



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04572
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

January 23, 2015

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**Decision**

\_\_\_\_\_

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 50-year-old employee of a defense contractor. He was alleged to be in debt in the approximate amount of \$63,177.99. His financial difficulties were caused by circumstances beyond his control and he has acted responsibly with respect to his debts. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 11, 2014, the Department of Defense 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on October 24, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on December 15,

2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 15, 2014, scheduling the hearing for January 6, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibits (HE) I and Exhibits (GE) 1 through 5. GE 1 through GE 5 were admitted without objection. Applicant offered Exhibits (AE) A through J, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 14, 2015. The record was left open until January 16, 2015, for Applicant to submit additional exhibits. On that day, he submitted two additional exhibits, marked AE K and AE L. Department Counsel had no objections to AE K and AE L. They were admitted into the record and the record was closed.

### **Amendment to the SOR**

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved to amend the SOR ¶ 1.i to correct a typographical error. It was changed from:

- i. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$7,499.86 for tax year 2009. Records reflect an installment agreement had been approved. As of September 2012 the taxes remain unpaid.

To:

- i. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$7,499.86 for tax year 2010. Records reflect an installment agreement had been approved. As of September 2012 the taxes remain unpaid.

Applicant had no objection to the amendment and I granted the motion. (Tr. 62.)

### **Findings of Fact**

Applicant is a 50-year-old employee of a defense contractor. He served honorably in the Marine Corps for 20 years. He retired from the Marine Corps at the rank of Gunnery Sergeant (E7). He has worked in his current job for over ten years, although his employer has changed due to changes in defense contractors. He has held a secret level security clearance for 28 years, without incident. He is married and has one adult child. (GE 1; GE 2; Tr. 24-25, 34-35.)

As listed in the SOR, Applicant was alleged to be in debt in the approximate amount of \$63,177.99. He was alleged to have failed to file his Federal and state tax returns for 2011. Applicant denied all of the debts with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 3; GE 4; GE 5.)

Applicant attributes his debts to two events beyond his control. In late 2004 or early 2005, tenants that dwelled in a home owned by Applicant and his wife failed to pay rent. Applicant's wife had owned the home when they married. It was later put into both of their names when they refinanced the property. When the tenants stopped paying rent, Applicant and his wife were forced to evict them. The eviction process was lengthy and took over nine months. During that period, Applicant paid the entire mortgage for the home, but relied on his credit cards to survive. Additionally, when the tenants vacated the property after eviction, they caused \$15,000 in damages to the property. Applicant was unable to re-rent the property. Applicant obtained a judgment against the renters, but it was unenforceable after the renters could not be located. Applicant withdrew all funds from his IRA savings account and tried to make ends meet by using credit cards in 2005 and 2006. However, in mid-2006, Applicant's employer changed and his salary was reduced by nearly 50%. He was unable to sell the rental property because he owed more on the mortgage than it was worth. As a result, he became delinquent on his credit cards and mortgages. He has slowly repaid his debts, as resources allowed, since that time. He no longer uses credit cards. He pays cash for all purchases. (Tr. 25-26, 39-42.) His debts alleged on the SOR are as follows.

Applicant was alleged to be indebted to a creditor in the amount of \$15,387 on a total balance of \$201,452, as stated in subparagraph 1.a of the SOR. This debt was for the mortgage on Applicant's rental property. Applicant sold the property, though a short sale, in December 2014 for \$184,000. The closing documentation shows this debt was satisfied. (AE I; Tr. 25-26, 42, 58.)

Applicant is indebted to a creditor in the amount of \$13,818, as stated in subparagraph 1.b of the SOR. Applicant testified that this debt was incurred when he needed a new transmission and a down payment for his wife's vehicle. Applicant has been in contact with this creditor, but he had difficulties negotiating a payment arrangement he could afford. On January 15, 2015, Applicant reached a written repayment agreement with this creditor to settle this debt through 12 monthly payments of \$350. Applicant is addressing this debt. (AE L; Tr. 27-28, 43-44.)

Applicant was alleged to be indebted to a creditor in the amount of \$287 on a total balance of \$8,354, as stated in subparagraph 1.c of the SOR. Applicant testified this debt is for his son's vehicle and that the account is now current. Applicant's December 11, 2014 credit report reflects that while this account had fallen \$287 past due in December 2013, Applicant appears to be current on his monthly obligation to this creditor. (GE 5; Tr. 29-31, 45.)

Applicant is indebted to a creditor in the amount of \$5,313, as stated in subparagraph 1.d of the SOR. Applicant testified that this account is current. Applicant's December 11, 2014 credit report reflects that while this account has fallen past due, he is now current on his monthly payment to this creditor. (GE 5; Tr. 31-32, 47-48.)

Applicant was alleged to be indebted to a creditor in the amount of \$653, as stated in subparagraph 1.e of the SOR. Applicant presented a letter from a collection

agent for this creditor that indicated this debt “has been settled.” This debt is resolved. (AE L; Tr. 32, 49.)

Applicant was alleged to be indebted for state taxes in the amounts of \$4,325.75 and \$3,978.49, respectively, for the 2009 and 2010 tax years as stated in subparagraphs 1.f and 1.g of the SOR. Applicant has a payment arrangement with his state taxation authority to resolve this debt through monthly payments of \$300. He has successfully made his monthly payments on this debt since January 2014. Applicant is resolving this debt. (AE C; AE D; AE G; AE L; Tr. 58-71.)

Applicant was alleged to be indebted for Federal taxes in the amounts of \$3,828.89 and \$7,499.86, respectively, for the 2009 and 2010 tax years as stated in subparagraphs 1.h and 1.i of the SOR. Applicant has a payment arrangement with the IRS to resolve this debt through monthly payments of \$215. His December 2014 IRS installment agreement statement shows that his remaining balance is now \$605.90. Applicant is resolving this debt. (AE B; AE E; AE F; AE H; Tr. 58-71.)

The SOR also alleges that Applicant failed to file his state and Federal tax returns for the 2011 tax year. Applicant presented an account transcript from the IRS that shows he filed his 2011 federal tax return in November 2012. He also presented documentation that shows he filed his 2012 tax return. He testified that he received an extension on his 2013 tax return, but plans to file it in the near future. He hired a Certified Public Accountant to assist him with his 2013 tax return filings. While his statements from the state do not show the date he filed his 2011 and 2012 tax returns, they do verify Appellant is making payments on his tax debt from that year. He credibly testified that he filed both his state and Federal tax returns for 2011. (AE B; AE C; AE D; AE F; AE G; AE J; Tr. 58-71.)

Applicant presented two letters of support. The first, authored by the Director of his agency, indicated Applicant is “a hard-working, competent and reliable worker . . . and his demonstrated reliability and dependability make [the Director] confident that he is worthy of the . . . security clearance.” (AE K.) A co-worker, the author of the second letter of support, attested to Applicant’s honestly and personal integrity. (AE K.)

Applicant testified that he was deployed 12 times during his service in the Marine Corps. He received numerous awards and decorations for his service including five Navy and Marine Corps Achievement medals. (Tr. 35-36.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. 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 AG ¶ 2 describing 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 clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant was in debt in the approximate amount of \$63,177.99 to numerous creditors, including his state taxation authority and the IRS, since 2009. He failed to file his state and Federal tax returns for 2011. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate these concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 fully apply:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are due to unforeseen circumstances. He was forced to evict a tenant that failed to pay rent and then caused significant damage to his property. Additionally, his pay was cut significantly when another Government contractor won the bid for his facility. Applicant has either resolved or is making payments on all of his alleged debts. He has filed his state and Federal 2011 tax returns. He has acted responsibly with respect to all of the debts on the SOR and made a good-faith effort to repay his creditors. AG ¶¶ 20(b) and 20(d) apply.

## 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 served honorably in the Marine Corps. He was deployed 12 times during his military career and received a number of commendations for his service. He is trusted by his employer and performs well on the job. While he had financial difficulties, he has diligently worked to address them. He paid his debts off slowly, as resources allowed. He has recently made agreements with his remaining creditors, but has a track record of following through on his payment plan. His promise to file his 2013 Federal and state tax return was credible, in light of the actions he has taken on all of his debts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person concept for Applicant.

## 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge