



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-05676

**Appearances**

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

07/31/2015

**Decision**

HOWE, Philip S., Administrative Judge:

On May 17, 2012, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On January 15, 2015, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); 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 on September 1, 2006.

Applicant answered the SOR in writing on February 23, 2015. Applicant admitted all six allegations. Applicant requested his case be decided on the written record in lieu of a hearing.

On May 4, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to the Applicant on May 15, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on May 26, 2015. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on June 25, 2015. Department Counsel did not object to the admission of these documents and I admitted them into the record. I received the case assignment on July 14, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted all the allegations and attached two documents in support of the Answer. The Response contained the same answers to the allegations, and additional documents. (Item 1; Response)

Applicant is a 45 year old employee of a defense contractor. He is a naturalized U.S. citizen since 1997. He and his first wife divorced in 2006 and had the marital debts assigned to his name. He filed Chapter 7 bankruptcy in 2007 on those debts of about \$12,000 (Subparagraph 1.f), and his debts was discharged that year. Applicant later remarried. (Items 2, 6)

Applicant owes five delinquent debts totaling \$74,466. The other listed debts started in 2007 or later and remain unpaid. (Items 2-4, 6)

Applicant owes \$55,035 in arrearages on his home mortgage (Subparagraph 1.a). He submitted a statement from a law firm that he is attempting to obtain a loan modification to lower his monthly payments from \$1,900. The letter is dated January 19, 2015, but no updated information was provided. This debt remains unresolved. (Items 2-4; Answer)

Applicant owes \$1,900 on a loan originally owed to a bank and now being collected by a debt collector (Subparagraph 1.b). Applicant submitted an installment payment agreement for \$123.42 monthly starting in July 2015 until June 2016. He also sent copies of his checking account showing two payments were made in June 2015. This debt is being resolved. (Items 2-4; Response)

Applicant owes \$67 on a medical account dating from 2011 (Subparagraph 1.c). Applicant did not address this debt in his Answer or Response with proof of payment. His Answer declared he would pay the debt, but beyond making that statement Applicant did not offer any proof of payment. This debt is unresolved. (Items 2-4)

Applicant owes \$1,899 to a bank (Subparagraph 1.d). Applicant pays this debt on an installment payment agreement. He made two payments: \$118.73 on June 4, 2015; and \$300 on June 5, 2015. This debt is being resolved. (Items 2-4; Response)

Applicant owed a time share developer \$15,565 on a unit he purchased (Subparagraph 1.e). He enclosed a letter from the creditor/developer with his Answer in which the creditor/developer proposed to accept ownership of the unit in full satisfaction of the debt. This letter is dated December 2011. This debt is resolved by this method. (Items 2-4; Answer)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Department Counsel submitted six Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 14, 2013. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

### **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 useful 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, the administrative judge applies 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2007 to the present, Applicant accumulated five delinquent debts, totaling \$74,466 that remained unpaid or unresolved. He also filed Chapter 7 bankruptcy on earlier debts in 2007.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

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

AG ¶ 20 (d) applies because Applicant entered two installment payment agreements with creditors to repay those debts. He hired an attorney to modify his home loan, but he did not submit any current proof that any action has been taken to accomplish that goal. He resolved his time share debt by ceding the property back to the developer pursuant to an agreement the developer proposed. His 2007 bankruptcy is in the past and is a legitimate method to resolve debts. The real issue is that he filed bankruptcy once and then continues to compile debts. However, he is trying to resolve his current debt situation short of filing another bankruptcy.

### **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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on his delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Subparagraph 1.f:

For 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.

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PHILIP S. HOWE  
Administrative Judge