



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



In the matter of: )  
)  
) ISCR Case No. 14-05805  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

05/23/2016

**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 4, 2015, 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on February 24, 2015, and requested a hearing. The case was assigned to me on October 19, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 9, 2015, setting the hearing for December 8, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. I

marked Department Counsel's discovery letter, which included an exhibit list as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through H, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He timely submitted AE I through N, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 29, 2015.

### **Findings of Fact**

Applicant is 47 years old and has worked for a government contractor since 2001 or 2002. He has a high school diploma and has taken some college courses. He is twice divorced and has two minor children from his second marriage. He is current on his \$1,200 monthly child support payments. He served in the Navy for four years and was honorably discharged in the pay grade of E-5. He has held a security clearance since becoming a contractor employee and has never had a security incident.<sup>1</sup>

The SOR alleges Applicant has 16 delinquent debts totaling approximately \$166,882. The debts were listed on credit reports from April 2013 and September 2014. Applicant admitted some of the allegations and denied others. Those admissions will be treated as findings of fact.<sup>2</sup>

Applicant's financial difficulties resulted when he divorced his second wife in 2012. Applicant's ex-wife was awarded possession of the family residence and was responsible for making the monthly payments. Applicant remained liable on the debt because the financing was obtained using a VA loan that he obtained. He was unaware that the loan was delinquent until informed by the security clearance process. Many of the consumer debts fell into the same pattern. His ex-wife was responsible for making the payments, but did not make them. He was unaware of the delinquencies and only became aware when informed by the defense investigator. Once informed of these debts, Applicant took action to remedy the situation. The status of the debts is as follows:<sup>3</sup>

#### **SOR ¶ 1.a mortgage account (\$143,716):**

Applicant arranged for a loan modification agreement executed in August 2015 by both he and his ex-wife. Applicant also made provisions where he will be notified if his ex-wife fails to make the required monthly payments. This debt is being resolved.<sup>4</sup>

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<sup>1</sup> Tr. at 6, 23-26; GE 1.

<sup>2</sup> Tr. at 28-30; Answer; GE 3.

<sup>3</sup> Tr. at 26-27, 42, 48; Answer; GE 2; AE A-B.

<sup>4</sup> Tr. at 28-32; AE A.

**SOR ¶ 1.b consumer debt (\$7,551):**

Applicant paid this account in November 2015. This debt is resolved.<sup>5</sup>

**SOR ¶ 1.c consumer debt (\$5,876):**

Applicant paid this account in February 2016. This debt is resolved.<sup>6</sup>

**SOR ¶ 1.d consumer debt (\$1,213):**

Applicant paid this account in February 2016. This debt is resolved.<sup>7</sup>

**SOR ¶¶ 1.e and 1.m consumer debt (same underlying debt) (\$1,207):**

Applicant paid this account in February 2016. This debt is resolved.<sup>8</sup>

**SOR ¶¶ 1.f and 1.o consumer debt (same underlying debt \$999):**

Applicant set up a payment plan in December 2014 and continued making those payments until the debt was paid in February 2016. The debt is listed on one credit report with the original creditor and is listed on the later credit report with the collection agency. The date of last activity and date of assignment match on both credit report listings. I conclude that both allegations arise from the same debt. This debt is resolved.<sup>9</sup>

**SOR ¶¶ 1.g-1.j medical debts (\$232, \$220, \$210, \$130):**

Applicant documented payment of two of these medical debts (1.g and 1.i), but indicated he was unable to locate the debt holder for the remaining two accounts (1.h and 1.j). He indicated he used internet resources to try to track down the creditors, without success. He will continue his efforts. These debts are being resolved.<sup>10</sup>

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<sup>5</sup> Tr. at 32; AE B.

<sup>6</sup> Tr. at 34; AE I.

<sup>7</sup> Tr. at 36; AE M.

<sup>8</sup> Tr. at 37; AE M.

<sup>9</sup> Tr. at 37-38; GE 2, 4; AE C, L.

<sup>10</sup> Tr. at 39-42; AE E-F.

**SOR ¶ 1.k consumer debt (\$2,850):**

Applicant presented documentation showing this account was paid in December 2012. The evidence shows the account number on the payment letter matches the account number on credit report (GE 2). This debt is resolved.<sup>11</sup>

**SOR ¶ 1.l consumer debt (\$798):**

Applicant set up a payment plan in February 2015 and made two payments to settle this debt. This debt is resolved.<sup>12</sup>

**SOR ¶ 1.n consumer debt (\$21):**

Applicant paid this account in February 2016. This debt is resolved.<sup>13</sup>

**SOR ¶ 1.p consumer debt (\$40):**

Applicant paid this account in December 2015. This debt is resolved.<sup>14</sup>

Applicant did not seek financial counseling. He testified that he has paid off his car and motorcycle, that he has saved approximately \$30,000 in the past year, and his 401(k) retirement account is worth approximately \$100,000. He is current on all his taxes.<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 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

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<sup>11</sup> Tr. at 436; GE 2; AE N.

<sup>12</sup> Tr. at 43; AE G.

<sup>13</sup> Tr. at 44; AE M.

<sup>14</sup> Tr. at 45; AE H.

<sup>15</sup> Tr. at 46-49, 55.

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;
- (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. He secured a mortgage modification for his mortgage debt and has paid all the delinquent debts for which he could track down. 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.

There is no evidence Applicant received credit counseling. He made a good-faith effort to resolve the debts by either paying them or attempting to track down the current creditors. 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 and 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.

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

Subparagraphs 1.a – 1.p: 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.

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Robert E. Coacher  
Administrative Judge