



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



In the matter of: )  
)  
) ISCR Case No. 14-04802  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

12/31/2015

**Decision**

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, dating back to before 2008. He has delinquent debts that are not paid or resolved. Financial security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

In April 2014 Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On March 23, 2015, the Department of Defense (DOD) 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; 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 within the Department of Defense for SORs issued after September 1, 2006.

On March 30, 2015, Applicant answered the SOR (Answer), and requested a hearing. On July 30, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On August 19, 2015, DOHA issued a hearing Notice of Video Teleconference Hearing, setting the case for September 9, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through C into evidence. All exhibits were admitted. The record remained open until September 30, 2015, to give Applicant an opportunity to submit more evidence pertinent to his delinquent debts. Applicant did not submit additional information. DOHA received the hearing transcript (Tr.) on September 17, 2015.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶¶ 1.a, 1.d, and 1.e. He denied the allegations in SOR ¶¶ 1.b, 1.c, and 1.f. His admissions are accepted as factual findings.

Applicant is 41 years old and married to his second wife for eight years. He has three children, ages 18, 20, and 21, from his first marriage. He served in the Air Force from 1993 to 1997, at which time he received a general discharge under honorable conditions. His rank was E-2. He began his current position with a defense contractor in June 2014. Prior to that, he worked for a private company for nine months. He was unemployed for four months in 2008, and for eight months from 1999 to 2000. (Tr. 15-19.) He held a Secret security clearance while in the Air Force, and while employed with another defense contractor for a period of time beginning in 2005. (Tr. 8.)

Applicant attributed his financial problem to periods of unemployment and garnishments for unpaid child support. All of his child support and arrears are now paid and his children have reached their majority. (Tr. 20.) More recently, he incurred medical bills, which he said he needs to pay first. (Tr. 47.)

Applicant's current annual salary is \$69,000 or about \$1,900 bi-weekly. (Tr. 19-20.) He does not have a written budget. (Tr. 19.) After paying bills, he has about \$700 remaining at the end of each month. He said he is current with all ongoing bills. (Tr. 22.)

Based on credit bureau reports (CBR) from April 2014 and March 2015, the SOR alleged five delinquent debts and one unpaid judgment totaling \$19,664. The status of each allegation is as follows.

1 (¶ 1.a) Applicant settled this \$2,325 debt that became delinquent in early 2014 and was owed to an apartment complex. In July 2015 he paid \$2,000 to resolve it. (Tr. 25; AE A, C.)

2. (¶ 1.b) Applicant disputed this \$370 debt owed to a cell phone company. The creditor removed it from his credit report in April 2015. (Tr. 26; Answer.)

3. (¶ 1.c) Applicant said he was unaware of this 2008 judgment for \$810. He said he disputed the debt online in March or April 2015. (Tr. 28-29.) It is unresolved.

4. (¶ 1.d) Applicant denied owing this \$15,234 delinquent account after an automobile repossession. He took out the auto loan in September 2012 and paid \$666 a month until February 2013. He said he returned the car because the automobile vendor did not perform according to their contract. He disclosed this debt in his April 2014 e-QIP, and stated he was awaiting a response from the creditor and that he may be responsible for the full amount. (GE 1.) He testified that he sent three letters to the creditor to dispute the matter. He sent the last letter in March 2015. (Tr. 31-32.) It is unresolved.

5. (¶ 1.e) This \$546 debt is from 2013 and is owed to a utility company. He offered a settlement in March 2015 but the company refused his offer. He said he will save money to make that payment after he pays a \$900 medical bill. (Tr. 33.) It is unresolved.

6. (¶ 1.f) Applicant said that he has no knowledge of this \$379 debt from 2010. After receiving the Government's discovery he did not investigate the debt, which appears on his April 2014 CBR. He said it does not appear on his March 2015 CBR. (Tr. 33; GE 2; AE C.) It is unresolved.

Applicant provided evidence that he resolved \$2,695 of the \$19,664 delinquent debts alleged in the SOR. Approximately \$16,969 of the alleged amount remains unresolved, the largest debt being from the automobile repossession.

There is no evidence that Applicant obtained credit or financial counseling. He did not provide a workable plan or budget from which his ability to resolve the remaining delinquencies and avoid additional debt problems can be predicted with any certainty. He submitted no evidence concerning the quality of his professional performance, or the level of responsibility his duties entail. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

### **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 (AG) 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Since before 2008, Applicant accumulated numerous delinquent debts that he has been unable or unwilling to resolve. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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;
- (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's financial problems have been ongoing since 2008 and continue into the present. Hence, AG ¶ 20(a) does not provide mitigation. Applicant has experienced some periods of unemployment, and more recently has incurred medical bills, which were circumstances beyond his control. However, he provided insufficient evidence that he acted responsibly while the debts were accumulating over the years; hence, AG ¶

20(b) has limited application. He did not offer any evidence that he received credit or budgetary counseling, and there are no indications that his finances are under control. Mitigation under AG ¶ 20(c) was not established. He settled the debt in SOR ¶ 1.a, indicating a good-faith effort to resolve that debt and establishing mitigation under AG ¶ 20(d) as to that debt. His successful dispute of the debt in SOR ¶ 1.b established mitigation under AG ¶ 20(e) as to that debt.

### **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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature, intelligent 41-year-old employee of a defense contractor. He is a former airman and employee of another defense contractor. He held a security clearance in the past. While those are positive factors, his history of financial problems, which seemingly started before the 2008 judgment was entered, is concerning. Although he noted in his April 2014 e-QIP that he was trying to resolve the \$15,000 automobile repossession, he did not submit any evidence documenting his previous efforts or indications that he is closer to a resolution of the matter. He apparently does not work with a written family budget nor has he sought financial counseling or assistance over the years. Until he establishes a track record of financial reliability, the evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance. Applicant did not meet his burden to mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c through 1.f:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM  
Administrative Judge