



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 14-00341  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

December 5, 2014

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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 August 23, 2013. (Item 3.) On March 18, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. (Item 1.) 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 April 14, 2014, and requested a decision by an administrative judge without a hearing. (Item 2.) Department Counsel submitted the Government’s written case (FORM) to Applicant on August 6, 2014. The FORM contained five documents. Applicant acknowledged receipt of the FORM on August 13, 2014. 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 November 3, 2014. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is 30 and single. 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.b through 1.h in the SOR under this paragraph. Those admissions are findings of fact. He admitted allegation 1.a, with an explanation.

The SOR lists eight delinquent debts, totaling approximately \$16,082. The existence and amount of these debts is supported by his answers to Question 26 of the e-QIP; and by a credit report dated September 13, 2013. (Items 3, and 4.) The debts include:

1.a. Applicant denies he is indebted for a judgment in the amount of \$331. This judgment concerns a small claims judgment entered against Applicant in 2009. Applicant maintains that he paid the plaintiff immediately after the hearing, but the plaintiff did not file a satisfaction of a warrant in debt and is now deceased. Applicant further states that he is working with the widow of the plaintiff to resolve the matter. (Item 2 at 3.) There is no other evidence that this judgment has been satisfied. This debt is not resolved.

1.b. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$2,542 since approximately 2012. (Item 4 at 4.) There is no evidence that this debt has been paid. This debt is not resolved.

1.c. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$2,395 since approximately 2012. (Item 4 at 4.) There is no evidence that this debt has been paid. It is not resolved.

1.d. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$1,418 since approximately 2012. (Item 4 at 5.) There is no evidence that this debt has been paid. It is not resolved.

1.e. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$1,114 since approximately 2012. (Item 4 at 5.) There is no evidence this debt has been paid. It is not resolved.

1.f. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$7,369 since approximately 2011. (Item 4 at 9.) There is no evidence this debt has been paid. This debt is not resolved.

1.g. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$618 since approximately 2012. (Item 4 at 9.) There is no evidence this debt has been paid. This debt is not resolved.

1.h. Applicant admits that he is indebted to a creditor for a past-due medical bill in the amount of \$295 since approximately 2012. (Item 4 at 10.) There is no evidence this debt has been paid. This debt is not resolved.

Applicant submitted no evidence that he has received any financial counseling. The evidence also shows that he has been gainfully employed by his current employer since July 2013. (Item 3.)

Regarding his debt situation Applicant says the following in his Answer at page 3:

The only reason I have these debts is because of economic failure. I was self employed and when the economy crashed I lost everything and had to start over.<sup>1</sup> I lost my home, my business and the life I worked hard for. These debts are not a result of living beyond my means and I have full intent of paying back every penny when I am more financially stable or else I would have filed bankruptcy. I work 7 days a week at my employer and am going to school to further my career within [my employer]. It honesty doesn't matter to me at the moment whether I have security clearance or not [because] I'm a mechanic and won't be seeking management until I finish school.

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

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<sup>1</sup>Applicant's e-QIP at Question 13 indicates that he was self-employed from July 2002 through July 2013. (Item 3.)

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 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 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 \$16,000 in past-due debts, all 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 any of these debts, which continue to date. 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 self-employed for eleven years and states that his debts were the result of the financial crash. He did not submit any evidence, however, that shows he acted responsibly once he obtained employment a year ago.

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, any of the creditors listed in the SOR. He states that he fully intends to pay the debts at some time in the future. However, he gives no time table, nor any other evidence to show that he has initiated any negotiations with these creditors.

Applicant submitted no evidence that he had taken any action to contest any of the 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 financial problems, which have not been resolved. He showed no plan to resolve these debts. Instead, he seems to indicate that he will settle these debts at some time in the future, when his plans may require such actions. 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
Subparagraphs 1.a through 1.h:	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.

WILFORD H. ROSS  
Administrative Judge