



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-07822
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

09/15/2015

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant has been unable to resolve two large delinquent debts that date back to 2009. He is also in litigation regarding unpaid child support. He failed to present sufficient evidence to mitigate the financial security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 11, 2000, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On October 3, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On January 27, 2015, Applicant answered the SOR (Answer), and requested a hearing. On April 27, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 5, 2015, DOHA issued a hearing notice, setting the case for July 2, 2015. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant did not offer any exhibits. The Government's exhibits were admitted without objection. Applicant and his wife testified. The record remained open until July 23, 2015, to give Applicant time to submit additional information. Applicant timely submitted two exhibits, which I marked as Applicant Exhibits (AE) A and B, and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on July 13, 2015.

### **Findings of Fact**

Applicant admitted the allegations contained in Paragraphs 1.a and 1.b of the SOR, denied the allegations contained in Paragraph 1.c, and provided explanations. His admissions are accepted as factual findings.

Applicant is a 55-year-old employee of a defense contractor, where he has worked since 1985. He was married to his first wife from 1981 to 1996. He and his former wife have four adult children. Three of the children serve in the U.S. Navy. He married his second wife in 2010. They do not have children. (Tr. 18-20.) He attended a junior college for almost two years. (Tr. 22.)

Applicant's financial problems began in 1996 when he and his first wife divorced, and he started paying \$2,000 a month in child support, in addition to paying the children's high school tuition, totaling about \$26,000 annually. At the time his annual salary was \$48,000 gross. After making child support payments for four years he was unable to pay many of his bills. (Tr. 50, 53; GE 2.) He then began using credit cards for expenses. (Tr. 54.) He enrolled in a debt consolidation program in 2009 and was able to resolve several accounts through the program. (Tr. 52; GE 2.) He stopped participating in the program at one point because he was experiencing problems with it. (Tr. 46.) In July 2013 the state began garnishing his wages for \$1,500 a month for unpaid child support. That garnishment is still in place and affects his ability to resolve other delinquent debts.

The SOR contained three allegations. The status of each allegation is as follows:

1. The \$23,582 debt alleged in SOR ¶ 1.a is owed to a credit card creditor for a judgment entered in October 2010. Applicant's wages were garnished for that debt until the court entered the July 2013 garnishment order for unpaid child support. That garnishment takes precedence over the credit card garnishment. (Tr. 37-38.) Applicant said that the creditor is willing to work out a settlement, but he cannot pay it until the child support issues are resolved. (Tr. 73.) In a post-hearing submission, Applicant re-iterated his statement that he is trying to negotiate a settlement on this debt. (AE B at 1.)

2. The \$11,753 debt alleged in SOR ¶ 1.b is owed to a credit card creditor for a debt charged off in 2009. Applicant has not contacted the creditor for over 10 years. (Tr. 45.) In a post-hearing submission, Applicant said he is working out a settlement for this debt. (AE B at 1.)
3. The child support debt list in SOR ¶ 1.c for \$96,000 is being disputed by Applicant. He said that he paid his former wife in cash and that she kept a ledger of the payments. (Tr. 34.) He contends that she owes him money at this time. Since December 2013 he has paid his former wife \$32,000 through the garnishment. (Tr. 70.) The most recent correspondence from the state indicated that he owed \$39,000, which Applicant disputes. (Tr. 77; AE B at 2.) His lawyer submitted a letter stating that since 2013 Applicant and his former wife have been in an ongoing dispute about the amount of child support allegedly owed by Applicant. (AE A.)

Applicant and his wife have a net monthly income of about \$2,000. He has \$95,000 in his 401(k). He is repaying two loans from his 401(k). The balance is \$14,000. The original loans totaled about \$38,000. (Tr. 28-29; AE B at 4.) He owes about \$952 to the Internal Revenue Service for his 2014 income taxes. (Tr. 31; AE B at 1.) About two years ago he and his wife attended a six to eight week financial and budgeting course. (Tr. 28-29.) They have tried making a budget, but have not been successful in maintaining it. (Tr. 26.) He said he has not been disciplined enough to implement the course's suggestions. (Tr. 52.) Neither he nor his wife use credit cards. (Tr. 46.) Applicant said as soon as the child support issue is resolved, he will be able to resolve the outstanding civil judgment and other delinquent debt. (Tr. 73-75.)

Applicant testified honestly and credibly. He said he would never compromise his country or job for money. He has held a security clearance since 1985. (GE 2.) He acknowledged that he has mishandled his finances at times. He wants to resolve his financial problems. (Tr. 80-81.) Applicant's supervisor is aware of this proceeding. (Tr. 23.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, 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 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(a) and 2(c), 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 that “[a]ny doubt concerning personnel being considered for access to classified information 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads:

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.

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

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

Applicant's financial problems began in 1996 when he and his first wife divorced, and he became responsible for child support. Since 2009 he has been unable to resolve all of his delinquent debts. The evidence is sufficient to raise both disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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 financial problems have been ongoing since 2009 and continue to date; hence, AG ¶ 20(a) does not provide mitigation. There is some evidence to indicate that Applicant's child support dispute may have been caused, in part, by his former wife and was beyond his control. In 2009 he hired a debt consolidation company which helped resolve some debts. He no longer uses that company because of problems he experienced with it. The evidence establishes limited mitigation under AG ¶ 20(b), as Applicant did attempt to manage his debts for a period of time. Applicant participated in financial and budgetary counseling two years ago. However, the evidence does not

demonstrate that his finances are under control, because he does not have a solid budget and two credit card debts totaling about \$35,000 remain unresolved since 2009. AG ¶ 20(c) does not apply. Because two of the three SOR-listed debts resulted in garnishments and the third debt has not been addressed for over ten years, there is insufficient evidence to conclude that he has made a good-faith effort to resolve his debts. AG ¶ 20(d) does not provide any mitigation. Applicant is disputing the amount of the alleged delinquent child support in court. He does not dispute the other two debts. Hence, AG ¶ 20(e) has some application to the child support debt.

### **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(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.

According to 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a 55-year-old employee of a defense contractor, who has held a security clearance for most of his employment since 1985. He has history of financial problems, which he said, date back to 1996 when he and his first wife divorced and he became responsible for child support. While many of his subsequent financial problems are clearly attributable to those circumstances, he acknowledged that he has not managed his finances responsibly over the years. He admitted that he has been unable to follow a budget. Without a solid plan for resolving these problems, including unpaid taxes, there is a strong likelihood that similar issues will continue to recur and call into question his reliability and judgment. Overall, the record evidence leaves me with concerns as to Applicant's present eligibility and suitability 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

### **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.

SHARI DAM  
Administrative Judge