



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01270
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

03/31/2015

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant incurred several delinquent small business debts, after turning over daily operations to an employee, when he started work for a larger company. He fully resolved all of them after learning of their existence, and has sufficient income to remain solvent. Resulting security concerns were mitigated. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application on August 19, 2013. On May 13, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on June 3, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 14, 2014. The case was assigned to me on October 20, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on December 16, 2014, setting the hearing date for January 15, 2015. I convened the hearing as scheduled, with Department Counsel participating from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 and 2, which were admitted without objection. Department Counsel also submitted GE 3 for identification and possible use during testimony, but did not offer it for admission. Applicant offered Exhibits (AE) A through D, which were admitted without objection, and testified on his own behalf. His supervisor also testified. I granted Applicant's request to leave the record open until January 29, 2015, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on January 26, 2015. On January 28, 2015, Department Counsel forwarded Applicant's post-hearing evidentiary submission without objection to its admission. These documents were marked AE E and admitted into the record.

### **Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor, where he has worked since March 2010. He is a high school graduate with one year of college classes. He has no military service and has never held a security clearance. He is married, for a second time, with four adult children and stepchildren. (GE 1; Tr. 38.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.f through 1.i, with explanations including that three of them reflected different credit report entries concerning the same underlying debt. He denied the allegations in SOR ¶¶ 1.a through 1.e, and 1.j; and provided receipts documenting prior payment of those alleged debts. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant purchased a small sheet metal business in 2001, and operated it successfully until late 2003 when he obtained a good job as a project manager with a larger company. He did not incorporate his business, and remained personally liable for its debts. He left the company to be managed by his accountant/bookkeeper, who failed to pay some required state employment and property taxes over the subsequent three or four years. After having to personally pay delinquent employment taxes on several occasions, Applicant decided to close the business and sold his machinery and equipment to a competitor. When he looked at a credit report for the first time in connection with completing his SF 86, he discovered that he also had state tax liens that had been filed against him for unpaid property taxes on his business equipment for tax years 2004 through 2008. These liens are the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.e, totaling \$1,253. Applicant promptly paid these taxes in July 2013, and received documentation from the state showing that the liens had been released. A \$967 tax lien that was presumably for employment taxes was also filed against him in November 2007, as alleged in SOR ¶ 1.d. He paid those taxes, and the lien was fully released in April 2010. (AR; GE 2; AE D; Tr. 40-47, 50.)

The three debts alleged in SOR ¶¶ 1.f through 1.h all pertain to a vehicle loan that Applicant used to buy a truck for his business in 2003. The first two are based on reports to different credit bureaus on different dates by the credit union that bought the loan from the dealer on the date of sale. The third is an entry by the collection agency to whom the credit union transferred the deficiency balance, after voluntary repossession and sale of the truck in 2007 when the business was closed. Applicant paid this deficiency balance (which had grown to \$9,327) to the collection agency by cashier's check on August 29, 2014; and provided a January 21, 2015 letter from the credit union confirming that the balance due on this debt had been paid in full through the third party collection agency. (AR; GE 2; AE A; AE E; Tr. 47-50.)

The \$2,860 debt alleged in SOR ¶ 1.i was another debt arising from Applicant's small business. In 2007 a customer filed a claim against his bonding company in connection with the installation of a heating and air conditioning system. Applicant's insurance paid the claim, but he thought that he had successfully disputed responsibility. After discovering the debt remained outstanding, he contacted the collection agency that acquired the debt from the insurance company, and paid them in full by cashier's check. He submitted a letter from the agency, dated September 2, 2014, acknowledging payment in full, with a zero balance due. (AR; Tr. 52.)

SOR ¶ 1.j alleged that a \$332 medical debt had been placed for collection and remained unpaid. Applicant denied this allegation, and provided proof that he paid this debt on January 16, 2014. (AR; AE A; Tr. 53-54.)

Applicant provided his family budget spread sheet showing monthly income of \$8,480 and expenses of \$4,818; leaving a remainder of \$3,662. He testified in a sincere, organized, and credible manner. His supervisor, the company's general manager, also testified on his behalf. This witness attested to Applicant's good character, reliability, trustworthiness, and track record of discretion in protecting the company's proprietary information. Four other current and former supervisors, who know Applicant well, wrote letters describing his outstanding character, responsibility, dedicated performance, and compliance with rules. (AE B; AE E; Tr. 66-71.)

### **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 (DCs) and mitigating conditions (MCs), 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 under 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.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had some delinquent debts, all but one of which arose after he turned over the daily operations of the business he formerly owned to an employee. The remaining debt involved a small medical account that he had paid four months before the SOR was issued. These facts provide substantial evidence under the foregoing DCs, thereby shifting the burden to Applicant to mitigate resulting security concerns. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 financial problems arose from the mismanagement of his former business by the employee to whom he entrusted operations while he traveled in his new position as a project manager for a larger company. As he became aware of each debt, he resolved it satisfactorily. He no longer owns the business, has resolved all formerly delinquent debts, and has a substantial monthly surplus of income over expenses. The evidence demonstrates that financial issues are unlikely to recur and do not reflect

adversely on Applicant's current reliability and judgment. Applicant established substantial mitigation under AG ¶ 20(a).

Applicant fully repaid and satisfied all of his formerly delinquent debts, and has sufficient income to remain financially solvent. These facts establish additional mitigation under AG ¶¶ 20(c) and (d).

### **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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, who accepted accountability for his valid debts and successfully resolved them. His positive actions to address both the sources and results of his indebtedness have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of significant financial problems unlikely. His debts of potential concern initially arose without his knowledge, and he successfully addressed them in a responsible manner upon becoming aware of their existence. His current solvency and financial responsibility demonstrate permanent behavioral changes. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability 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: FOR APPLICANT

Subparagraphs 1.a through 1.j: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge