



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



In the matter of: )  
)  
) ISCR Case: 12-10279  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

02/02/2016

**Decision**

DAM, Shari, Administrative Judge:

Between 2008 and 2014 Applicant accumulated 11 delinquent debts, which he has not paid or resolved. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On May 17, 2012, Applicant submitted a security clearance application (SF-86). On December 2, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on December 30, 2014 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On July 9, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant on July 20, 2015, and received by him on July 23, 2015. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He did not submit any exhibits nor object to the Government's documents identified as Items 1 through 9 in the FORM. Hence, those Items are admitted into evidence. DOHA assigned the case to me on September 21, 2015.

### **Findings of Fact**

In his Answer Applicant admitted all 11 of the allegations contained in Paragraph 1 of the SOR. (Item 4.) His admissions are incorporated into these findings of fact.

Applicant is 40 years old and married. He has three adopted children, ages 10, 14, and 20. He attended vocational schools for police work and automotive training. Since April 2012 he has worked as a technician for a federal contractor. (Item 5.)

Based on credit bureau reports (CBR) from June 2012 and July 2014, the December 2014 SOR alleged 11 delinquent debts that totaled \$13,999 and are unresolved. The debts became delinquent between 2008 and 2014. (Items 7, 8.) In his Answer, Applicant stated that he was in the process of establishing monthly payments for two debts. He did not submit evidence confirming those arrangements or payments.

On September 19, 2014, prior to the issuance of the SOR, Applicant completed Interrogatories, which inquired into the status of the 11 debts. He acknowledged that he had not taken any action on any debt. He explained that he is responsible for the debts and intends to resolve them, but does not have enough money because of family expenses, including his daughter's college tuition. Along with the Interrogatories, Applicant submitted a family budget as of September 2014. His net monthly income was listed as \$7,559, and expenses and payments on loans and tuition were listed as \$6,103, leaving \$1,456 remaining at the end of the month. (Item 6.) Applicant did not submit evidence of having participated in credit, budgetary, or other financial counseling or assistance programs.

### **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(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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 that an adverse decision to an applicant shall be "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 in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>1</sup>

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 admitted that he accumulated 11 delinquent debts from 2008 to 2014, which he has been unable or willing to resolve. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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), 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; and

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<sup>1</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts accumulated between 2008 and 2014, and continue to date. Because they are ongoing, AG ¶ 20(a) does apply. There is insufficient evidence to determine that the debts occurred as a result of circumstances beyond Applicant's control, thus, AG ¶ 20(b) does not apply. Applicant has not participated in financial or credit counseling, and there are no clear indications that the delinquent debts are under control. The evidence does not support the application of AG ¶ 20(c). He provided no documentation to demonstrate that he made a good-faith attempt to resolve any of the 11 delinquent debts. Hence, AG ¶ 20(d) does not apply.

### **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 40 years old. He began employment with a defense contractor in April 2012. In September 2014 he stated that he did not have enough income to resolve his delinquent debts. In his December 2014 Answer he said that he was in the process of starting payments on two debts, but did not submit evidence to verify that assertion. At this time, the record does not contain sufficient evidence about Applicant's financial situation, nor is there evidence demonstrating a track record of resolving debts and managing his obligations. Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

