



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



In the matter of: )  
)  
) ISCR Case No. 13-00988  
)  
Applicant for Security Clearance )

**Appearances**

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

01/30/2014

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 21, 2013. On October 1, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD acted 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 (AG) effective within the DOD for SORs issued after September 1, 2006.

On October 26, 2013, Applicant signed a notarized answer to the SOR. On October 29, 2013, he elected to have a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 21, 2013. I convened a hearing on December 23, 2013, to consider whether

it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through Ex. 5 and entered in the record without objection. Applicant testified, called no witnesses, and offered no exhibits. DOHA received the hearing transcript (Tr.) on January 3, 2014.

### **Findings of Fact**

The SOR contains six allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.f.) In his Answer to the SOR, Applicant admitted five allegations (SOR ¶¶ 1.a. through 1.e.). He denied the SOR allegation at ¶ 1.f. Applicant's admissions are entered as findings of fact.

Applicant is 33 years old and employed as an internet technology specialist by a government contractor. He earned a high school diploma in 1999. He was first granted a security clearance in 2007. He has worked full time for his current employer since November 2012. (Ex. 1; Ex. 5.)

Applicant has never been married. When he completed his e-QIP in March 2013, he listed a cohabitant. At his hearing, he stated that the relationship had ended and the cohabitant and her child no longer lived with him. Earlier, Applicant had a relationship with a woman with whom he had a child, who is now three years old. The woman died, and Applicant assumed responsibility for raising his son. The child resides with Applicant, and his mother cares for the child while he works. (Ex. 1; Tr. 23, 33, 50-51, 72-74.)

In response to questions on his e-QIP that sought specific information on his financial record, Applicant denied any financial delinquencies in the past seven years. The SOR alleges six delinquent debts totaling approximately \$19,193. Three of the delinquencies are in collection status: SOR ¶ 1.a. (\$150); SOR ¶ 1.b. (\$150); and SOR ¶ 1.c. (\$317). The remaining three debts are in charged-off status: SOR ¶ 1.d. (\$3,907); SOR ¶ 1.e. (\$13,000); and SOR ¶ 1.f. (\$1,669.). (SOR; Ex. 1; Ex. 5.)

At his hearing, Applicant stated that the delinquent debts alleged at SOR ¶¶ 1.a. and 1.b. arose when he was treated twice at a hospital in October 2011. At the time, Applicant was covered by health insurance, and the debts represent co-pays for medical services. Applicant recalled receiving bills from the hospital for the services. He stated that he had not contacted the hospital to discuss payment. The debts are unresolved. (Tr. 20, 24-29.)

In his response to the SOR, Applicant admitted the debt alleged at SOR ¶ 1.c. At his hearing, Applicant stated that he did not recall specifics about the \$317 debt. The debt is listed on Applicant's credit bureau reports of March and September 2013. The debt is unresolved. (Ex. 3; Ex. 4; Tr. 29-30.)

In July 2013, Applicant was interviewed about his financial issues by an authorized investigator from the U.S. Office of Personnel Management (OPM). Applicant identified the debt alleged at SOR ¶ 1.d. as a loan for the purchase of a motorcycle. He stated that he had opened the account in 2008, and the original amount of the loan was \$7,000. He stated that he made monthly payments of \$171 on the loan, and he asserted that he had not been late in making his payments. Applicant's credit bureau report of March 2013 shows the last payment action on the debt as occurring in August 2012, and it lists the debt in charged-off status as of January 2013. At his hearing, Applicant acknowledged that he was no longer making payments on the debt, had not contacted the creditor to discuss making a reduced payment, and had attempted to sell the motorcycle through an auction web site. Additionally, he stated he had spoken to the creditor about the status of the debt, and he speculated that the creditor had turned the debt over to a collection company. The debt is unresolved. (Ex. 3; Ex. 5; Tr. 30, 34-37.)

Applicant identified the debt alleged at SOR ¶ 1.e. as a purchase loan on an automobile that was stolen from him in November 2012 and declared a total loss by the insurer. He stated that the loan was originally for \$25,000 and was used to finance the stolen vehicle and another vehicle Applicant had owned. The amount alleged on the debt on the SOR is \$13,000. Applicant stated that he had not contacted the creditor to discuss payment. He also stated that he planned to seek the services of a debt consolidation firm to resolve the debt and others for which he was responsible. (Ex. 5; Tr. 21, 37-42.)

Applicant denied knowledge of the \$1,669 debt alleged at SOR ¶ 1.f. He asserted that he never had a debt with the bank creditor identified at SOR ¶ 1.f. Applicant also denied the debt when he was interviewed by the OPM investigator. However, the debt appears on Applicant's credit bureau reports of March and September 2013. His credit bureau report of March 2013 shows that the account was opened in October 2005. He did not provide any evidence that he had disputed the debt with the creditor or the credit bureau. (Ex. 5; Ex. 3; Tr. 21-22, 42-44.)

Applicant's current annual salary is \$65,000. His monthly net income varies between \$3,400 and \$4,000. He also receives \$800 each month in Social Security death benefits for the support of his son. He keeps \$400 of the Social Security benefit for his son's support, and he gives \$400 to his mother, who provides care for the child. (Tr. 45-48, 55-56.)

Applicant identified the following additional monthly expenses: rent, including utilities, \$1,530; groceries, \$150 to \$200; cable for himself and his mother, \$300; gasoline, \$200; rent and utilities for his mother, \$250; and \$600 each month on his vehicle insurance and his mother's vehicle and home insurance. Applicant's net remainder each month appears to vary between \$745 and \$1,345.<sup>1</sup> (Tr. 56-58.)

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<sup>1</sup> Applicant stated that he frequently has large unanticipated cash expenses, such as repairs on his automobile and furniture purchases. (Tr. 56-57, 65-66.)

Applicant testified that he does not have money in a savings account. He has a 401(k) account but was not sure of its balance. He does not have a monthly budget, and he has not had financial credit counseling. (Tr. 63-64, 70.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider and apply 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in 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 this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security 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 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 accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant’s gross annual income from his employment is \$65,000, and he estimates that his take-home pay each month is between \$3,400 and \$4,000. In addition, he receives \$800 each month in Social Security death benefits for his minor son.

Applicant has a history of financial difficulties and inattention to his financial responsibilities. He acknowledged that five of the six debts alleged on the SOR remained unresolved. He denied responsibility for the sixth debt: \$1,669 owed to a bank creditor. The debt appears on two of Applicant’s credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), DOHA’s Appeal Board explained: “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” (Internal citation omitted). Applicant failed to establish that he was not responsible for the debt he denied or that mitigating circumstances applied.

Applicant’s delinquent debts total approximately \$19,193. He failed to provide documentation showing that his debts were resolved or otherwise satisfied. The record reflects that the delinquencies alleged on the SOR are ongoing and have occurred under circumstances that are likely to recur. There do not appear to be circumstances beyond Applicant’s control that prevented him from paying his creditors in a timely manner. Applicant has not had financial counseling, and he lacks a clear and timely strategy for resolving his delinquent debts.

At his hearing, Applicant stated that he had not contacted his creditors because he was considering consulting with a debt consolidation firm to resolve his debts. In determining an individual’s security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). Accordingly, I conclude that none of the Guideline F mitigating conditions fully applies to the facts of Applicant’s case.

## **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.

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 is a mature person of 33 years. He has held a security clearance in his work as a government contractor since 2007. His financial problems began several years ago and are ongoing. He has not taken affirmative action to pay or resolve his delinquent debts. His lack of attention to his financial delinquencies continues to raise security concerns. He has failed to develop a budget to satisfy his debts, three of which are for amounts of less than \$325, and he has not sought credit counseling.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

## **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
Subparagraphs 1.a. - 1.f.:	Against 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.

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Joan Caton Anthony  
Administrative Judge