



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04291
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/11/2015

**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 November 17, 2014, 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; 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 Department of Defense on September 1, 2006.

Applicant answered (Ans.) the SOR on December 11, 2014, and requested a hearing. The case was assigned to me on May 1, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 8, 2015, setting the hearing for May 19, 2015. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant

testified and offered exhibits (AE) A and B, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 27, 2015.

### Findings of Fact

Applicant is 46 years old and has worked for a government contractor for 15 years. He holds a bachelor's degree. He is married for a second time and has two adult children. He has no military service, but has held a security clearance since 2008.<sup>1</sup>

The SOR alleges Applicant had a charged-off account in the amount of \$17,941 (SOR ¶ 1.a) and a home foreclosure in the approximate amount of \$443,000 (SOR ¶ 1.b). The debts were listed on a credit report from February 2014. Applicant denied SOR ¶ 1.a, but admitted SOR ¶ 1.b.<sup>2</sup>

Applicant's financial difficulties began in approximately July 2007 when he divorced from his first wife after 15 years of marriage. She did not work outside the home. Under the terms of the divorce decree, Applicant was required to pay monthly alimony and child support that totaled approximately \$3,000. This represented about 50 percent of his total monthly income. Additionally, Applicant's ex-wife was awarded the marital residence and was to hold Applicant harmless for any debts or obligations on the property. Applicant's alimony and child support payments were sufficient to pay the monthly mortgage amount. Applicant's wife did not keep up the payments and the home eventually was foreclosed. Because the value of the property decreased as a result of the economy, it sold for less than was owed on it. He received a tax form concerning the tax consequences of the deficiency amount, but he could not remember specifically what it was. SOR ¶ 1.b is resolved.<sup>3</sup>

Applicant accumulated the credit card debt listed in SOR ¶ 1.a during the course of his first marriage. Once his divorce was finalized and he began making alimony and child support payments, he could no longer afford to pay this credit card. He contacted the company in an attempt to work out a payment plan, but it refused. Later, he contacted two debt management companies and an attorney, all told him not to pay this debt because it was beyond the state statute of limitations. He followed that advice and eventually received an IRS form 1099-C showing a cancellation of debt. He filed that form with his tax return. This debt is resolved.<sup>4</sup>

Applicant testified that his current financial status is good. He remarried and his current wife works. Their combined income is approximately \$270,000 per year. He no longer is obligated to pay alimony or child support. Both of his sons graduated from

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<sup>1</sup> Tr. at 6, 25, 28; GE 1.

<sup>2</sup> Ans.; GE 3.

<sup>3</sup> Tr. at 25-27, 32-34; Ans.

<sup>4</sup> Tr. at 29-30, 36-37; Ans.; GE 2.

college, so he no longer pays college-related expenses. He is current on his taxes and paid other debts not listed on the SOR.<sup>5</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 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

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<sup>5</sup> Tr. at 31, 3540, 42; Ans.; AE A-B.

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 two delinquent debts including a foreclosure. The evidence is sufficient to raise the 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;
- (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 delinquent debts attributed to Applicant are recent. Both debts have been resolved. Since the delinquent debts arose as a result of the financial hardship caused by his divorce, they do not cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's debts became delinquent when he was required to pay 50 percent of his salary to his ex-wife in alimony and child support and he lost possession and control over paying for the family residence. This was a condition beyond his control and he acted responsibly by contacting his creditors and making regular payments to his wife so that she had the ability to pay the mortgage. He is not responsible for her failure to make the mortgage payments. AG ¶ 20(b) applies.

Applicant received credit counseling from two debt relief companies and an attorney. He made an effort to resolve the credit card debt and then was advised not to pay the debt. While his action is not necessarily good faith, the debt is otherwise resolved and it was claimed as a forgiven debt on his tax return. He did show good faith in paying alimony and child support to his ex-wife so that she had the ability to pay the mortgage. AG ¶ 20(c) applies and ¶ 20(d) partially 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 divorce and how it affected his financial status. I found Applicant to be honest and candid about the circumstances that led to his debts. I find it unlikely that Applicant will find himself in a similar situation in the future.

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.b: 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