



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06270
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

04/29/2016

**Decision**

CURRY, Marc E., Administrative Judge:

Although Applicant’s financial problems were partially caused by circumstances beyond his control, there are no clear indications that they are either resolved or under control. Clearance is denied.

**Statement of the Case**

On July 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006. On August 5, 2015, Applicant answered the SOR, admitting the allegations and requesting a hearing. The case was assigned to me on October 23, 2015. DOHA issued a notice of hearing on November 6, 2015, scheduling the hearing for December 8, 2015. The hearing was held as scheduled. At the hearing, I received

seven Government exhibits (GE 1 - GE 7), and I took administrative notice, at Department Counsel's request, of one exhibit (Hearing Exhibit (HE) 1). At the close of the hearing, I left the record open, at Applicant's request, to allow him the opportunity to submit exhibits. Within the time allotted he submitted seven exhibits that I admitted and incorporated into the record as AE A through AE G. DOHA received the transcript (Tr.) on December 8, 2015.

### **Findings of Fact**

Applicant is a 69-year-old man with three children. He has been married and divorced twice. His oldest, an adult, is from his first marriage and the two youngest, both teenagers, are from his second marriage. (Tr. 16) The youngest child lives with him.

Applicant has a high school education. Since 2001, he has worked for a federal Government subcontractor. He worked in business development during his first seven years with the company. Since then, he has been working as the company's facility security officer. He has held a security clearance since 2007. Applicant is highly respected on the job. His boss characterizes him as "a man of integrity and responsibility." (Tr. 65)

Between 2010 and 2012, Applicant incurred approximately \$75,000 of delinquent debt. Maintaining financial stability during his marriage to his spendthrift second wife, to whom he was married from 1992 through 2013, was always a challenge. (Tr. 41) His financial struggles were exacerbated in 2009 when his employer, facing an economic downturn, filed for Chapter 11 bankruptcy protection. (Tr. 70) Before the bankruptcy filing, Applicant was earning approximately \$60,000 per year. (Tr. 32) After the filing, his employer drastically cut his wages and did not restore them to their previous level for four months. (Tr. 73) Consequently, Applicant's debts gradually became delinquent.

After the company's Chapter 11 reorganization, its fortunes improved. As the business prospered, Applicant's salary rose. By 2013, he was earning \$125,000 annually. (Tr. 15) Unfortunately, Applicant's second marriage began deteriorating around the same time that his salary was increasing. In October 2012, Applicant moved from the family home that he jointly owned with his then wife. (Tr. 20) As Applicant's then wife was a homemaker, he was responsible for the mortgage payments. After separating from his wife, he was unable to balance the expenses of his new home and the mortgage expenses of his marital home. (Tr. 28) Consequently, by June 2015, he had incurred a \$67,331 mortgage delinquency, as alleged in SOR subparagraph 1.h. By December 2015, the foreclosure process was completed and the home had been sold at auction. (AE D at 4) Applicant does not know if there is any deficiency. (Tr. 52)

Applicant and his second wife divorced in October 2013. The court ordered Applicant to pay \$3,000 per month in alimony. (AE A at 11-12) Applicant and his ex-wife agreed that he have custody of their minor child. (AE A at 7)

Before Applicant's divorce, he and his ex-wife filed their federal income tax returns jointly. (Tr. 44) In 2013, Applicant filed individually, resulting in an unexpectedly high tax burden of \$6,000 that he was unable to pay when due.<sup>1</sup> Through a combination of \$80 monthly payments and the offset of his 2014 refund to the debt, Applicant has reduced this debt to \$2,000. (Tr. 44)

Applicant incurred approximately \$7,500 of his total delinquent debts before his divorce, as alleged in SOR subparagraphs 1.a, 1.b, 1.e through 1.g, and 1.k through 1.m. These debts include a \$2,600 judgment entered against Applicant in April 2011 (SOR subparagraph 1.a).

In 2013, Applicant consulted a credit counselor. (Tr. 38) With the help of the counselor, he developed a payment plan. Between January 2014 and October 2014, he satisfied approximately \$5,200 of his delinquent debt. (AE C at 2-3; Tr. 56) During this time, he satisfied the debt alleged in SOR subparagraph 1.g and duplicated in SOR subparagraph 1.m, totalling \$699. (Tr. 76) Applicant could not determine how many of the debts in the payment plan corresponded with any of the SOR debts. (Tr. 55)

Applicant, by November 2014, had cancelled the debt repayment plan. (Tr. 38-39; AE G at 2-3) He attributes his inability to continue with the debt payment plan to his struggle with balancing it with the alimony payments. At some point that year, he helped one of his sons purchase a car, giving him money towards the down payment and by paying for half of each monthly payment. (Tr. 30)

In May 2015, Applicant's salary was eliminated and his status was changed from employee to part-time consultant. (Tr. 32; 68) Applicant has not earned any income from the company since then; however, as a long-time friend of the boss, he has been working without pay. (Tr. 36) Applicant's employer seeks for Applicant to obtain a clearance so that he can re-instate him to a part-time position. (Tr. 68)

Applicant has not made any additional debt payments towards the satisfaction of the SOR debts. He anticipates resuming payments when his employer's company has a turnaround, and he can "hopefully . . . assume a more permanent or at least a better salary." (Tr. 56)

Applicant borrowed \$20,000 from a friend who helped him make ends meet at or around the time of the divorce. (AE G at 1) He has been making payments towards this debt. The current balance of this debt is unknown from the record. Currently, Applicant is receiving \$1,700 monthly in Social Security retirement benefits. (Tr. 13) Also, he earns approximately \$500 weekly from a part-time job. (Tr. 14)

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<sup>1</sup>This debt is not alleged in the SOR.

## **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 debt.

Applicant’s most significant debt, the \$67,000 mortgage delinquency, occurred as a result of his divorce. As the sole breadwinner, he was unable to simultaneously

support the home mortgage and the rental payments on the place where he moved. Conversely, he incurred approximately \$8,000 of delinquent debt before the divorce.

Applicant satisfied the debt listed in SOR subparagraph 1.g (\$799). In 2013, he consulted a credit counselor. Through a debt payment plan, he made \$5,200 in debt repayments. Although he failed to establish whether these payments were made towards the satisfaction of any of the SOR debts, they still reflect positively in his favor. AG ¶ 20(b) partially applies.

It remains unknown from the record whether Applicant owes a deficiency from the foreclosure of his home. He is currently not earning a full-time income, and he is not making any debt payments. Under these circumstances, any promise to resume payments is merely speculative. Consequently, although Applicant's good-faith efforts in 2014 trigger the application of AG ¶ 20(d), they were not sustained long enough to conclude that the problem is under control. AG ¶ 20(c) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

Applicant's financial problems were partially caused by circumstances beyond his control. However, he has not demonstrated enough concrete evidence of financial reform to conclude that he has mitigated the security concern. Under these circumstances, I conclude that he has not mitigated the security concern.

### **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.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Subparagraphs 1.h-1.l:

Against Applicant

Subparagraph 1.m:

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.

MARC E. CURRY  
Administrative Judge