



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



In the matter of: )  
)  
) ISCR Case No. 12-09258  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: Joseph Testan, Esq.

January 24, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had three delinquent debts totaling \$242,625, identified on the Statement of Reasons (SOR). Applicant repaid one small debt. He contacted a second creditor and attempted to repay that debt, but was told the debt was “obsolete.” He failed to take actions on the largest debt of \$220,128, because he believed it to be legally unenforceable. Reliance on the non-collectability of his remaining debts does not constitute a good-faith effort to resolve the debt within the meaning of the Directive. Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his electronic Security Clearance Application (e-QIP) on April 20, 2012. On September 19, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for Financial Considerations. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant answered the SOR (Answer) on October 7, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 19, 2013. A notice of hearing was issued to Applicant on November 20, 2013, scheduling a hearing for December 16, 2013. Applicant's counsel requested a continuance, and the hearing was rescheduled on December 9, 2013 to January 6, 2014. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. The Government also presented documentation, marked Hearing Exhibit (HE) I for administrative notice and such notice was taken. Applicant testified on his own behalf, and offered Applicant's Exhibits (AE) A through S. Applicant's counsel asked that administrative notice be taken of AE A through AE C and that AE D through AE S be admitted into evidence. Department Counsel had no objection to this request and the documents were admitted into the record for their stated purpose. DOHA received the transcript of the hearing (Tr.) on January 14, 2014.

### **Procedural Ruling**

At the hearing on January 6, 2014, I made an amendment to the SOR, *sua sponte*, pursuant to Directive ¶ E3.1.17, to correct a misspelling of the Applicant's name on the SOR. Neither the Government nor the Applicant had objections to the amendment. (Tr. 9.)

### **Findings of Fact**

Applicant is 53 years old. He is married and has one adult son. He has been employed by a government contractor since March 2012.<sup>1</sup> Applicant served in the Army from 1978 to 1981. He achieved the rank of E-4. He held a security clearance while in the Army, without incident. (GE 1; AE E; Tr. 59-62.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified three delinquent debts totaling \$242,625. Applicant's debts appear in credit reports entered into evidence. Applicant denied the debts as alleged in subparagraphs 1.a through 1.c. (Answer; GE 4; GE 5; GE 6.)

Applicant has a history of financial problems prior to incurring the debts alleged in the SOR. Applicant worked for a government contractor from 1987 to 1997,<sup>2</sup> when he

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<sup>1</sup> From January 2012 to March 2012, Applicant worked for his present employer as a contract employee. He was hired as an employee in March 2012.

<sup>2</sup> Applicant identified his previous employment with the Government contractor on his e-QIP and in his testimony to have occurred from 1987 to 1999. However, his Statement of Subject, dated August 31,

was laid off. He held a security clearance, without incident, during that period of employment. He experienced financial problems as a result of that layoff and the failure of his home businesses. He used credit cards to purchase items for the businesses, but the interest rates caused the balances to continuously increase. He stopped paying his mortgage “enabling [him] to maintain [his] credit card payments.” He filed Chapter 7 bankruptcy in March 1997 as a result. His debts were discharged through the Chapter 7 bankruptcy. (GE 1; GE 2.)

After Applicant’s 1997 bankruptcy, his finances improved. In 1995 Applicant had obtained a real estate license. After his lay-off in 1997, he decided to sell real estate full time. He further enhanced his career in real estate by obtaining a real estate broker’s license in 2006. He testified that from 2001 to approximately 2007, he made a six figure income through his real estate business. (GE 2; Tr. 63-64.)

In 2005 Applicant purchased a property that consisted of a home and a dog kennel. He planned to live in the home and his wife would operate the kennel. Applicant testified the purchase price of the property was \$575,000. However, the credit reports reflect Applicant’s first mortgage was for \$460,000 and he had a second home equity line of credit (HELOC) upon which he owed approximately \$220,128. SOR subparagraph 1.b pertains to the HELOC. Applicant testified that he did not make a down payment when he purchased the property, but he did reinvest the commission he received from the sale, as the listing and buying agent. Applicant testified that the terms of both the primary mortgage and the HELOC required interest-only payments for the first two years. They would both then become variable rate loans. He planned to have his wife operate the kennel for two years. If the kennel business was successful, Applicant intended to refinance the mortgage and the HELOC. If the kennel business was not profitable, he intended to sell the property before the mortgage and the HELOC rates increased. (GE 3; Tr. 65-68.)

In 2007 shortly before Applicant’s mortgage and the HELOC rates were scheduled to increase, he applied to refinance the mortgages. The kennel business was profitable and he wanted to keep the property. However, the holder of the HELOC reported in error that Applicant had been 30-days late on his payment. As a result, the refinancing was declined by the lender. The holder of the HELOC issued Applicant a letter of apology and eventually corrected error on Applicant’s credit report, but the real estate market had “crashed” in the meantime. Applicant could no longer secure a refinanced loan based on stated income. Applicant’s monthly first mortgage payments increased from \$2,891.19 in April 2007, to \$4,388.57 in May 2007. His payments on the HELOC also increased, although he did not provide documentation to show how much. He tried to sell the property, which he listed at \$625,000 in December 2007, but he received no offers. (GE 3; AE F; Tr. 67-74.)

At the same time Applicant’s mortgage and HELOC payments increased, his real estate business declined. He could no longer afford to satisfy his mortgage or the

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1998, indicated he was laid off in June 1997. Applicant’s recital of the dates is inconsistent and confusing. Irrespective of the actual dates, Applicant previously discharged debt through Chapter 7 bankruptcy due to both unemployment and failed investment decisions.

HELOC. He made payments at the increased rates for a few months, but exhausted his savings and eventually defaulted on both his first mortgage and the HELOC. The home was foreclosed upon in approximately June 2008 by the first mortgage holder. The first mortgage was satisfied by the foreclosure, but the HELOC remained outstanding. Applicant had little contact with the creditor owning the HELOC debt. The creditor listed this debt as a charged off account in the amount of \$220,128 on Applicant's May 2012 credit report. Applicant explained in his answer that his state's "statute of limitations on breach of contract is 4 years." He further noted that this debt was no longer listed on his credit report. At hearing, he testified that he has not had any communications with this creditor since 2012 when he asked the creditor "why it was still on my . . . credit report." After that inquiry, the creditor removed the HELOC entry from his credit report. He made no request to make payments on this obligation during that communication. He continued, "I pretty much figured that they - - we were pretty much equal, with what - cause what they cost me, and compared to that." Yet, he asserted that he would be willing to work out payments with them. (GE 6; AE A; Tr. 75-77, 97-115, 124-130.)

After the foreclosure, Applicant and his wife moved in with his sister-in-law for approximately six months. Applicant worked as a sales manager with a real estate company, at a significantly reduced income. Most of his income went to pay for medical insurance. Applicant, his wife, and his son all had serious and costly medical ailments during this period. The \$250 medical bill listed in subparagraph 1.a on the SOR was for an unpaid medical bill that Applicant incurred in approximately May 2009. He produced documentation that shows this debt was satisfied through payment of \$368.22 on February 28, 2013. (AE G; AE H; AE L; AE M; AE R; Tr. 76-83, 103, 112.)

As a result of their financial problems, Applicant returned a luxury vehicle he financed in 2005 to the lender when he could no longer afford the payments. The lender who financed the purchase listed this as a charged off account in the amount of \$22,247 on Applicant's May 2012 credit report, as identified in SOR subparagraph 1.c. Applicant testified he contacted this creditor in 2012 concerning this account to work out payments. After the creditor was unable to locate the account, Applicant was told it was deleted from his credit report due to "obsolete data." He provided a letter from this creditor to that effect. (GE 3; GE 4; AE N; Tr. 86-89, 95-97, 116.)

After Applicant was hired by his current employer in March 2012, he began to address the numerous financial delinquencies he incurred between 2007 and 2012. He provided documentation to show he satisfied four debts totaling approximately \$13,285. He testified that he is currently able to meet his monthly obligations. His personal financial statement, created on December 27, 2013, shows Applicant has a monthly net remainder of \$1,430.85, after he satisfies his monthly obligations. Applicant has \$17,443.43 in retirement savings. He lives in a rented apartment and is current on the rent. Applicant's wife is not employed. He has not had any formal financial counseling. Applicant recently leased a new vehicle for his wife's use. (AE I; AE J; AE K; AE L; AE P; AE Q; Tr. 83-91, 117-119.)

Applicant is respected for his honesty, trustworthiness, and integrity by both his professional and personal contacts. He is active within his church and participates in

outreach ministries such as feeding the homeless. He also works with youth in his community. His work ethic is considered to be exemplary and his work performance evaluations reflect he has met or exceeded all rating criterion since 2012, when he was hired. He presented a number of certificates of recognition for his community service. He served as the president of a real estate organization in 2006. (AE D; AE O; AE S; Tr. 49-58.)

### **Policies**

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 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, administrative judges apply the guidelines 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 access to classified information will be resolved in favor of national security." In reaching the 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." The applicant has the ultimate burden of persuasion to obtain 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. The 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 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 EO 10865 provides that adverse decisions 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern 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. Two are potentially applicable in this case:

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

The SOR alleges that Applicant incurred approximately \$242,625 in delinquent debt. The debts have been delinquent since 2008. While Applicant satisfied the medical debt for \$250, he claims that the HELOC and vehicle loan are legally uncollectable. Given the record evidence in its entirety, the Government has established its *prima facie* case against Applicant. All of Applicant’s delinquent debts were reported on his May 2012 credit report. The evidence shows Applicant’s “inability or unwillingness to satisfy” his HELOC debt and an overall “history of not meeting financial obligations.”

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable, including:

- (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.

In this case, events beyond Applicant's control contributed to his financial difficulties including several years of underemployment, an error reported on his credit report, the economic downturn in the real estate market, and the subsequent health problems his family encountered. He has addressed a number of debts not listed on the SOR, satisfied the \$250 debt listed in 1.a, and offered to make payments on the charged off vehicle identified in subparagraph 1.c. These actions show some responsibility in addressing his delinquencies. However, believing he had been treated unfairly by his HELOC lender, Applicant decided not to repay his legitimate debt after he lost the property to foreclosure. Instead, he decided to rely on the operation of his state's law, which he claims deems the debt legally unenforceable. While Applicant receives some credit for the mitigating evidence in the record, it is not sufficient to overcome the concerns raised by his conduct with respect to the HELOC debt.

The Appeal Board has held:

Security clearance decisions are not controlled or limited by such statutes of limitation. A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an Applicant's conduct in incurring and failing to satisfy the debt in a timely manner.<sup>3</sup>

In this case, although he provided relevant case law, Applicant failed to produce evidence regarding the specific terms of the loan agreement, which prevents a "reasoned determination" as to whether the state law applies in this case.<sup>4</sup> Further, the security issues raised in this case are not diminished by evidence that Applicant is current on his recurring financial obligations. Security clearance adjudications regarding financial issues are not debt collection proceedings. Rather, the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."<sup>5</sup> Applicant's ongoing decision not to pay

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<sup>3</sup> ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

<sup>4</sup> ISCR Case No. 08-01122 (App. Bd. Feb. 9, 2009.)

<sup>5</sup> AG ¶ 2(a)

his HELOC debt reflects poorly on his current judgment, reliability, trustworthiness, and ability to protect classified information. I cannot find that financial problems are unlikely to recur. Applicant's decision to renege on a financial obligation shows an unwillingness to take responsibility for his actions. He has not established that the problem is being resolved or is under control or that he made a good faith effort to repay the HELOC loan. None of the mitigating conditions were sufficiently established by the record evidence with respect to that debt and the financial history of which it is symptomatic.

### **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 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent 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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a hardworking and dedicated employee who performs well on the job. He served honorably in the Army. He has a long, commendable history of serving his community. However, he has not mitigated the Financial Considerations security concerns. Applicant's frustration with his HELOC lender is understandable because creditors have a statutory obligation to report accurate account information to the credit reporting bureaus. However, the error made by the HELOC lender did not negate Applicant's responsibility to pay or resolve his legitimate debt. Once the foreclosure process on the property began, Applicant had no intention of repaying this creditor, despite his testimony that he is now willing to pay this debt. He has failed to take any actions to add legitimacy to his stated intention, and his current willingness to repay the debt appears to be the result of the negative effects nonpayment has had on his application for a security clearance. Based on Applicant's conduct, it is not unreasonable to question his willingness to comply with security policies or report a security infraction or violation if he perceives the consequences to be unfair or contrary



to his self-interest. 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 Financial Considerations security concerns.

### **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:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge