



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-01083
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hymans, Esq., Department Counsel  
For Applicant: *Pro se*

04/11/2016

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On August 3, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on August 21, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 8, 2016. I convened the hearing as scheduled on March 1, 2016. The

Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. In addition, the Government submitted a copy of its discovery letter sent to Applicant that was marked as Hearing Exhibit (HE) I. Applicant testified and offered Applicant Exhibits (AE) A through C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 10, 2016.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.g and 1.h. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 46 years old. He earned an associate's degree. He was married from 1990 to 2002 and has two children from the marriage, ages 25 and 19. He was employed for 16 years with a company until he was discharged in December 2013. He was unemployed until April 2014. He has worked for his current employer, a federal contractor since then.<sup>1</sup>

Applicant attributed his financial problems to a child custody battle he had with his ex-wife. She had custody of the children after their divorce. Applicant stated that his ex-wife was abusive to the children, and his youngest child ran away to his house in approximately August 2008. He stated that his ex-wife was subsequently diagnosed as a sociopath. At that time, legal proceedings related to the custody issues began. Applicant estimated that he spent approximately \$10,000 in legal fees until the matter was resolved in August 2010. He was earning approximately \$38,000 to \$42,000 annually from 2008 to 2010. The debts alleged in the SOR are supported by credit bureau reports from October 2014 and July 2015.<sup>2</sup>

Applicant also attributed his financial problems to medical issues and a hospital stay in 2009 and twice in 2012. Although he had insurance, some bills were not covered. His monthly out-of-pocket medical expenses impacted his finances. He disputed some of the medical debts alleged in the SOR because some have been resolved and others were submitted to the insurance company with the wrong medical code for payment, and he has been attempting to have the medical providers resubmit the claims.<sup>3</sup>

Applicant disputed the medical debts alleged in SOR ¶¶ 1.a (\$211), 1.d (\$159), 1.e (\$21), 1.i (\$211), 1.j (\$835), and 1.k (\$727) on his credit report. He worked with his employer's assistance program to determine that many of the medical debts were for amounts over-billed by the provider and disputed with the insurer. These debts are not listed on his most recent credit reports. Applicant believes the debts in SOR ¶¶ 1.a and

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<sup>1</sup> Tr. 16-20, 39-40.

<sup>2</sup> Tr. 23-28, 40-44; GE 2 and 3.

<sup>3</sup> Tr. 21-24, 27, 37-39.

1.i are the same debt. I concur.<sup>4</sup> He also disputed the medical debts in SOR ¶¶ 1.b (\$177) and 1.c (\$379) on his credit report indicating these are the debts that the provider incorrectly coded and submitted to the insurance company. These two debts remain on Applicant's most recent credit report, and they are noted as being in dispute.<sup>5</sup>

Applicant was unable to pay the credit card bill alleged in SOR ¶ 1.g (\$2,355) due to his child custody legal expenses. The card was used to help pay for his daughter's living and college expenses. He defaulted on it in approximately 2011. He withdrew money from his IRA and paid the debt. He understood he would have a tax penalty.<sup>6</sup>

Applicant admitted he defaulted on the credit card debt alleged in SOR ¶ 1.f (\$8,091). He provided documentation to substantiate that this is the same debt as SOR ¶ 1.h (\$7,603).<sup>7</sup> Applicant credibly testified that the account became delinquent when he had legal and medical problems and was unable to pay it. He contacted the creditor to close the account and attempted to negotiate a payment plan for the debt. The creditor refused and would only accept a lump sum, which Applicant could not pay. The debt was sold to a collection company and Applicant had difficulty getting the two creditors to acknowledge which actually owned the debt. The issue was resolved days before Applicant's hearing and the most recent credit report indicates the collection company owns the debt. Applicant indicated he has sufficient funds to pay the debt and intends to resolve it. He was hesitant to do so earlier because both creditors were claiming ownership of the debt, and he did not want to pay one and then have the other claim he still owed it.<sup>8</sup>

Applicant continues to have medical problems, but has refused to let the doctors diagnose him as disabled because he wants to work. His treatments are expensive, but he is able to meet the costs not covered by insurance. His 19-year-old child lives with him, works, contributes to the monthly expenses, and intends on attending school next semester. Applicant has sufficient monthly income to cover his expenses and if necessary has money in his IRA to pay debts.<sup>9</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

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<sup>4</sup> Tr. 30-33, 35-36, 54-55; AE B and C. SOR ¶1.e is listed in AE B, but not AE C.

<sup>5</sup> Tr. 30-33, 49-54; AE B and C.

<sup>6</sup> Tr. 30-32, 44-48; AE B and C.

<sup>7</sup> AE A.

<sup>8</sup> Tr. 20, 25-30, 33-34, 44-46, 55, 64-68.

<sup>9</sup> Tr. 55-61.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 Executive Order 10865 provides that 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>10</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had numerous delinquent debts that were unpaid or unresolved beginning in 2011. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;

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<sup>10</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 has addressed some of his delinquent debts, but the largest credit card debt remains delinquent and unpaid. AG ¶ 20(a) does not apply because he still has recent debts that he is resolving.

Applicant attributed his financial problems to legal fees associated to a protracted child custody issue and medical problems. I have considered that many of the debts in the SOR are for medical expenses. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant disputed many of the medical debts, and they are no longer on his current credit report. He is still disputing two medical debts because he believes the providers used the wrong medical code that was provided to his insurer. Applicant paid one large credit card debt. The remaining credit card debt he acknowledged he owed and had attempted to negotiate a payment plan that was declined by the creditor. He is now in a better financial situation to pay the debt and intends to do so. Under the circumstances, Applicant acted responsibly. AG ¶ 20(b) applies.

Applicant disputed many of his medical debts with the credit bureaus and some have been removed. He continues to dispute the remaining two medical debts. AG ¶ 20(e) applies to these debts.

### **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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 46 years old. He experienced financial difficulties when he incurred legal fees arising from a child custody issue. He then experienced health problems that also impacted his finances. Applicant has resolved most of his delinquent debts, but still owes one credit card and is disputing two small medical debts. He credibly testified that he has sufficient resources to pay the credit card debt, but was waiting for the correct creditor to be identified. He is continuing to attempt to resolve the remaining medical debts. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

### **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.k:	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 a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge