



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



In the matter of:	)	
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	)	ISCR Case No. 14-00478
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

July 22, 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 March 23, 2013. (Government Exhibit 1.) On March 19, 2014, 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 April 7, 2014 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 29, 2014. This case was assigned to me on May 2, 2014. DOHA issued a notice of hearing on May 6, 2014. I convened the hearing as scheduled on May 22, 2014. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant Exhibits A through W, also without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted

Applicant Exhibits X through AA, and they were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 4, 2014. The record closed on June 23, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 54, has three Master's degrees, and is divorced. He has custody of the one remaining minor child of the marriage, a daughter. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment. Applicant has held a security clearance during his employment with other defense contractors.

#### **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 subparagraphs 1.a, 1.b, 1.c, 1.e, 1.f, 1.g, 1.h, 1.j, 1.m, and 1.n in the SOR under this Paragraph. Those admissions are findings of fact. He denied the remaining allegations (1.d, 1.i, 1.k, 1.l, 1.o, and 1.p). He also submitted additional information to support his request for a security clearance.

The SOR lists sixteen delinquent debts, totaling approximately \$76,726. The existence and amount of the debts is supported by credit reports dated April 6, 2013; October 2, 2013; and April 29, 2014. (Government Exhibits 2, 3, and 4.)

Applicant's financial difficulties began in about 2008. Applicant was a defense contract consultant in State One, working with four different companies as an independent contractor. He made approximately \$190,000 in 2008. (Tr. 124.) Beginning in 2009 several things happened almost simultaneously that seriously affected his finances. First, one of his clients lost a major contract, which affected his pay. Accordingly, his total taxable income dropped in 2009 to \$113,314. (Applicant Exhibit X at 6-7; Tr. 123-125.) He was able to get a new client in 2010, which helped get his total income up to \$157,311. (Applicant Exhibit X at 8-9; Tr. 126.) However, Applicant's wife also filed for divorce in 2009, so he began to pay her a considerable amount in alimony. While the parties were formally divorced in 2010, additional proceedings in this contentious action are still ongoing. (Applicant Exhibit X at 47-54; Tr. 49-52, 72.)

At this same time Applicant's 80-year-old father began suffering from serious medical issues, primarily cancer. Accordingly, "I [Applicant] have helped them out to the extent I could, both financially and physically." (Tr. 49.) This financial assistance has continued to the present day. (Tr. 68-69.)

The years 2011 and 2012 were the worst for Applicant financially. His total income had been cut almost in half, to approximately \$70,000 each year. (Applicant

Exhibit X at 10-13; Tr. 126.) In addition, Applicant was made responsible for all marital debts, including those entered into by his wife without his knowledge. (Applicant Exhibit X at 15-43; Tr. 53, 71-72.) Finally, Applicant continued to pay considerable alimony to his ex-wife, a situation which continues to the present day. (Applicant Exhibit G; Tr. 65-67.)

Applicant began work with his current employer, located in State Two, in January 2013. This was a move across the country for Applicant and his daughter. (Government Exhibit 1 at Sections 11, 13; Applicant Exhibit H; Tr. 56-57.) His financial situation has improved. According to Applicant, "My yearly salary now is just shy of \$170,000." (Tr. 107.) (See Applicant Exhibit L, X at 46; Tr. 111, 114-116.) Once he got his present job, he promptly contacted all of his creditors to attempt to work out resolution of his debts. (Tr. 90-93.)

Applicant is resolving other debts, which are not alleged in the SOR. Applicant submits that his payments to these other creditors show he is attempting to resolve his financial situation in the best way he can. This includes a Federal tax debt, which he has been consistently paying since 2012. (Applicant Exhibits I, N, O, and AA; Tr. 59-62, 116-117.) In addition, he has been paying a credit card debt for eighteen months at the rate of \$150 a month. (Applicant Exhibit M; Tr. 60, 117-118.) While his financial situation is not perfect, he is able to pay his regular monthly expenses, other bills from the marriage, and resolve the SOR-listed debt. (Applicant Exhibits L, P, Q, R, S, T, U, and V; Tr. 74.)

The current status of the debts alleged in the SOR is as follows:

1.a. Applicant admits that he is indebted to a bank for \$1,284 regarding the end of a lease agreement. He further stated that there was a dispute regarding the amount of this debt and he was attempting to work it out with the creditor. Subsequent to the hearing he made an agreement with this creditor to pay \$50 down and \$20 a month until debt is resolved. The initial check has been cashed by the creditor. (Applicant Exhibit X at 4, 59, Exhibit Y; Tr. 69-71, 75.) This debt is being resolved.

1.b. Applicant admits that he is indebted to a bank in the amount of \$31,245 for a repossessed boat. This boat was purchased by Applicant's ex-wife during their marriage. His ex-wife retained possession of the boat, did not make payments on the boat, and refused to let the Applicant sell the boat, which is what the divorce court wanted. Eventually it was repossessed. Applicant is in negotiation with the creditor to reach a resolution, and has sent a good-faith payment. (Answer at 2; Applicant Exhibit X at 38-39, 57-58, 60, Exhibit Y; Tr. 76-81.) This debt is not resolved, but is in negotiation.

1.c. Applicant admits that he was indebted to a credit card company in the amount of \$12,218. He was sued by this creditor concerning this debt, but the complaint was dismissed by the plaintiff on October 11, 2012. Applicant contacted the credit card company after the hearing and confirmed "this has been withdrawn with no more collection." (Applicant Exhibit K; Exhibit X at 4; Tr. 81-84.) This debt is resolved.

1.d. Applicant denied in his Answer that he is indebted to a creditor in the amount of \$1,562 for a credit card debt. Subsequent to the hearing he was able to determine that the credit card was used exclusively by his ex-wife. Applicant states, “[The creditor] is no longer collecting on the account and has sent me Form 1099-C whereby I am responsible for, and have paid the taxes for 2013.” (Applicant Exhibit X at 4; Tr. 85-86.) Based on all of the available information, I find this debt is resolved.

1.e. Applicant admits that he owes a past-due student loan in the amount of \$8,997. He has worked out a payment plan with the owner of the loan and has made his first payment. (Applicant Exhibit X at 4, 74, 76; Tr. 86-89.) Based on all available information, I find this debt is being resolved.

1.f. Applicant admits that he is indebted for a past-due gas credit card in the amount of \$3,190. This is also the same debt as 1.n, below. He reached a settlement with this creditor and has paid this debt off. (Applicant Exhibit X at 4, 62-64, 75; Tr. 89.) I find that this debt is resolved.

1.g. Applicant admits that he is indebted to a creditor for a past-due account in the amount of \$3,664. He testified that he was having issues contacting the current creditor on the account. After the hearing he was able to contact the creditor and determine that this card was used exclusively by his ex-wife, but is still his obligation under the divorce decree. He was unable to resolve this debt, but will revisit it with this creditor in six months “as other debts pay down.” (Answer at 3, Applicant Exhibit X at 4; Tr. 94-95.) This debt is not resolved.

1.h. Applicant admits that he is indebted to a creditor for a past-due account in the amount of \$8,038. He testified that he was unaware of this debt until after the divorce, since it was his ex-wife’s. He is currently making monthly payments to this creditor for six months, when the debt will be revisited. (Applicant Exhibit X at 4, 57-58, 60, Exhibit Y; Tr. 95.) This debt is being resolved.

1.i. Applicant originally denied that he was indebted to a creditor for a past-due debt in the amount of \$58. Subsequent to the hearing he made payment arrangements with the creditor and paid this debt in full. (Applicant Exhibit X at 4, 65; Tr. 98-99.) This debt is resolved.

1.j. Applicant admits that he is indebted to a creditor for a past-due medical debt incurred by his ex-wife in the amount of \$1,296. Subsequent to the hearing he made a payment arrangement with this creditor and has begun to make payments on the debt. (Applicant Exhibit X at 4, 66; Tr. 99-100.) This debt is being resolved.

1.k. Applicant originally denied owing a past-due debt in the amount of \$314. Subsequent to the hearing he contacted the creditor and settled the account. (Applicant Exhibit X at 4, 72-73; Tr. 100-101.) This debt is resolved.

1.l. Applicant denied owing a past-due debt for a rental car in the amount of \$2,207. He stated he had no knowledge of the debt. Applicant disputed the debt in

writing twice to all three of the credit reporting services. Two of the credit reports in evidence refer to his first dispute. (Government Exhibit 2 at 15, Exhibit 3 at 2.) He received a response from one of the companies regarding his second dispute stating, "Based on the information provided to TransUnion, our records show that the information you disputed does not currently appear on your TransUnion credit report." (Applicant Exhibit X at 68-70, Exhibit Z; Tr. 101-104.) This debt has been resolved.

1.m. Applicant admits that he owed a past-due medical debt incurred by his ex-wife in the amount of \$227. He contacted the creditor after the hearing and confirmed that "this account reflects paid in full." (Applicant Exhibit X at 4; Tr. 104.) This debt is resolved.

1.n. This is the same debt as 1.f, above. It is resolved. (Tr. 104-105.)

1.o. Applicant originally denied this alleged past-due debt in the amount of \$91 because he had no knowledge of the account. Subsequent to the hearing he contacted this creditor and paid the debt in full. (Applicant Exhibit X at 4, 67; Tr. 105-106.) This debt is resolved.

1.p. Applicant originally denied this alleged past-due debt in the amount of \$80 because he had no knowledge of the account. Subsequent to the hearing he contacted this creditor and paid the debt in full. (Applicant Exhibit X at 4, 71; Tr. 105-106.) This debt is resolved.

### Mitigation

Applicant's supervisor testified and provided written support for Applicant. (Applicant Exhibits E, and W; Tr. 34-46.) This witness, a senior vice president of the defense contractor, has known Applicant for well over 30 years. He was the person who recruited and hired Applicant for his current position. Applicant has been open with the witness about his financial problems, which the witness knew about before hiring Applicant. The witness believes Applicant to be honest and capable of resolving his debt situation. He fully supports Applicant's request for a security clearance.

Applicant's 21-year-old son also testified. (Tr. 130-138.) His testimony discussed the details of his father's divorce from his now ex-wife, as well as Applicant's desire and intent to pay all of his debts. He also discussed Applicant's reputation for integrity and honesty.

Applicant also provided letters of support and recommendation from several individuals. A retired lieutenant general in the U.S. Air Force, and a deputy project manager for the U.S. Army, both of whom have known Applicant for 30 years, strongly endorse his obtaining a security clearance. (Applicant Exhibits A and B.) Applicant's personal accountant, and a friend who is an attorney, each with knowledge of his financial situation, describe Applicant as a man of integrity and character. (Applicant Exhibits C, and D.) Finally, Applicant's father, who held security clearances throughout his professional life, including as president of a consulting firm working with the military,

states that Applicant “is one of the finest young men I have ever met.” (Applicant Exhibit F.)

## **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 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, by his own admission, and supported by the documentary evidence, had several delinquent accounts that he could not resolve. 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), 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.” In addition, AG ¶ 20(b) states that 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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. The majority of Applicant’s debt was incurred in relation to his contentious divorce from his now ex-wife. That situation occurred simultaneously with the drop in Applicant’s income, a fact shown by the income tax returns in the record. Applicant has not tried to avoid this situation, but has worked hard to resolve it. He has been proactive, consistently paying his alimony and contacting his creditors to work out acceptable payment arrangements, or pay them off if possible.

Seven of the debts in the SOR have been paid by Applicant. (SOR 1.f, 1.l, 1.k, 1.m, 1.n, 1.o, and 1.p.) Collection actions have ceased on two other debts. (SOR 1.c, and 1.d.) He has entered payment arrangements regarding three other debts. (SOR 1.a, 1.e, and 1.h.) He has not been able to resolve two of the debts, which were incurred by his ex-wife. (SOR 1.b, and 1.g.) However, he evinces a credible intent, based on his actions to date, that he will resolve these debts as well. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Finally, Applicant successfully disputed the debt set forth in SOR 1.l. This action brings him under the orbit of AG ¶ 20(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 has acted in a way that shows good judgment, making the best he could out of a very difficult personal situation. Since he became fully employed about a year and a half ago he has made great strides in resolving his financial situation. As the DOHA Appeal Board (Board) has said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”<sup>1</sup>

Furthermore:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ‘. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such

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<sup>1</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).



debts one at a time. *Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.*<sup>2</sup> (Emphasis supplied.)

All of the above mitigating conditions apply to the facts of this case. Guideline F is found for 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 worked hard to resolve his financial situation, raise his young daughter virtually alone, and succeed in his employment. He has the knowledge and ability to avoid financial problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

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<sup>2</sup>ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

### **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:                      FOR APPLICANT

Subparagraphs 1.a through 1.p:              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.

WILFORD H. ROSS  
Administrative Judge