



**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. 17-03312

**Appearances**

For Government:

Aubrey De Angelis, Esquire, Department Counsel

For Applicant:

Jerry Koger, Personal Representative

December 13, 2018

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on March 21, 2016. (Government Exhibit 1.) On October 16, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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 *National Security Adjudication Guidelines for Determining Eligibility for Access to Classified*

*Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 13, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 12, 2018. The case was assigned to me on February 26, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on March 6, 2018. I convened the hearing as scheduled on April 4, 2018. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant offered Applicant Exhibits A through N, which were admitted without objection, and testified on his own behalf. He called one additional witness. I granted Applicant's request to leave the record open to permit him to submit additional evidence. DOHA received the transcript of the hearing on April 12, 2018. Applicant submitted Applicant Exhibits O, P, and Q in a timely manner. Department Counsel had no objection and the exhibits were admitted into evidence. The record then closed.

### **Findings of Fact**

Applicant is 33 years old and employed by a defense contractor. He is single, with one child. Applicant is seeking to retain a security clearance in connection with his employment.

Applicant is a disabled, retired Soldier. He was severely injured on active duty in a combat zone. He suffered a traumatic brain injury (TBI), as well as other physical injuries. He also has been diagnosed with Post-Traumatic Stress Disorder (PTSD). He was medically retired in 2010 with the rank of Specialist (E-4). He continues to have physical and psychological issues connected to his military service. These issues include organizational skills, ability to prioritize, and memory lapses. This situation had an impact on his ability to organize his finances and pay his debts for several years. (Applicant Exhibits N, Q at 47-61; Tr. 41-49, 54, 153.)

Applicant was medically retired in February 2010. He was unemployed or underemployed until November 2011, when he was hired by the predecessor of his current employer. This also had an impact on his ability to pay his debts. (Government Exhibit 1 at Section 13A.)

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted SOR allegations 1.c through 1.yy, 1.aaa through 1.ccc, 1.eee, 1.fff, and 1.iii through 1.kkk. He denied allegations 1.a, 1.b, 1.zz, 1.ddd, 1.ggg, and 1.hhh.

The SOR alleged that Applicant owed approximately \$17,362 in past-due indebtedness to various creditors. Support for the existence and amount of the debts is supported by admissions of the Applicant, and credit reports submitted by the Government dated May 10, 2016; and September 8, 2017. (Government Exhibits 2 and 3.) Applicant submitted an annotated version of Government Exhibit 2. (Applicant Exhibit C.) He also submitted additional credit reports dated November 4, 2017; March 22, 2018; and March 26, 2018. (Applicant Exhibits D, E, and F.)

The current status of the debts is as follows:

1.a. Applicant denied that he owed a bank \$4,432 for an automobile that was repossessed from Applicant in 2011. He was unable to pay this debt because he was underemployed at the time. Applicant had never been contacted by this creditor and had no further information about the status of this debt. It is unresolved. (Government Exhibits 2 and 3; Applicant Exhibit D; Tr. 91-92.)

1.b. Applicant denied owing \$2,971 to a creditor for a collection account, stating in his Answer that there was no record supporting him owing that amount of money. Applicant testified that he spoke to this creditor and they had stopped all collection proceedings concerning Applicant. The creditor said that they had closed the files on this debt, and others further described below that Applicant admitted in his Answer. (Applicant Exhibits C and M; Tr. 70-72, 132-133.)

1.c. Applicant admitted that he owed \$2,383 for a past-due student loan debt. Applicant has a payment arrangement concerning this debt, and is in compliance with that arrangement. This debt is being resolved. (Applicant Exhibits E at 39, K at 11, and L; Tr. 76-79, 151-152.)

1.d. Applicant admitted that he owed \$1,229 for a second past-due student loan debt. Applicant has a payment arrangement concerning this debt, and is in compliance with that arrangement. This debt is being resolved. (Applicant Exhibits E at 39, K at 11, and L; Tr. 76-79, 151-152.)

1.e. Applicant admitted that he owed \$599 to a creditor for a charged-off debt. He established a payment arrangement with this creditor, and provided supporting documentation showing this debt was paid. It is resolved. (Applicant Exhibits E at 22, K at 9-10; Tr. 79-81, 116, 135.)

1.f. Applicant admitted that he owed \$477 to a creditor for a charged-off debt. He established a payment arrangement with this creditor, and provided supporting documentation showing this debt was paid. It is resolved. (Applicant Exhibits E at 22, K at 9-10; Tr. 79-81, 116, 135.)

1.g, 1.i, 1.j, 1.k, 1.m, 1.o, 1.r, 1.u, 1.w, 1.x, 1.y, 1.z, 1.ee, and 1.oo. Applicant admitted owing these debts to the same creditor, a collection agency. They are medical

co-pays and total \$1,391. Applicant contacted this creditor and was informed that collection attempts had been stopped, and the files had been purged. Applicant was also informed that he owed nothing further to this creditor. He indicated that he was willing and able to pay these debts if possible. These debts are not resolved. (Applicant Exhibit M; Tr. 70-72, 103-105.)

1.h, 1.i, 1.p, 1.s, 1.aa, 1.bb, 1.dd, 1.ff, 1.gg, 1.hh, 1.ii, 1.jj, 1.tt, 1.vv, 1.ww, 1.xx, 1.yy, and 1.aaa. Applicant admitted owing these past-due debts to a different debt-collecting creditor. They are primarily medical co-pays and total \$1,069. Applicant has paid all these debts in full, as shown by documentation from the creditor. In addition, he paid \$74 for other debts that were not alleged in the SOR. All these debts are resolved. (Applicant Exhibit Q at 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 26, 29, 30, 31, 32, 33, 34, 35, and 36; Tr. 59-64, 100-101.)

1.n. Applicant admitted owing this debt for a collection account for a telephone bill in the amount of \$128. Applicant attempted to contact the collection agent for this debt, but was unsuccessful. This debt is not resolved. (Applicant Exhibit J.)

1.q. Applicant admitted owing a creditor \$79 for a medical collection account. Applicant testified that he had paid this debt in full, once he found out who the current creditor was. This debt is resolved. (Applicant Exhibit M; Tr. 64-66.)

1.t. Applicant admitted owing a creditor \$76 for a past-due debt to a named company. A debt to this company was paid in full as described under SOR allegation 1.aaa, set forth above. Comparing entries in the Government credit report (Government Exhibit 2 at 3) with the payment document for allegation 1.aaa (Applicant Exhibit 2 at 32) I find this is the same debt and it has been resolved.

1.v, 1.cc, 1.kk, 1.ll, 1.mm, 1.nn, 1.pp, 1.qq, 1.rr, 1.ss, 1.uu, and 1.fff. Applicant admitted owing these past-due medical debts. The debts total \$446. Through research, Applicant was able to determine that the named creditor named in allegation 1.cc was actually collecting for all these debts. Applicant has paid these debts in full, as shown by documentation from the creditor. These debts are resolved. (Applicant Exhibit Q at 9, 12, 18, 19, 20, 21, 22, 23, 24, 25, 27, and 28; Tr. 87-90.)

1.zz. Applicant denied owing a delinquent debt to a bank stating he had paid it. The SOR does not state a dollar amount as to this alleged past-due debt. Government Exhibit 2 does not state a past-due amount concerning this debt, noting, "Purchased by another lender." Applicant stated that he paid this debt in full years before the SOR was issued. Government has failed to show that Applicant owes any current debt to this creditor. (Government Exhibit2; Tr. 135-138.)

1.bbb. Applicant admitted owing \$119 for a past-due medical debt. During his testimony Applicant stated that he had no further information about this debt, and had not paid it. This debt is unresolved. (Tr. 72-73.)

1.ccc. Applicant admitted owing \$118 for a past-due medical debt. During his testimony Applicant stated that he had no further information about this debt, and had not paid it. This debt is unresolved. (Tr. 72-73.)

1.ddd. Applicant denied that he owed a creditor \$629 for a past-due debt for television services. He stated that he had resolved all of his debts for services such as this when he left a residence several years before the hearing. No other information was available. This debt is not resolved. (Tr. 83-84, 115.)

1.eee. Applicant admitted that he owed a bank \$610 for a debt. Applicant testified that the only account he had with this bank was for the automobile that was repossessed and discussed under allegation 1.a, above. No other information was available. This debt is not resolved. (Tr. 81-82.)

1.ggg. Applicant denied owing a past-due debt to a utility company in the amount of \$225. He stated that he had resolved all of his debts for services such as this when he left a residence several years before the hearing. No other information was available. This debt is not resolved. (Tr. 83-84, 115-116.)

1.hhh. Applicant denied owing a delinquent debt to a bank, stating in his Answer, "I don't recognize this at all." The SOR does not state a dollar amount as to any alleged past-due debt. Government Exhibit 2 does not state a past-due amount concerning this debt, noting, "Purchased by another lender." Government has failed to show that Applicant owes any current debt to this creditor. (Government Exhibit 2; Tr. 135-138.)

1.iii. Applicant admitted owing \$56 for a past-due insurance bill. Applicant contacted this insurance company and paid the debt in full. This debt has been resolved. (Applicant Exhibit M; Tr. 93.)

1.jjj. Applicant admitted owing \$106 to a city for a collection account. He submitted documentation that showed this debt had been paid in full. This debt is resolved. (Applicant Exhibit O; Tr. 93-94.)

1.kkk. Applicant admitted owing \$187 to a city for a collection account. He submitted documentation that showed this debt had been paid in full. This debt is resolved. (Applicant Exhibit O; Tr. 93-94.)

The business manager of Applicant's union has helped Applicant organize his finances. This includes determining the full extent of his debt load and a plan moving forward to resolve it. (Applicant Exhibits I and J; Tr. 105-109.)

Applicant has had some family issues that have impinged on his finances, including his grandmother's recent death and the hospitalization of his mother. Applicant realized that he must take care of his own indebtedness first, in order to help his family into the future. (Applicant Exhibits H, Q at 44-46; Tr. 109-114, 141-143.)

Applicant's current financial situation is stable. He lives very frugally, renting a room in a house. Applicant continuously monitors his credit and pays off his older debts as his income allows. He is current on child support payments of \$900 a month for his daughter who lives in a different city. He has worked hard over the last several years to get his financial house in order, and has a plan to pay the rest of his debts in the near future. Applicant successfully paid off an automobile in 2016. He also paid off three personal loans totaling approximately \$20,000 including interest between 2014 and 2016. Applicant understands the importance of resolving his past-due debts and remaining fiscally secure into the future. (Applicant Exhibits C at 7, F at 10, I, J, K at 8, P at 5-8, Q at 37-43; Tr. 52-53, 64, 95, 101-103, 129-130, 144-147, 156-157.)

## **Mitigation**

Applicant's current supervisor testified on his behalf. He has known Applicant about four years. He testified that Applicant is trustworthy and capable, and recommended him for a position of trust. (Tr. 29-39.)

Applicant provided two letters of recommendation from people who know him in the defense industry. Applicant's program manager stated, "I trust [Applicant] to continue working in classified spaces and I have never found a reason to doubt or question him." A coworker stated, "I have always trusted [Applicant] with information and I have never found a reason to doubt or question him. I can confidently attest that he will not let you down." (Applicant Exhibits B and C.)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 national security eligibility.

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. 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, "Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

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

Applicant had approximately \$17,000 in past-due debts that he had not paid or resolved as of the time the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to 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 had a difficult time transitioning from the military to civilian life. His injuries, particularly a TBI and PTSD, made it difficult for him to focus and pay his bills. Before 2014 there were issues with a repossessed automobile, and other past-due indebtedness. Since that time, he showed through documentation, that his financial situation had improved. He was able to buy a car, and pay off three personal loans. He is able to pay his current debts, including child support for his daughter, and has a plan for paying off the remainder of his debt. AG ¶ 20(b) applies because much of the debt, and Applicant's inability to pay it, was related to the injuries he suffered in the service.

Despite continued medical issues, Applicant has taken control of his financial situation. That is obvious once his entire financial history is examined. Certainly, he was deficient in paying his TRICARE copays, which constitutes a lot of his debt. He has paid



or resolved almost \$7,000 of the debt set forth in the SOR. This includes making payment arrangements for his student loans. He also paid off several of his medical creditors. He has shown a good-faith effort to resolve his financial situation. As the DOHA Appeal Board has said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”<sup>1</sup> AG ¶¶ 20(a) and 20(d) apply.

Since much of the remaining debt alleged in the SOR is old, Applicant has had a hard time finding the current creditors. Even when he had found such an entity, some have told Applicant that collection efforts are no longer being made, and that they will not take his money. Under the particular circumstances of this case, I find that AG ¶ 20(e) applies to some extent.

The Appeal Board has stated:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>2</sup>

Applicant’s current financial status is stable, and he evinces a credible intent and ability to maintain that stability into the future. Applicant has made substantial lifestyle changes that will assist him in staying on a proper financial footing. He has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

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<sup>1</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

<sup>2</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a national security eligibility 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(d):

(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 national security 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 has mitigated the concerns regarding his financial situation. His actions have minimized the potential for coercion or duress, and make recurrence of financial issues unlikely. Overall, the record evidence does not create substantial doubt as to Applicant's present eligibility and suitability for national security eligibility, and a security clearance.

## **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: FOR APPLICANT

Subparagraphs 1.a through 1.kkk: 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge