 2, 5-8.

<sup>8</sup> Items 2, 4-8.

<sup>9</sup> Items 2, 4-8.

<sup>10</sup> Items 5-7. The mortgage loan and the delinquent payday loan were not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used in assessing Applicant’s overall financial situation, in determining the applicability of mitigating conditions, and when conducting the whole-person analysis.

## 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 had delinquent debts that he was unable or unwilling to pay. The evidence is sufficient to raise the above disqualifying conditions.

Applicant was only an authorized user for the delinquent \$3,977 debt alleged in SOR 1.t. That allegation is concluded for Applicant.

Conditions that could mitigate the 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.

The medical problems in Applicant's family and his daughter's victimization by her roommate were beyond Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

The 13 medical debts alleged in the SOR are mitigated. Those allegations are concluded for Applicant. Applicant established that he settled the \$1,144 debt alleged in SOR ¶ 1.i for \$413. That debt is resolved and mitigated. His wife may have settled the \$3,977 debt that was in her name with Applicant as an authorized user. Applicant brought his primary mortgage loan current through a modification, and he has made at least one \$25 payment towards his student loan. However, he has a new \$3,205 delinquent debt from a payday lender.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he 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. AG ¶¶ 20(b) and 20(c) are 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 this 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.d:	Against Applicant
Subparagraphs 1.e-1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.o:	Against Applicant
Subparagraphs 1.p-1.z:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge