



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



In the matter of:	)	
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	)	ISCR Case No. 12-05820
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

June 23, 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 January 28, 2012. (Government Exhibit 1.) On January 28, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) 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 March 20, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 16, 2014. This case was assigned to me on April 22, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 29, 2014. I convened the hearing as scheduled on May 16, 2014. The Government offered Government Exhibits 1 through 6, which were admitted without objection. The

Government also submitted Administrative Judge Exhibit I for record purposes. Applicant submitted Applicant Exhibits A through D, which were also admitted without objection, 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 May 27, 2014. Applicant timely submitted Applicant Exhibit E, which was admitted without objection. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 28 and engaged. He is employed by a defense contractor and is applying for a security clearance in connection with that 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, except for subparagraph 1.j. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance, including his statements in response to DOHA interrogatories (GE 2).

The SOR lists 11 delinquent debts, totaling approximately \$27,719. The existence and amount of most of these debts is supported by credit reports dated February 15, 2012; November 5, 2013; April 16, 2014; and May 15, 2014. (Government Exhibits 3, 4, 5, and 6.) According to Applicant, his financial problems began, "A long time ago." (Tr. 28.) Some of his debts extend back to the 2005-2006 time frame. Most of them, however, appear to have arisen after 2010. In particular, Applicant's hours were cut by his employer in 2011, which seriously affected his ability to pay any of his debts beyond the bare necessities of life. (Tr. 36-37.) In addition, he had issues with his mother, who is an alcoholic and a drug abuser. (Tr. 56-57.) Applicant intends to pay all of his bills now that he is in a better financial situation. (Tr. 54-55.) He has not taken any financial management courses. "Just a lot of research and reading and just asking advice of some of the people in the finance office." (Tr. 28.)

The current status of the debts is as follows:

1.a. Applicant admits that he is indebted to a creditor for a repossessed automobile in the amount of \$4,116. Applicant bought the car in 2012 and it was repossessed about a year later. According to Applicant, he was unable to maintain the car payments because of the reduction in his work hours. He has made no payments on this debt, and has not had any contact with this creditor. (Tr. 29-34.) This debt is not resolved.

1.b. Applicant admits that he is indebted to a creditor for a debt in the amount of \$2,030 for an unpaid medical bill dating from 2005-2006. He has made no payments on this debt, and has not had any contact with this creditor. (Tr.34-36.) This debt is not resolved.

1.c. Applicant admits that he was indebted to a creditor for a past-due cable debt in the amount of \$71. (Tr. 36-38.) He submitted evidence that he paid this debt in full after the hearing. (Applicant Exhibit E at 4.) This debt is resolved.

1.d. Applicant admits that he is indebted to a creditor for a past-due debt concerning a gym membership in the amount of \$2,408. Applicant stated that he had concerns about this debt, but has not contacted the collection agency to resolve them. He further admitted that he had not made any payments on this debt and had no current plans to make any payments. (Tr. 38-42.) This debt is not resolved.

1.e. Applicant admits that he is indebted to a creditor for a medical debt in the amount of \$42. According to Applicant this debt may be connected to an automobile collision he was involved in. He has recently informed his attorney of this debt, and hopes to have it resolved. Based on the advice of counsel, he has not made contact with this creditor. (Tr. 42-44.) This debt is not resolved, but is currently in litigation.<sup>1</sup>

1.f. Applicant admits that he is indebted to the U.S. Department of Education for a student loan debt in the amount of \$15,147. Applicant testified that he started school at about the time he obtained his current employment about three years ago. His manager stated that Applicant needed to make a choice between going to school or his job, but not both. Applicant subsequently withdrew from school, but then his hours were cut at work. Since he was now out of school his loan became due and owing, but he could not pay anything on it. Applicant recently began a repayment program with the Government. He submitted information that the first payment has been made. (Applicant Exhibits A and E at 3; Tr. 50-54, 63-64.) Based on all available information, I find that this debt is not resolved, but Applicant has begun a payment plan..

1.g. Applicant admits that he is indebted to a creditor for a credit card debt in the amount of \$790. He has made no payments on this debt, which is approximately ten years old, and has not had any contact with this creditor. (Tr.44-45.) This debt is not resolved.

1.h. Applicant admits that he is indebted to a creditor for a medical debt in the amount of \$1,704. He has made no payments on this three-year-old debt, and has not had any contact with this creditor. (Tr.45-47.) This debt is not resolved.

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<sup>1</sup>Applicant testified that he found out about this debt for the first time within six months of the hearing. (Tr. 43.) There is evidence that shows Applicant was first asked about this account during an interview conducted by an investigator with the Office of Personnel Management (OPM) on March 14, 2012. (Government Exhibit 2 at 25.)

1.i. Applicant admits that he is indebted to a creditor for a wireless debt in the amount of \$1,067. He has made no payments on this four to five year old debt, and has not had any contact with this creditor. (Tr.47-48.) This debt is not resolved.

1.j. Applicant denies that he owes a creditor \$108 for a past-due telephone bill. Applicant has repeatedly stated he has never had an account with this telephone company. He stated in his Answer to the SOR that this account may actually have been opened by his late father, who had the same name as Applicant. Applicant has not made any contact with this creditor in an attempt to resolve the situation. (Tr. 48-50.) This debt is not resolved.

1.k. Applicant admits that he is indebted to a creditor for a cable debt in the amount of \$236. However, Applicant testified that he has never had this cable company, and that this may be another situation where his late father opened the account. Once again, Applicant has not made contact with the creditor in an attempt to resolve the situation. (Tr. 49-50.) This debt is not resolved.

Applicant supplied information about his current income, as well as yearly income for 2013. (Applicant Exhibit E at 2, 5-6.) Regarding his plans for paying his debts he stated, "I'm not making much for a two person household, so it will take time for me to completely pay all my debts in collection. I do again want to make it clear that I intend to clear all debts none the less." (Applicant Exhibit E at 1.)

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process. Applicant admitted that he had false answers on his questionnaire, but denied there was an intent to deceive the Government.

Regarding his finances, Applicant stated that within the seven years prior to filling out the questionnaire he had not had bills turned over to a collection agency; and had not had any credit card suspended, charged off, or cancelled for failing to pay as agreed. (Government Exhibit 1 at question 26.) These answers were not true, as set forth in detail under Paragraph 1, above.

Applicant stated that he did not intend to mislead the Government in regards to his answers on the questionnaire. Rather, he testified, "I didn't check my credit. I thought that some of the things that were on there had fallen off because it was so long since I paid it. I figured, you know, since they were fallen off, what can I do?" (Tr. 58.)

As stated, the questionnaire was signed by Applicant on January 28, 2012. He was interviewed by an investigator for OPM on March 14, 2012. In his written report concerning this interview the agent states:

The subject volunteered that while on his paperwork he had listed "no" to all of the financial questions as he was not sure what his finances

looked like. After filling out the case papers, he ran his credit report and saw that he did have some accounts in collections, details not recalled. He was not trying to hide anything. He just was not sure at the time. He is in the process of trying to clean up his credit. (Government Exhibit 2 at 25.)

## **Mitigation**

Applicant submitted several letters of reference from co-workers. (Applicant Exhibits B, C, and D.) His first line supervisor wrote Applicant Exhibit B. He stated that Applicant is “an honest and trustworthy person with high integrity that hit a bump in the road, but is working hard every day to fix it.” The other writers describe Applicant as someone with a “can do attitude,” and also “an upstanding guy.”

## **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 over \$27,000 in past-due debts, all of which have been due and owing 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." Applicant's financial difficulties have been in existence since at least 2006. He has been able to pay one debt (1.c), and one debt is involved in litigation (1.e). Those allegation are found for Applicant. Applicant has just begun a payment plan for his largest debt, a student loan of over \$15,000. There is not enough of a track record of payments to find this

allegation for Applicant. He does not have a reasonable plan to pay the remaining debts. This mitigating condition does not have significant application in this case.

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.” I have considered the decrease in Applicant’s work hours, and its impact on his finances. However, as became clear during the hearing, Applicant does not have a solid grasp of his financial situation, and no real plans for resolving it. Accordingly, I cannot find that he has acted responsibly in attempting to resolve his financial situation. This mitigating condition does not have application in this case.

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.” Applicant has submitted some evidence showing that he has paid one small debt. However, he did not present any evidence that he has acceptable payment arrangements with the majority of his creditors.

Applicant testified that two debts (1.j and 1.k) may actually have been his late father’s. AG ¶ 20(e) requires that “the individual [have] 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 admitted that he has not contacted either creditor to resolve the situation. This mitigating condition does not have application in this case.

In conclusion, as stated above, looking at Applicant’s entire financial situation at the present time, I cannot find 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.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The following mitigating conditions under AG ¶ 17 apply to the facts of this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is no question that Applicant's answers to question 26 on the e-QIP were wrong. However, they were not intentionally false. Less than two months later, when interviewed by a Government investigator, Applicant volunteered that he had bad debts, which he had only discovered after filling out the questionnaire. Under the particular circumstances of this case, Applicant's actions were not unreasonable, nor do they show particularly poor judgment. Paragraph 2 is found for 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



Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. He has a long history of not paying his debts, and does not currently have a good grasp of his overall financial situation. Applicant's conduct with regards to his finances was not mitigated. Applicant did show that the omission of relevant and material information from his e-QIP was accidental and not intentional.

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 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge