



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 13-00763

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel

For Applicant: *Pro se*

05/13/2014

**Decision**

HOWE, Philip S., Administrative Judge:

On October 25, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On July 25, 2013, 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 29, 2013. He answered the SOR in writing on August 15, 2013, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request in August 2013. Department Counsel was prepared to proceed on October 24, 2013, and I received the case assignment on October 31, 2013. DOHA issued a Notice of Hearing

on February 20, 2014, and I convened the hearing as scheduled on March 18, 2014. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and wanted to submit documentary exhibits after the hearing. DOHA received the transcript of the hearing (Tr.) on March 28, 2014. I granted Applicant's request to keep the record open until April 4, 2014, to submit documentary exhibits. On April 4, 2014, he submitted Exhibits A to D, without objection. The record closed on April 4, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.b, 1.c, and 1.d of the SOR, with explanations. He denied the factual allegation in Subparagraph 1.a of the SOR because he claimed he paid that debt. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 47 years old. He is married. He immigrated to the United States in 1994 on a student visa and became a naturalized citizen in 2004. He has worked for a defense contractor since 2005. He has a bachelor's degree in mechanical engineering and is working on obtaining a master's degree in the same discipline. He has two minor stepchildren with his present wife. He was previously married from 1996 to 1999. (Tr. 17-27; Exhibit 1)

Applicant does not currently have a security clearance. He is seeking one for his new position in the company. (Tr. 24; Exhibit 1)

Applicant has four delinquent debts listed in the SOR totaling \$52,077. He paid one debt and is currently making installment payments for the remaining three debts that are student loans. (Tr. 32-57; Exhibits 2-6, A-D)

The first debt is a medical account in the amount of \$271 (Subparagraph 1.a). Applicant denies this debt because he has paid it. He submitted documents showing that the debt is resolved. (Tr. 31, 32; Exhibit A)

The debts listed in Subparagraphs 1.b and 1.c are for student loans dating from 2006. The first debt amount is \$20,792. The second debt is for \$19,755. These loans were in default but Applicant has rehabilitated them by making regular payments for nine months. He continues to make payments. Applicant has arranged an installment payment plan for both debts. He pays \$300 monthly for both these debts. The payments are made by automatic deduction from his checking account. The debts are now held by Sallie Mae, the government student loan servicer. He has made payments since June 2013. They are being resolved. (Tr. 34-36, 38; Exhibits 2-6, C)

The fourth debt, alleged in Subparagraph 1.d, is for a loan from the university at which Applicant is currently obtaining his master's degree. This debt originated in 2012.

The amount is \$11,259. This debt is also the subject of an installment payment agreement. The payments are made automatically by deduction from his checking account. He has made payments since April 2013. It is being resolved. (Tr. 36-38; Exhibits 2-5, D)

Applicant also has a debt judgment not listed in the SOR. It is from January 2012 in the amount of \$2,073. Applicant thinks this debt arose from a one-night stay in a hospital when he was suffering a medical condition. The amount was garnished from his salary and has been paid. The debt is resolved. (Tr. 32-34; Exhibits 2-6, B)

Applicant pays his mortgage on his house regularly. His house is rented and he lives with his wife. He files his income tax returns regularly. Applicant's net monthly income is about \$2,000. He has three credit cards that he pays regularly. His car payment is made regularly. Applicant's wife's car is fully paid. (Tr. 40-50; Exhibits 1-6)

### **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 useful 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 the adjudicative process (AG ¶ 2(a)). 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 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, 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."

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. 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.

Section 7 of Executive Order 10865 provides that 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$52,077 in delinquent debt from 2006 to the present time that remains unpaid. Applicant had four delinquent debts listed in the SOR and his credit report shows one additional judgment debt.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

- (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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant is paying his debts in an orderly manner currently. The monthly payments are deducted automatically from his checking account and sent to the creditors. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (c) applies.

Applicant pays his debts regularly. His documents show two debts were paid, including one not listed on the SOR, and the three student loans are being paid monthly according to the terms and conditions of the installment payments agreements. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

### **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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 the facts and circumstances surrounding this case. Applicant's credit reports show he pays his debts regularly. The four debts that are the subject of the SOR, and the one additional judgment for medical care, are all paid or being resolved responsibly and in a regular monthly manner.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge