



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No: 18-02640  
)  
)  
Applicant for Security Clearance )

For Government: Eric Price, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2019

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of unpaid debts. He did not mitigate the resulting financial security concerns. National security eligibility for access to classified information is denied.

**Statement of the Case**

On December 21, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. Applicant answered the SOR in writing (Answer) on January 19, 2019, and requested a hearing before an administrative judge.

On April 5, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On May 6, 2019, DOHA issued a Notice of Hearing setting the case for May 29, 2019. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified and offered

Applicant Exhibits (AE) A through F into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on June 13, 2019.

The record remained open until June 15, 2019, to give Applicant an opportunity to submit additional evidence. He timely submitted proof of payment of a delinquent debt that I marked as AE G, and admitted into the record without objection. I extended that deadline to June 19, 2019, based on Applicant's representations that he was waiting for additional evidence. He again timely submitted an additional exhibit that I marked as AG H, and admitted into the record without objection.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.j, 1.k, and 1.l. He denied the allegations SOR ¶¶ 1.b, 1.c, 1.g, 1.h, and 1.i, and stated he paid these debts. His admissions are incorporated into these findings.

Applicant is 25 years old. He graduated from high school in 2012. He has two children, ages three and four, with a former girlfriend. They live in another state. Since October 2017, he has lived with his fiancée, who is pregnant with their child. (Tr. 22-23, 25-26)

After graduating from high school, Applicant went to work for local retail companies. In May 2013, he began a position with a private company. He worked there until April 2015, when he voluntarily resigned his position after a dispute with his employer and moved to another state to be with his two children. He obtained another job in the new state at a lesser salary and worked there until July 2016, when he was in an automobile accident. He was unable to return to work until September 2017. He then moved back to his former state and worked as a private driver. In April 2018, he started a position with a federal contractor. He has also attended technical school. (Tr. 23-25; GE 1)

Applicant attributed his financial problems to the following factors: quitting his position in April 2015; moving to another state; being unable to find a good paying job there; and the long period of unemployment he experienced after his automobile accident in July 2016. (Tr. 26) He admitted that he exercised poor judgment when he resigned his position and moved to another state where his children lived, without having another job. (Tr. 60)

Based on a credit bureau report (CBR) from April 2018, the SOR alleged 12 debts that became delinquent between 2014 and 2017, and totaled \$29,554. The status of each debt is as follows:

1. (1.a) The \$14,314 charged-off automobile loan is unresolved. The last payment Applicant made on the car loan was in March 2015, a month before he resigned his job. He said he voluntarily returned the car. The original loan was more than

- \$20,000. He explained that he is paying collection debts before resolving charged-off accounts. (Tr. 34-36)
2. (1.b) The \$130 debt owed to an insurance company for car insurance was paid in April 2018. It is resolved. (Tr. 36; AE A at 7)
  3. (1.c) The \$599 debt owed to a cable company was paid in August 2018. It is resolved. (Tr. 37; AE A at 7)
  4. (1.d) The \$662 debt owed to a retail store is unresolved. The account was closed in June 2015. Applicant more recently called the creditor to settle the account for a lesser amount but was unsuccessful. The creditor wants the full amount. It is unresolved. (Tr. 38)
  5. (1.e) The \$660 debt owed to a wireless company was paid in March 2019. It is resolved. Applicant used some of his \$1,200 tax refund from 2018 to pay this debt. (Tr. 39; AE B)
  6. (1.f) The \$4,088 debt owed to a creditor for an unpaid loan is unresolved. Applicant stopped paying the debt in March 2015. He had been paying it for about a year. The creditor will not take payments on the debt or settle it for less than \$4,088. (Tr. 40-42)
  7. (1.g) The medical debt for \$222 was paid by Applicant's lawyer after his automobile accident in 2016. It is resolved. (Tr. 42; AE H)
  8. (1.h) The medical debt for \$399 was paid by Applicant's lawyer after his automobile accident in 2016. It is resolved. (Tr. 43; AE G)
  9. (1.i) The medical debt for \$125 is paid. (Tr. 44-45; AE C)
  10. (1.j) The \$1,115 debt owed to a credit card company is unpaid. Applicant's last payment was in March 2015. (Tr. 45-46)
  11. (1.k) The \$3,452 debt owed to a creditor for a personal loan is unresolved. Applicant obtained the loan to pay off debts in February 2015. He made payments on the loan until May 2015. The creditor recently agreed to settle it for \$1,200, but he cannot afford that amount currently. (Tr. 46-49)
  12. (1.l) Applicant owes his former employer \$3,788 for personal expenses he charged to his employer's credit card while traveling for his job. It also includes about \$1,200 for tools and materials he purchased to use for his employer's project from October to December 2014. He said his supervisor gave him authorization to use the credit card to purchase the tools he needed. He said he had routinely put personal expenses on the credit card and paid them when payment was due. He knew he was not supposed to use the travel card for

personal expenses, but he had done so in the past without a problem because he promptly paid his personal expenses when he received the credit card statement. He acknowledged that some of the personal expenses he put on the card were to purchase alcohol in a bar. He received reimbursement for the authorized expenses on the card, but not for the tools or his personal expenses. He quit this job in April 2015, as noted above, without having paid the credit card debt. (Tr. 50-58, 77-78; AE D)

The credit card balance is now \$4,039. Applicant began making monthly payments of \$289 in February 2019. He intends to have the debt paid in December 2020. The debt is slowly being resolved. (AE D)

Applicant earns \$53,000 annually. He pays \$500 a month in child support for his two children. He uses an online app to keep track of his income and expenses. He does not owe federal or state taxes. He has been making monthly payments of \$90 on a \$632 delinquent loan debt not alleged in the SOR. He has not taken a budget or credit counseling course, but has had help from his mother, who teaches budgeting and financial planning at a university. (Tr. 29-30, 32-34, 73-74; AE F)

Applicant submitted a letter of recommendation from his supervisor, who strongly supports Applicant's request for a security clearance. He relies on Applicant when he is out of the office. He said Applicant is a "trustworthy individual." (AE C)

### **Policies**

This case is adjudicated 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying 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, 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(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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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.

Section 7 of Executive Order 10865 provides that an adverse decision 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 Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are 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. Financial distress can also be caused by or exacerbated by, and thus can be a possible indicator of, other issues of personnel 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 acts to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. The following are potentially applicable in this case:

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

Applicant has a history of being unable to satisfy his debts that began in 2014 and continued into 2018, when he started to resolve them. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out conditions that could potentially mitigate those financial security concerns under this guideline:

- (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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts have been ongoing for at least three years before he began to address them. AG ¶ 20(a) does not apply. Applicant's financial problems significantly increased in mid-2015, after he quit his job, which Applicant admitted was a poor decision, and a circumstance within his control. Between 2016 and 2017, he was unable to work because he was in a serious automobile accident, which was a circumstance beyond his control. He did not attempt to responsibly manage the delinquent debts until he began the security clearance process. The evidence establishes some mitigation under AG ¶ 20(b).

Applicant received credit or financial counseling from his mother, a financial planner. He has paid six debts, totaling \$2,135, demonstrating that those debts are under control. He initiated a good-faith effort to resolve the \$3,788 credit card debt owed to his

former employer through monthly payments. He established mitigation as to those seven debts under AG ¶¶ 20(c) and 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(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) 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 must include 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant testified candidly and forthrightly while discussing his delinquent debts. He admitted that he made a poor financial decision in April 2015 when he chose to resign from his job without having found another one in the state where he intended to move. As a consequence of that and an unfortunate accident, he was subsequently unable to pay numerous financial obligations that he had assumed. In 2018, he began to slowly resolve them. To date, he has paid or resolved seven of the twelve debts totaling \$5,923. He has been unable to financially address the remaining five debts that total \$23,631. While he is establishing a track record of responsibly managing his debts, he has not fully mitigated the security concerns raised under the financial considerations guideline. The record evidence leaves me with some doubt as to Applicant's judgment and suitability for a security clearance at this time.

## 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
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g through 1.i:	For Applicant
Subparagraphs 1.j and 1.k:	Against Applicant
Subparagraph 1.l:	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 a security clearance. National security eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge