



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



In the matter of: )  
)  
) ISCR Case No. 14-04607  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

April 29, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is delinquent on three debts, in the total amount of \$27,378. He failed to produce documentation to show he has addressed his delinquencies. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 22, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 21, 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 December 22, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on February 10, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 11, 2015, scheduling the hearing for March 9, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits until April 6, 2015. On March 23, 2015, he requested an extension until April 20, 2015 to submit post hearing evidence. The request for an extension was granted. Applicant failed to submit anything further for consideration, and record was closed on April 21, 2015. DOHA received the transcript of the hearing (Tr.) on April 6, 2015.

### **Findings of Fact**

Applicant is 62 years old. He is employed as a custodian for a Government contractor. He is married. He provides support for his two children, ages 26 and 16, and his grandchild. (GE 1; Tr. 26-27.)

The Government alleged that Applicant is ineligible for a clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR alleged that Applicant is delinquent on three debts, in the total amount of \$27,378. In his Answer, Applicant admitted to each debt. The alleged debts were also listed on credit reports dated January 30, 2014; January 22, 2015; and March 8, 2015. (Answer; GE 2; GE 3; GE 4.)

Applicant attributes his financial delinquencies to: a reduction in overtime and losing "track of stuff." He also noted the financial delinquencies occurred around the time of the birth of a grandchild, but did not explain how the birth related to the delinquencies. (Tr. 20-21.)

Applicant is indebted on a charged-off debt for a repossessed vehicle in the amount of \$12,301. This debt has been delinquent since June 2009. He explained that once he fell behind on his vehicle loan, he worked to repay his delinquent payments because he did not want the vehicle repossessed. However, it was repossessed despite his efforts to bring the account current. He was approximately two months late on payments at the time of repossession. The vehicle was resold for less than he owed on the loan, and he still owes the balance. (GE 2; Tr. 21-26, 28.)

Applicant is indebted on a charged-off account in the approximate amount of \$6,100. It has been delinquent since January 2009. This debt was for a loan. It has not been repaid because Applicant does not have the money. (GE 2; Tr. 28-29.)

Applicant is indebted to another creditor in the amount of \$8,878. It has been delinquent since 2007. He does not recall the last time he made payment on this delinquency. (GE 2; Tr. 29.)

Applicant testified he lives paycheck to paycheck with only \$20 to \$30 remaining after he pays his monthly bills. He failed to submit evidence of financial counseling, a budget, or income statement. He provided no letters of recommendation or performance appraisals. (Tr. 32.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (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(a) 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 the 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 avoided drawing 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, 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 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:

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 remains indebted to three different creditors in the amount of \$27,378. He demonstrated both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

Four 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.

Applicant's substantial delinquent debts are recent and ongoing, without indication that the circumstances under which they arose have changed. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He attributed his delinquencies to a reduction in overtime and the birth of his grandchild, but admitted he did not monitor his finances carefully. He has been fully employed during the period he incurred substantial delinquent debts, and has not taken reasonable steps to resolve them. This is not responsible action under the circumstances.

Applicant did not undergo financial counseling. He failed to document any effort to resolve the SOR-listed delinquent debts. These facts preclude mitigation under MC 20(c) or 20(d).

### **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 all of 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.

Applicant's inability to resolve his financial obligations raises concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the whole-person concept against 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge