



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 -----<sup>1</sup> ) ISCR Case No. 13-01222  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

June 5, 2015

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on July 16, 2013. (Item 5.) On December 19, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 answered the SOR in writing on January 13, 2014, and requested a decision by an administrative judge without a hearing. (Item 4.) Department Counsel submitted the Government’s written case (FORM) to Applicant on March 14, 2014.<sup>2</sup>

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<sup>1</sup>The Statement of Reasons (SOR) misspells Applicant’s first name. It is spelled correctly in this Decision. (Item 5.)

<sup>2</sup>Department Counsel submitted seven Items in support of the SOR allegations.

Applicant acknowledged receipt of the FORM March 4, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant elected not to submit any additional information. The case was assigned to me on April 27, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 42, and divorced from his second wife.<sup>3</sup> He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.a and 1.b in the SOR under this paragraph. Those admissions are findings of fact. He denied 1.c.

The SOR lists three delinquent debts, totaling approximately \$54,754. (Subparagraphs 1.a through 1.c.) The existence and amount of all the debts is supported by credit reports dated August 7, 2013; and March 13, 2014. (Items 6, and 7.) The current status of the debts is as follows:

1.a. Applicant admits owing this past-due debt for a credit line in the amount of \$51,247. He states in his Answer, "During this time period I was going through a divorce and loss of employment." No further information was provided. This debt is not resolved.

1.b. Applicant admits owing this past-due debt in the amount of \$3,201. He states in his Answer, "Divorce/loss of employment." No further information was provided. This debt is not resolved.

1.c. Applicant denies owing a past-due automobile debt in the amount of \$306. He states that he sold the automobile and the purchaser paid the past-due debt. Item 7 at 3 states that this account is a "Paid Charge Off." This allegation is found for Applicant.

As stated, Applicant was divorced from his second wife in 2013. The evidence also shows that he was unemployed August 2011 to May 2012. He was self-employed from May 2012 to July 2013. Applicant has been gainfully employed by his current employer since July 2013. (Item 5.) Applicant submitted no evidence that he has received any financial counseling. He did not submit a budget, or any other information

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<sup>3</sup>Item 5 at Section 17.

concerning his income and expenses. No evidence was submitted to show that Applicant has paid either of the two remaining delinquent debts.<sup>4</sup>

Applicant provided 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 submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

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<sup>4</sup>Item 7, the April 13, 2014 credit report, shows six additional past-due or charged-off debts. They appear to be debts to two utilities, two banks, an automobile loan, and a home mortgage. They are not alleged in the SOR, and will not be considered under any Guideline F Disqualifying Condition. Their existence can be considered in determining possible mitigation, and under the whole-person concept.

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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 has over \$54,000 in past-due debts, both of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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.” Applicant’s financial difficulties have been in existence for several years. There is no

evidence that he has paid either of the remaining two debts, which continue to date. While the debt in 1.c has been paid, it is noted that the purchaser of the automobile paid this debt, not Applicant. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant was unemployed for a year in 2011 and 2012, and then self-employed for another year, before starting his current employment. He also stated his divorce also had an impact. He did not submit any evidence, however, that shows he acted responsibly once he obtained employment almost two years ago. This mitigating condition does not have application in this case.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not submitted any evidence to show that he has made successful payment arrangements with, or made payments to, the two remaining creditors listed in the SOR. Applicant had more than a year to resolve the debts between answering the SOR and receiving the FORM. In addition, the latest credit report shows additional delinquencies on Applicant’s part. This mitigating condition does not have application in this case.

Applicant submitted no evidence that he had taken any action to contest either of the remaining debts in the SOR. Accordingly, AG ¶ 20(e) does not apply. It requires that “the individual [have] 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 conclusion, as stated above, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

### **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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved despite his knowing since January 2014 of the Government's concerns. He has a long history of not paying his debts. Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

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 security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

### **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
Subparagraph 1.a:	Against 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge