



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



In the matter of: )  
)  
) ISCR Case No. 14-00258  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Catie E. Young, Esq.

October 23, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 52-year-old employee of a defense contractor. He is alleged to be indebted to seven creditors in the approximate amount of \$354,876. He has acted responsibly with respect to his debts by resolving all but one of the delinquencies. He has hired an attorney and together they are actively working to resolve the remaining delinquency. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 18, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on May 28, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 22, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 30, 2014, scheduling the hearing for September 22, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 4, and they were admitted without objection. Applicant offered Exhibits (AE) A through R, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits. On October 2, 2014, Applicant presented six additional exhibits marked AE S through AE X. Department Counsel had no objections to AE S through AE X, and they were admitted. DOHA received the transcript of the hearing (Tr.) on October 3, 2014.

### **Findings of Fact**

Applicant is a 52-year-old employee of a defense contractor. He has worked for his employer for the past 29 years. He has held a security clearance since 1985, without incident. He is married and has three daughters, ages 15, 16, and 20. He possesses three professional degrees. (GE 1; AE H; Tr. 24-25, 53-54.)

As stated in the SOR, Applicant was alleged to be in debt to seven creditors in the approximate amount of \$354,876. Applicant admitted all of the debts listed in the SOR subparagraphs, with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4.)

Applicant's SOR-listed debts are attributable to his investments in two real estate companies that, unbeknownst to Applicant, were conducting fraudulent operations. Applicant learned of a real estate investment opportunity in 2004 through an advertisement in a newspaper. He met with the owners and in 2005 invested \$100,000 into the first business. He was told his investment was backed by properties. He invested \$150,000 with a second, similarly structured, real estate investment company that he met through other investors involved with the first investment in approximately 2006. He received monthly statements from both of the investment groups until sometime in 2007. (Tr. 25-36.)

Applicant financed his first investment by taking interest-free cash advances on credit cards. Those credit card debts are the delinquent accounts reflected in SOR subparagraphs 1.a, 1.b, 1.c, 1.f, and 1.g. He intended to repay the credit card debt with the money he earned from his investment. He financed his second investment with Home Equity Lines of Credit (HELOC), which are the delinquent debts reflected in SOR subparagraphs 1.d and 1.e. (Tr. 33-62.)

In 2007, Applicant stopped receiving monthly statements on both investments. Shortly thereafter, Applicant was notified by the Department of Justice that he was a victim of fraud and that the owner of the first investment company has been arrested. He also received notice from the Postal Inspector that his second investment was under investigation for fraud and the owner of the second company had also been arrested.

Eventually, he was called to testify against the owner of the second company. The owners of both investment companies were convicted and sentenced to jail. Applicant received judgments against both owners, but to date, he has only received \$88 in restitution. (AE E; AE T; AE U; AE X; Tr. 27-32.)

Applicant continued to make the minimum payments on his credit cards and HELOCs through 2009 in hopes he would be able to collect restitution and repay his debts. In 2009, his accountant advised him to address his debts one by one, which he did. Applicant provided documentation to show each of the debts in allegations 1.a, 1.b, 1.c, and 1.e, have been fully resolved through payment of settlement agreements. (AE A; AE B; AE C; AE P; AE Q; AE S; Tr. 37.) The debts identified in 1.f and 1.g were cancelled by the creditor. He was issued a 1099-C for each of them, and they were included in his Federal income tax return. They are resolved. (AE V; Tr. 37.)

Applicant hired an attorney to resolve his one remaining delinquent account, identified in SOR subparagraph 1.f. He anticipates that the attorney will be able to negotiate a settlement on this debt. Applicant has set aside approximately \$85,000 in a savings account toward the repayment of this \$94,312 debt. He is committed to resolving this debt as soon as possible. (AE D; AE R; Tr. 41-44.)

In order to repay his debts, Applicant's wife entered the workforce. He also used his savings of approximately \$50,000 to \$60,000. Applicant testified that he will never participate in risky investments again. He now utilizes the services of a Certified Public Accountant (CPA) and a financial advisor to plan for the future. He limits his investments to his 401K and stocks. He has amassed approximately \$1,000,000 in his retirement savings since 2009. He has a monthly net remainder of \$3,700 after his expenses are met. No new debts have been incurred. (GE 4; AE F; AE G; Tr. 48, 56, 60-62.)

Applicant presented six letters of recommendation from colleagues and friends. They recognized Applicant for his outstanding performance at work, quality, respect, and integrity. They noted that he was honest and reliable. Applicant has received recognition from his employer for his contributions. (AE I; AE J; AE K; AE L; AE M; AE N; AEO.)

## **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 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, administrative judges apply the guidelines 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 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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.

Applicant's delinquent debts began accumulating in 2009 when he stopped making minimum payments on his debts. He was unable to satisfy or resolve them at that time. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 fully apply:

- (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; and
- (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.

Applicant's financial problems were caused in part by his unwitting investment in two fraudulent enterprises. However, some of his financial problems were also due to irresponsible borrowing to finance investments which he could not fully afford. Since making those investments in 2005 and 2006, Applicant learned a difficult lesson. He lost over \$200,000. He has worked diligently to resolve his delinquencies and has only one delinquent account remaining. He has \$85,000 in a savings account to use toward the repayment of this remaining \$94,312 debt. He credibly asserted that he will not make risky investments in the future. He now enlists the assistance of a CPA and a financial advisor to help him prepare for his future. He has significant retirement savings and an ample monthly remainder to avoid financial delinquencies in the future. Financial problems are unlikely to recur and he will likely demonstrate good judgment in the future. AG ¶ 20(a) applies.

Additionally, there are clear indications that Applicant's financial problems are resolved or are being resolved. The debts alleged in SOR subparagraphs 1.a, 1.b, 1.c, and 1.e, have been fully resolved through payment of settlement agreements. The debts identified in SOR subparagraphs 1.f and 1.g were resolved through cancellation by the creditor. Applicant has demonstrated he has taken action to resolve SOR allegation 1.d, though it is still pending. He will continue to work to resolve this debt until it is satisfied.

## 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is well respected by his colleagues who wrote letters in support of him. He performs well at his job. He served as a government contractor for almost 30 years. He has never had a security violation, though he has held a clearance since 1985. His financial difficulties are attributable to two ill-advised investments, and he has acted responsibly by repaying all but one of his debts. He is working to resolve the remaining account. No new debts have been incurred. There is little likelihood of recurrence.

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 has mitigated the Financial Considerations security concerns.

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

Subparagraph 1.f:  
Subparagraph 1.g:

For Applicant  
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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Jennifer I. Goldstein  
Administrative Judge