



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



In the matter of: )  
)  
) ISCR Case No. 14-05581  
)  
Applicant for Security Clearance )

**Appearances**

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

07/24/2015  
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**Decision**  
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HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on July 15, 2013 that he certified on July 17, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on December 12, 2014, 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 for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he answered it on January 11, 2015. Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on March 9, 2015, and I received the case assignment on April 2, 2015. DOHA issued a Notice of Hearing on April 20, 2015, and I convened the hearing as scheduled on May 14, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection.<sup>1</sup> Applicant testified. He did not submit any exhibits. DOHA received the hearing transcript (Tr.) on May 22, 2015. I held the record open for Applicant to submit additional matters. Applicant timely submitted AE A - AE G, which were received and admitted without objection. The record closed on June 24, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a to 1.g of the SOR. His admissions are incorporated herein as findings of fact. He denied the general security concern of Guideline F. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 59 years old, seeks employment as a technician on equipment through a position with a DOD contractor. Applicant has periodically worked as a per diem employee for this contractor.<sup>2</sup>

Applicant and his first wife married in 1980, and they divorced in 1990. He has a 33-year-old son from this marriage. Applicant married his second wife in 1994, and they separated in 2011. He has a 33-year-old stepdaughter from his second marriage. She wrote a letter of recommendation on his behalf. She described him as dependable, reliable, law abiding, and a man of his word. She trusts him and teaches her son the values he taught.<sup>3</sup>

After high school graduation, Applicant enlisted in the United States Air Force in 1977. In the Air Force, he learned electronics while working on the flight line. He received an honorable discharge from the Air Force in September 1984. Applicant received good performance evaluations and fitness reports in the Air Force.<sup>4</sup>

Applicant began work as a technician with a company in 1984. This company merged with a larger company in 1989, and Applicant continued to work as a technician.

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<sup>1</sup>At the hearing, Department Counsel withdrew the initial exhibit marked as GE 2 and renumbered GE 3 through GE 5 to GE 2 through GE 4. Tr. 15.

<sup>2</sup>GE 1; Tr. 17, 21, 30-31.

<sup>3</sup>GE 1; AE A; Tr. 20.

<sup>4</sup>GE 1; Tr. 31-34.

After 23 years of combined employment with both companies, Applicant's employer laid him off in October 2006, when the company transferred his job overseas. While working for this company, Applicant met or exceeded in all aspects of his job skills and duties.<sup>5</sup>

Beginning in October 2006, Applicant experienced periods of unemployment from October 2006 to November 2007, March 2010 to September 2010, April 2011 to August 2011, September 2011 to April 2012, October 2012 to June 6, 2013, and June 20, 2013 to August 2013, and July 1, 2014 to the present. Applicant worked several contract positions during this time, the longest with his long-term employer until the company stopped contract work in 2010. Since July 2011, he has worked per diem for the company sponsoring him for his clearance. He usually worked three to four per diem calls a month.<sup>6</sup>

During periods of unemployment and at one other time, Applicant enrolled in classes to upgrade his computer skills to increase his employment opportunities. He attended a technical school from November 2006 until April 2007, but he did not receive a certificate or diploma. He completed a second program in July 2007 at another school. He started another program at this school in August 2008, but left in April 2009 without receiving a certificate or diploma. He completed another certificate program in July 2012, and he is currently studying to be a network administrator.<sup>7</sup>

Applicant left school in April 2007 to care for his terminally ill father. Applicant used his savings, his retirement account, and unemployment benefits to support himself when unemployed. At the time of the hearing, Applicant was receiving \$144 a week in unemployment benefits, which he anticipated ending around June 30, 2015. If his unemployment ended, Applicant planned to find a part-time job as he wanted to complete his training program. He had not been working per diem because it reduced his unemployment benefits.<sup>8</sup>

Applicant filed for Chapter 7 bankruptcy in April 2009, and his debts were discharged in October 2009. His educational loans were not discharged in the bankruptcy. He sold his house through a short sale and does not owe a balance on his mortgage loan.<sup>9</sup>

Applicant currently lives in a room in local veterans housing. He pays one-third of his unemployment income (\$192) as his rent. He owns a 2002 car. He receives medical benefits through the Veterans Administration (VA). He has applied for a VA disability

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<sup>5</sup>GE 1; AE F; Tr. 17-18, 21, 35.

<sup>6</sup>GE 1; Tr. 18-21.

<sup>7</sup>GE 1; Tr. 18, 21, 23.

<sup>8</sup>Tr. 18-21, 23, 26-27.

<sup>9</sup>GE 2; Tr. 22-23.

benefit based on hearing loss. Besides his rent, Applicant pays \$30 a month in car insurance, \$100 a month for gasoline, and more than \$100 for food. He has a prepaid cell phone from a veterans group. Applicant has limited income available to pay debt.<sup>10</sup>

The SOR asserts that Applicant has three unpaid educational loans in allegations 1.b (\$3,809), 1.d (\$3,370) and 1.e (\$3,144) for a total educational debt of \$10,323. In 2012 or 2013, Applicant contacted the appropriate agency to arrange payment of these debts. He made some payments, but was unable to continue with both his educational loan payments and his rent. He advised that his educational loans had been deferred in the past. After the hearing, Applicant contacted the Department of Education by email to request information about deferment of his past-due loans. He advised that he was unemployed. He sent a follow up letter on his request on June 24, 2015. He has not received a response.<sup>11</sup>

The SOR also alleges three unpaid debts in paragraphs 1.c (\$3,524), 1.f (\$511) and 1.g (\$191) for a total debt of \$4,226. Applicant lacks the resources to pay these debts. After the hearing, Applicant sent a \$5 payment to two creditors, including the creditor listed in 1.g. The March 2015 credit report does not list any account information for Applicant because he requested a security freeze. The two earlier credit reports do show these three debts are unpaid.<sup>12</sup>

Applicant submitted a reference letter from his case manager at the veterans transitional housing program. She advised that he entered their program in September 2014. She described him as an outstanding individual in their program. He attends training classes to improve his Intel and computer skills, and he follows his case plan with a goal of becoming independent. She considers him trustworthy, forthright and honest based on her contacts with him. She advised that he looks for employment and works to build his knowledge in several areas.<sup>13</sup>

Applicant stated that he wants to work steadily and permanently. With work, he plans to pay his debts so that he would “have his honor again”. The record lacks any evidence of credit counseling.<sup>14</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>10</sup>Tr. 22, 26-28.

<sup>11</sup>AE B; AE C; Tr. 24, 39-41.

<sup>12</sup>GE 2-GE 4; AE D; AE E.

<sup>13</sup>AE G.

<sup>14</sup>Tr. 37.

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.

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. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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 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 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed significant financial problems after his employer laid him off in 2006, when it transferred his job overseas. His separation from his wife in 2011, and his sporadic employment contributed to the accrual of unpaid bills. The debts have not been resolved. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following 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 bills remain unpaid, and his unemployment or under employment remain a problem, making AG ¶ 20(a) inapplicable. Since he lost his long-time job in 2006, Applicant has experienced extensive periods of unemployment or underemployment, factors beyond his control. Applicant and his wife separated in 2011, another factor beyond his control. Over the years, Applicant has sought additional computer-related training to develop skills to increase his ability to find steady employment. When he had what he believed to be steady employment in 2012 or 2013,

he contacted the company servicing his student loans and developed a payment plan for his outstanding loans. Given the circumstances in which he continues to find himself, Applicant has acted responsibly. AG ¶ 20(b) applies.

The record lacks evidence of credit counseling, and Applicant's debts are not under control. AG ¶ 20(c) does not apply. However, after the hearing, Applicant contacted the Department of Education about a payment plan or deferment of his loan based on his unemployed status when he learned that he could be eligible for a deferment. He also sent two small payments to creditors to apply towards the resolution of unpaid debts. AG ¶ 20(d) is partially applicable.

### **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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began when he lost his long-term job with a major employer. He lost his job in 2006 through no fault of his own, but as a result of corporate decision making. For more than seven years, Applicant has been unemployed or underemployed off and on, creating severe financial issues for him. He lives frugally, but lacks sufficient income to pay his education loans and his \$4,000 of debt. As an electronics technician, he must continually upgrade his skills and knowledge, which he has done and is doing again to make himself more employable. Because he is currently unemployed, he reasonably

sought deferment of his education loans, as his current lack of employment would allow his loans to be deferred. His minimal offer to two creditors is sufficient to constitute a good faith effort to resolve his debts, even if a creditor rejects the offer of payment.

After many years of steady employment in the Air Force and in private industry, Applicant joined the ranks of the chronically unemployed. He has learned new skills and obtained contract work, which, in his case, has been temporary and sporadic. How an employer categorizes a position is a determination over which Applicant has no control. He has, however, worked to improve himself with through education and skills training, tools within his control. At age 59, he is learning a new computer skill to regain meaningful employment. Until he obtains gainful and steady employment, Applicant can not reasonably resolve his debts. He is taking the right steps towards achieving his goal of financial independence. In reviewing the evidence of record, I find that Applicant would not mishandle classified information or reveal classified information even though he has been unable to resolve 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 mitigated the security concerns arising from his finances under Guideline F.

### **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
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Subparagraphs 1.a - 1.g:	For Applicant
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### **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 a security clearance is granted.

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MARY E. HENRY  
Administrative Judge