



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 14-00167
	)	
Applicant for Security Clearance	)	

**Appearances**

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

August 14, 2014

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

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on May 6, 2013. (Government Exhibit 1.) On March 12, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on April 21, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 19, 2014. This case was assigned to me on May 22, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 27, 2014. I convened the hearing as scheduled on July 1, 2014. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant submitted Applicant Exhibits A through E, which were admitted without objection, called one witness, and testified on his own behalf. Applicant asked that the record remain

open for the receipt of additional documents. DOHA received the transcript of the hearing (Tr.) on July 10, 2014. Applicant timely submitted Applicant Exhibit F, which was admitted without objection. The record closed on July 17, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 51, and married with two children. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment.

#### **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 all the allegations in the SOR under this Paragraph. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

The SOR lists six delinquent debts, totaling approximately \$37,858 (SOR 1.c through 1.h). This amount includes delinquent taxes in the amount of approximately \$16,000. The existence and amount of these debts is supported by credit reports dated May 9, 2013; October 28, 2013; May 19, 2014; and June 30, 2014. (Government Exhibits 4, 5, 6, and 7.) In addition, the SOR alleges that Applicant filed for Chapter 7 bankruptcy protection in 1996 and 2012 (SOR 1.a and 1.b).

According to Applicant, his current financial difficulties began in approximately 2008. At that time payments on Applicant's variable rate mortgage, concerning a house he bought in 2003, began to increase and he could not make the payments. The house was foreclosed upon in 2009. At that time Applicant and his wife moved into a rental house, where they have remained. During that time Applicant's wife's business also failed, and eventually they had to use credit cards to pay bills. That is where the majority of the debt delinquencies come from, other than the tax debt discussed below. (Government Exhibit 2 at 5.; Tr. 27-33, 37-38.)

1.a. Applicant admits that he filed for Chapter 7 bankruptcy in 1996. His unsecured debts in the amount of \$107,686 were discharged in August 1996. (Government Exhibit 3.) According to Applicant this bankruptcy was primarily caused by his being laid off at his employment, and thereby going through a loss of almost half his yearly income when he got new employment for a year and a half. By the time his original job recalled him the debt situation had deteriorated. (Tr. 33-37.) Based on the time since this bankruptcy was filed, as well as the circumstances surrounding its filing, this allegation has no current security significance. It is found for Applicant.

1.b. Applicant admits filing for Chapter 7 bankruptcy protection in August 2012. This bankruptcy was voluntarily dismissed by Applicant in December 2012. According to Applicant, the bankruptcy was dismissed because he failed the so-called means test. This was because he made too much money for a Chapter 7 case and a more appropriate vehicle was a Chapter 13. (Tr. 51-54.)

Regarding repayment of his debts after the dismissal of his Chapter 7, Applicant testified:

So after that and after I failed the means test I went to see an attorney after that to see how do you go about this. And when he was looking at some of that debt he advised he said, well, these are all past the four year statute of limitations, they really can't come after you on it anyhow. If you want to pay on them that's up to you to call them and work out some type of payment plan, which yes I plan on doing that. (Tr. 46-47.)

The current status of the debts alleged in the SOR is as follows:

1.c. Applicant admits that he is indebted to the Internal Revenue Service (IRS) for delinquent taxes in the amount of approximately \$16,000. The debt is due to the fact that Applicant filed his taxes in a timely manner from 2009 through 2013, but insufficient withholding was taken out of his paycheck and he couldn't pay the taxes when due. (Government Exhibit 2 at 21-27; Tr. 39-41.) Applicant finally began talking to the IRS about repayment this year. He has been making payments of \$350 a month since February 2014. (Applicant Exhibits E and F at 3-5; Tr. 41-43.) This debt is being resolved.

1.d. Applicant admits that he is indebted to a creditor for a debt in the amount of approximately \$12,172. (Tr. 60.)

1.e. Applicant admits that he is indebted to a creditor for charged-off account in the amount of \$4,002. (Tr. 45-47.) Applicant has not made any payments on this debt and has no current plans to pay this debt. It is not resolved.

1.f. Applicant admits that he is indebted to a creditor for charged-off account in the amount of \$8,355. Under extensive questioning Applicant eventually revealed that he had been sued by a successor creditor. A judgment had been issued against Applicant in the amount of approximately \$12,000. Applicant had paid \$3,500 towards this debt in June 2014 and was being garnished in the amount of \$1,000 a month beginning in August 2014 to resolve the remainder of the debt. (Applicant Exhibit F at 3,7; Tr. 47-50, 61.) This debt is being resolved.

1.g. Applicant admits that he is indebted to a creditor for charged-off account in the amount of \$2,737. (Tr. 50.) Applicant has not made any payments on this debt and has no current plans to pay this debt. It is not resolved.

1.h. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of approximately \$2,869. (Tr. 51.) Applicant has not made any payments on this debt and has no current plans to pay this debt. It is not resolved.

Regarding all of his past-due debts Applicant states that his “intent is to pay them all, to contact them and pay them.” (Tr. 50. See Tr. 54, 59.)

## **Mitigation**

Applicant submitted two letters from co-workers, showing that he is a well-regarded and respected employee. (Applicant Exhibits A and B.) His most recent performance review showed that he “Achieves Expectations.” (Applicant Exhibit D.)

Applicant’s witness was a friend of five years who also works in the defense industry, but in a different company than Applicant. (Tr. 64-73.) The witness describes Applicant as a “trustworthy,” “honest,” and “hardworking” person. (Tr. 66.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has a considerable amount of debt that he has either been unable or unwilling to pay for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” AG ¶ 20(b)

states that the disqualifying conditions may be mitigated where “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.” Also, AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” None of these mitigating conditions apply to Applicant’s case.

Applicant’s financial difficulties have been in existence since at least 2009, if not before. In 2012 he made an attempt to resolve his debts by means of a Chapter 7 bankruptcy, which would have discharged all but his tax debt. Applicant failed the means test, and elected not to convert his case to a Chapter 13 wage-earner plan, which would have repaid his unsecured creditors. Rather, if not for the SOR, Applicant had decided not to repay any of his debts because they were old and appeared to be beyond his state’s statute of limitations.

He only began repaying the tax debt this year, which includes unpaid taxes for 2013, which were not alleged in the SOR, as well. The few monthly payments to date have not established a sufficient track record of compliance to mitigate security concerns, particularly since he has not paid his taxes in a timely fashion since 2008 despite regular employment. In addition, it has to be said that Applicant was not exactly forthcoming with information during his testimony about allegation 1.f. It took extensive questioning by Department Counsel to have Applicant grudgingly admit that he was subject to a lawsuit about this debt, that a judgment had been entered against him, that his pay was being garnished, and that he had taken a loan from his 401(k) to pay part of this particular debt. While it is now being repaid, it is not through a good-faith or voluntary effort at resolution by Applicant.

In conclusion, looking at Applicant’s entire financial situation at the present time, the evidence does not support a finding that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

### **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 the relevant circumstances. 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 administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. He has a history of not paying his debts, and it is too soon to show that he is now trustworthy and reliable. Applicant's conduct with regards to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

### **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:	AGAINST APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against 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.

WILFORD H. ROSS  
Administrative Judge