



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



In the matter of: )  
)  
) ISCR Case: 14-00514  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel  
For Applicant: *Pro se*

08/18/2014

**Decision**

DAM, Shari, Administrative Judge:

Applicant accumulated approximately \$27,000 of delinquent debts since 2003, and failed to file a 2011 Federal income tax return. 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 April 17, 2013, Applicant submitted a security clearance application (SF-86). On April 17, 2014, 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.

On May 9, 2014, Applicant answered the SOR and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On June 12, 2014, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant that same day. He received the FORM on June 25, 2014, and was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He provided no additional information. DOHA assigned the case to me on August 7, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted five of the six allegations contained in Paragraphs 1.a through 1.f, except Paragraph 1.c, which he disputed. (Item 4.)

Applicant is 39 years old and divorced. He has a 12-year-old son from a marriage that ended in 2003. He attended high school between 1990 and 1993. In November 1996 he enlisted in the Air Force and in July 2002 he received an honorable discharge. He was then unemployed until May 2003 when he started working for a defense contractor. He is a network engineer. (Items 5, 7.)

Applicant attributed his financial problems to a 2003 automobile accident in which he received some injuries. He asserted that his insurance company failed to pay the necessary medical bills promptly, which caused some of his bills to become delinquent. (Item 7.) During a May 2013 interview with a Government investigator, he stated that he "inadvertently neglected to file his 2011 federal income tax return." (Item 7.) He was not concerned because he generally received a refund and had not received any notice from the Internal Revenue Service about the unfiled return. He stated he intended to file the return. (Item 7.) He discussed five delinquent debts and told the investigator that he "was willing to pay any just debts with evidence of obligation." (Item 7.)

Based on a credit bureau report (CBR) dated April 30, 2013, the SOR alleged five delinquent debts totaling \$27,080, dating from 2007 to 2012, and an unfiled Federal income tax return. (Item 6.) The status of each allegation is as follows:

1. Applicant asserted that he filed his 2011 Federal income tax return, alleged in SOR ¶ 1.a, but provided no documentation to confirm the filing. (Item 4.) It is unresolved.

2. The \$10,810 debt alleged in SOR ¶ 1.b arose after Applicant's automobile was repossessed. Applicant asserted that he negotiated a repayment plan with the creditor and was making payments. He did not submit proof of any payments made on that plan. (Item 4.) It is unresolved.

3. The \$15,830 debt alleged in SOR ¶ 1.c is owed to a credit card company. Applicant admitted that he owed \$6,000 of the debt, but disputed the remaining fees. He

provided no information to document that he had filed a formal dispute of the debt. (Item 4.) It is unresolved.

4. The \$271 debt alleged in SOR ¶ 1.d is owed to a cable company. (Item 7.) It is unresolved.

5. The \$119 alleged in SOR ¶ 1.e may be an unpaid medical bill. (Item 7.) It is unresolved.

6. The \$50 alleged in SOR ¶ 1.f may be an unpaid medical bill. (Item 7.) It is unresolved.

Applicant did not submit evidence that he obtained credit counseling or sought assistance with resolving his debts. He did not provide a budget. 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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated delinquent debts between 2003 and 2012 that he has been unable or unwilling to satisfy. He also failed to file a 2011 Federal income tax

return. The evidence raises all three 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 obligations:

(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 2003 and continue to date. Because he failed to prove that he addressed any debts or filed the 2011 income tax return, he did not demonstrate that such problems are unlikely to continue or recur. His reliability, judgment, and trustworthiness in managing delinquent debts and tax obligations remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant asserted that his financial problems arose in 2003 as a result of an automobile accident. He provided no explanation for not resolving any debts in the intervening 11 years. He did not submit sufficient evidence to demonstrate that his financial problems arose as a consequence of circumstances that were beyond his control. AG ¶ 20(b) does not apply.

Applicant has not participated in financial or credit counseling, and there are no clear indications that his delinquent debts or unfiled tax return are under control. Hence, AG ¶ 20(c) has no application. Because Applicant provided no evidence documenting a good-faith effort to resolve debts or file the 2011 income tax return AG ¶ 20(d) does not

apply. Although Applicant claimed that he had a reasonable basis to dispute a large credit card debt, he provided no proof to substantiate the basis of the dispute or provide evidence of actions taken to resolve the issue 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 39-year old man who honorably served in the Air Force for six years. He has worked for a defense contractor since May 2003. The SOR-listed debts dating from 2003 to 2012 total about \$27,000.

In May 2013 a Government investigator interviewed Applicant about five delinquent debts and an unfiled 2011 Federal income tax return. Applicant said he would pay any debts that he justifiably owed. One year later, on April 17, 2014, the Department of Defense issued a SOR and alleged that those five debts, discussed during his previous interview, raised security concerns. In May 2014 Applicant answered the SOR, stating that he was resolving the \$10,830 debt. During that May 2013 interview Applicant also asserted that he "inadvertently" failed to file a 2011 tax return, but that he intended to file it. On June 25, 2014, Applicant received the FORM, which specifically informed him that he failed to submit proof of payment or resolution of any delinquent debt, including a small debt of \$50, and that he had not provided proof of filing the 2011 Federal income tax return. Applicant had 30 days to supply additional information in response to the FORM, but did not do so.

Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance. He had sufficient notice of the Government's concerns and time to address them. His excuse for not filing a 2011 income tax return is not credible, and raises questions about his judgment. He is a mature individual, who according to his interview, has filed many returns in the past and knew or should have known of his yearly legal obligation. 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 through 1.f:	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.

SHARI DAM  
Administrative Judge