



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



In the matter of:	)	
	)	
	)	ISCR Case: 13-01051
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

May 22, 2014

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated approximately \$23,000 of delinquent debts since 2012. He resolved only \$1,070 of that debt. 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 March 5, 2013, Applicant submitted a security clearance application (SF-86). On October 23, 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on November 18, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) Department Counsel submitted the Government's written case on February 7, 2014. A complete copy of the File of Relevant Material (FORM), containing six Items, was provided to Applicant on said date, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on February 18, 2014, and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He did not provide additional information in response to the FORM within the 30-day period. DOHA assigned the case to me on May 15, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the six allegations contained in the SOR, and provided information and explanations. (Item 3.)

Applicant is 42 years old. He has worked for various Federal contractors since 1998. He has held a security clearance since approximately 1998 in connection with his employment. Applicant was married in 1998 and divorced in 1999. He married his second wife in 2003. He has one stepchild, age 18. (Item 4.)

Based on credit bureau reports (CBR) dated March 16, 2013, and September 26, 2013, the SOR alleged six delinquent debts totaling \$23,470 and dating back to 2012. (Items 5 and 6.) Applicant attributed his delinquencies to his wife's depression and her failure to pay the bills in a timely manner due to her illness. (Item 4.) The status of each debt is as follows:

1. The \$4,000 debt alleged in SOR ¶ 1.a is owed on a delinquent mortgage with a total loan balance of \$280,000. This debt is for the primary mortgage on Applicant's home. It has been delinquent since October 2012. He purchased his home in 2007, "at the height of the housing market" and estimated the home's value has declined to "nearly half of the purchase price." In 2013 Applicant contacted this lender and tried to negotiate a loan modification. He presented communications from this lender that stated "We are not currently trying to modify your loan." Applicant failed to present evidence he is currently acting responsibly toward the resolution of this debt. This debt is unresolved. (Item 3; Item 6.)

2. The \$3,000 debt alleged in SOR ¶ 1.b is owed on a delinquent mortgage with a total loan balance of \$44,000. This debt is for the second mortgage on Applicant's residence. It has been delinquent since August 2012. Applicant applied to refinance this mortgage with two different companies in 2007. However, he failed to introduce evidence that he successfully refinanced this debt or that he was otherwise responsibly addressing this debt. This debt is unresolved. (Item 3; Item 6.)

3. Applicant is indebted on a delinquent account for a voluntarily repossessed vehicle in the amount of approximately \$15,000, as alleged in SOR ¶ 1.c. This debt has been delinquent since 2012. In Item 3 Applicant indicated, "I contacted [lender] about our account and have agreed on a settlement in the amount of \$3,600 with payment agreements set up monthly in the amount of \$100 to be paid at the end of each month." He attached a document from the lender documenting the agreement. However, Applicant failed to present documentation to show he has successfully made payments under this agreement. This debt is not resolved. (Item 3; Item 6.)

4. The \$1,000 debt alleged in SOR ¶ 1.d was owed on Applicant's current vehicle. He presented copies of two money orders paid to this creditor. He also submitted a copy of a letter from this creditor indicating Applicant had no past-due balance. This debt is resolved. (Item 3.)

5. The \$400 judgment alleged in SOR ¶ 1.e is owed on a medical debt. Applicant provided a letter that showed he contacted this creditor and set up an agreement to make a payment of \$244.25 by November 29, 2013, and \$244.25 by December 13, 2013. Applicant failed to provide documentation that he made the payments as scheduled. This debt is unresolved. (Item 3.)

6. The \$70 debt alleged in SOR ¶ 1.f was owed to a medical collection agency. Applicant presented a letter from this creditor that stated, "the above referenced account has been closed as paid in full." This debt is resolved. (Item 3.)

Applicant resolved \$1,070 of the \$23,470 SOR-listed debts. He provided no explanation for how he incurred the delinquencies or why he did not address his debts sooner than 2013. He failed to submit a budget or income statement. He submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

### **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 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.

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.

Since 2012 Applicant accumulated delinquent debts that he was unable or unwilling to satisfy until sometime in 2013 when he resolved about 5% of them. The evidence raises both security concerns, 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 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;
- (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 delinquent debts began accumulating in 2012, the bulk of which continue to date. Because he failed to seriously address two of the debts until 2013, and did not offer evidence he made payments on the other four delinquent accounts, he did not demonstrate that such problems are unlikely to continue or recur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant presented evidence that his financial problems were due to circumstances beyond his control, including his wife's depression and the economic forces that caused the value of his home to significantly decline. However, he failed to provide evidence that he acted responsibly under the circumstances or that he attempted to resolve the debts while they were accumulating, despite full-time employment. AG ¶ 20(b) has limited application.

Applicant failed to provide evidence that he participated in financial counseling or that he had a plan to fully resolve his debts. However, he addressed the SOR-listed debts in ¶¶ 1.d and 1.f, both of which are now resolved. AG ¶ 20(c) has no application to the SOR-listed debts in ¶¶ 1.a, 1.b, 1.c, and 1.e, as there are not clear indications that those problems are under control. Applicant's payment of two debts also indicates a good-faith effort to resolve those debts. Hence, AG ¶ 20(d) has application to the SOR-listed debts in ¶¶ 1.d and 1.f.

There is no evidence that Applicant had a reasonable basis to dispute any delinquent debt and successfully resolved it through the dispute process. AG ¶ 20(e) has no application.

### **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 42-year-old employee of a defense contractor. In August 2013 he completed a SF-86 in which he disclosed delinquent debts. In October 2013 the Government issued a SOR informing him that delinquent financial obligations were jeopardizing his security clearance and employment. In November 2013 he answered the SOR, and indicated that he was

attempting to refinance his delinquent mortgages. In February 2014, the Government sent him the FORM, arguing that his security clearance should be denied, and specifically noting that he failed to submit proof that he made payments on his debt repayment plan or present copies of a refinanced loan. The FORM gave him 30 days to respond with further information. He failed to do so. Although Applicant paid off two smaller debts, he failed to establish a track record of responsibly managing or resolving the four remaining debts totaling over \$22,400.

Overall, the record evidence leaves me with doubt as to Applicant's present 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.

### **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
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	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.

Jennifer I. Goldstein  
Administrative Judge