



**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. 23-02413

**Appearances**

For Government:

Andrew Henderson, Esquire, Department Counsel

For Applicant:

*Pro se*

07/29/2024

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 14, 2023. (Government Exhibit 1.) On October 30, 2023, the Defense Counterintelligence and Security Agency Central Adjudication Services (DCAS CAS) 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 Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant submitted an undated written answer to the SOR (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 22, 2024. The case was assigned to me on February 6, 2024. The Defense Office of Hearings and Appeals (DOHA) issued an Amended Notice of Hearing on February 21, 2024. The case was heard on March 13, 2024.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf. He asked that the record remain open until March 29, 2024, for the receipt of additional documentation. DOHA received the transcript of the hearing on March 22, 2024. He did not submit any additional information and the record closed as scheduled.

### **Findings of Fact**

Applicant is 46 years old and divorced. He has a high school education. He is currently employed outside the defense industry, but is not working due to a work-related injury. He is pending employment with a defense contractor, who is sponsoring him for a security clearance. (Tr. 9-10; Government Exhibit 1 at Sections 12, 13A, and 17.)

#### **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.

The SOR alleged that Applicant had ten past-due or charged-off debts totaling approximately \$25,000 (SOR 1.a through 1.j). Applicant admitted all the allegations in the SOR with explanations. The most recent credit report in the record, from January 2024, indicates that the debt has increased to over \$31,000. The existence and amounts of these debts is supported by credit reports dated April 1, 2023; and January 22, 2024. The existence of the debts is also supported by Applicant's responses to Government interrogatories dated August 27, 2023. They were also admitted during statements he made to a Government investigator during an interview conducted May 3, 2023. (Government Exhibits 2, 3, 4, and 5.)

Applicant and his former spouse were married from 2008 until 2023, when their divorce was finalized. The ex-spouse had control of the couple's finances during most of the marriage. Applicant separated from his then-spouse in 2020 and stated they have had no further contact. It was in 2020 that he was able to regain control of his finances. Applicant argued that many of the debts were the result of his then-spouse fraudulently acquiring debt in Applicant's name before their separation. He supplied documentary information that one creditor, not alleged in the SOR, acknowledged the opening of a fraudulent account. (Tr. 24-27, 32-33, 39-40; Government Exhibit 2 at 17.)

Applicant also testified that he suffered a work-related injury in July 2023 and was not currently working, receiving worker's comp, or unemployment compensation. He further testified that he has been unable to make any payments on his debts since his injury because of his lack of income. He had no estimate as to when he would be able to get back to work. (Tr. 35-37, 45-48.)

Applicant testified that at one point in 2020 he had retained a credit-repair company to assist him with resolving his debts. After six months he stopped working with them because they were not helping him resolve any of his debts. (Tr. 34-35.)

Applicant stated that he had retained a lawyer to file bankruptcy for him. He further testified that the lawyer had been paid, but that no bankruptcy had yet been filed. He was given an opportunity to provide documentation from the bankruptcy lawyer about his representation of Applicant. No documentation was provided. (Answer; Tr. 33-35, 48-50.)

The current status of the allegations in the SOR is as follows:

1.a. Applicant admitted owing approximately \$7,202 for a charged-off bank credit card debt. He stated that he acquired this credit card before his marriage. He has made no recent payments on this debt and has no current plans to make any payments on it. This debt has not been resolved. (Tr. 27-28.)

1.b. Applicant admitted owing approximately \$4,901 to a bank for a charged-off credit card debt with the account number ending 7482. He was unsure of the current status of this debt because he had at least one other account with this bank. He also indicated that this account was possibly one of the fraudulent ones opened by his ex-spouse. (Tr. 31-34.)

The available records show another account with this bank, not alleged in the SOR, with the account number starting 4672. Records attached to his interrogatories show several payments were made on this account in 2023. It is unclear whether these payments were voluntary or due to a garnishment. (Tr. 35-36; Government Exhibit 2 at 13-15.)

Applicant also stated that one of more of these accounts may have been subject to a garnishment. He submitted a pay stub from August 2023 that showed a garnishment in the amount of \$1,837.86. However, the record is unclear what debt that garnishment was to pay. (Tr. 35-36; Government Exhibit 2 at 16.)

Applicant was given an opportunity to supplement the record concerning this debt. No documentation was provided. Based on the state of the record I find that Applicant owes the debt alleged in allegation 1.b. I further find that there have been no current payments on that debt and that he has no current plans to pay it. This debt is not resolved.

1.c. Applicant admitted owing this charged-off credit card debt in the amount of \$4,006. He testified that he had paid \$3,000 towards this account after he separated from his ex-spouse in 2020, but was unable to continue to pay it due to work issues. He was given an opportunity to supply documentation supporting his statements. No documentation was provided. He has made no recent payments on this debt and has no current plans to make any payments on it. This debt has not been resolved. (Tr. 28-30.)

1.d and 1.f. Applicant admitting having two charged-off accounts with the same bank. One in the approximate amount of \$3,582 and the second in the amount of \$1,343. He has made no recent payments on these debts and has no current plans to make any payments on them. These debts have not been resolved. (Tr. 37-38, 40.)

1.e. Applicant admitted owing \$1,371 for a charged-off credit card account. He stated that the existence of this debt was a “surprise to me.” He has made no recent payments on this debt and has no current plans to make any payments on it. This debt has not been resolved. (Tr. 38-40.)

1.g. Applicant admitted owing a \$133 past-due debt to a creditor. He stated that this account for television services was opened by his ex-spouse, but the service was used by both of them. He has made no recent payments on this debt and has no current plans to make any payments on it. This debt has not been resolved. (Tr. 40-42.)

1.h. Applicant admitted owing a creditor \$297 for an account placed for collection by an automobile insurance company. He stated that his ex-spouse was supposed to pay this insurance bill, but did not do so. Applicant admitted he used the vehicle during the time it was insured. He has made no recent payments on this debt and has no current plans to make any payments on it. This debt has not been resolved. (Tr. 42-44.)

1.i. Applicant admitted owing a creditor \$844 for an account placed for collection by a bank. Applicant stated that the existence of this debt was “another surprise that he [ex-spouse] had opened up that account.” He has made no recent payments on this debt and has no current plans to make any payments on it. This debt has not been resolved. (Tr. 44-45.)

1.j. Applicant admitted owing \$1,292 for an account placed for collection by a bank. Once again, he stated that his ex-spouse had opened this account without his knowledge. It appears that this account was opened in November 2020, after Applicant and his ex-spouse had separated. There is a legitimate dispute as to whether this debt is Applicant’s. Accordingly, this allegation is found for him. (Tr. 45; Government Exhibit 5 at 4.)

## 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 owed approximately \$25,000 for ten past-due or charged-off debts as of the date 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's current financial situation is not stable. All of the financial issues set forth in the SOR are related to Applicant's marriage in one way or another. I have considered his arguments that some of the debts were fraudulent in that the accounts were opened by his ex-spouse without Applicant's knowledge. However, the record is unclear as to how much information Applicant had about this conduct. The evidence shows that on several occasions he had knowledge of the new accounts because he used the account, or the services connected to the account. As of the present time, as confirmed by Applicant, he has no intention of paying any of these past-due debts.

I have also considered the fact of Applicant not working from July 2023 to the date of the hearing. If he had been making consistent payments on these debts prior to that date, or taken other responsible steps, mitigating condition ¶ 20(b) might apply. However, there is little evidence of any steps taken by Applicant. He was given an opportunity to supplement the record with documentary information to support his statements and did not supply any.

It is Applicant's burden to show sufficient evidence to support application of the mitigating conditions. He has not done so. As stated, allegation 1.j is found for Applicant. With that exception, the remaining allegations and Guideline F are found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for 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 not the concerns regarding his financial situation. He has not reduced the substantial potential for pressure, coercion, or duress, and there is a high likelihood of recurrence. Overall, the record evidence does create substantial doubt as to Applicant's present 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:

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|--------------------------------|-------------------|
| Paragraph 1, Guideline F:      | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.i: | Against Applicant |
| Subparagraph 1.j:              | 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge