



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 14-01594
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

04/16/2015

**Decision**

HOGAN, Erin C., Administrative Judge:

On June 25, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the 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 (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On July 25, 2014, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on February 10, 2015. The FORM was forwarded to Applicant on February 11, 2015. Applicant received the FORM on February 20, 2015. He had 30 days to submit a response to the FORM. He timely submitted a Response to FORM which is admitted as Item 5. Department Counsel objected to Applicant's Response to FORM, but did not state a specific basis for the objection. Department Counsel's response to Applicant's Response to FORM is admitted as Item 6. On March 31, 2015, the FORM was forwarded to the hearing office and was assigned to me on April 2, 2015.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Rulings on Evidence**

Item 3 of the FORM is a portion of the Report of Investigation (ROI) from the background investigation of Applicant. The two-page document is a portion of a summary of an interview of Applicant which occurred between January 14, 2014, to January 31, 2014, in conjunction with his background investigation. DoDD 5220.6, enclosure 2, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)). Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte*. While it is clear that Department Counsel is attempting to act in good-faith, having highlighted the issue in a footnote in the FORM, Item 3 is not authenticated. (See Government's FORM, p.2, footnote 1) Applicant's failure to mention this issue in a response to the FORM is not a knowing waiver of the rule. Waiver means "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9<sup>th</sup> ed., West 2009). Applicant was not expressly informed of the requirement in ¶ E3.1.20 of the Directive that an ROI may be received with an authenticating witness. I cannot conclude he expressly waived this rule. He did not mention Item 3 in his response to the FORM. He may not have read the footnote advising him to review Item 3 for accuracy. I am also concerned because only a portion of the interview was provided. I cannot conclude that Applicant's failure to address the accuracy of Item 3 in his response to the FORM was a knowing waiver of the rules outlined in the Directive, enclosure 2, ¶ E3.1.20. Item 3 is not admissible and will not be considered in this Decision.

### **Findings of Fact**

In his answer to the SOR, Applicant admits to SOR allegations 1.a – 1.i. (Item 1)

Applicant is a 55-year-old male employed by a Department of Defense contractor, seeking to obtain a security clearance. Applicant has been employed with the company since July 2012. He has a high school diploma. From January 1980 to March 2007, he served on active duty in the U.S. Marine Corps. He received an Honorable Discharge. He is married and has no children. (Item 2)

Applicant completed an electronic questionnaires for investigations processing (e-QIP) on December 31, 2013. (Item 4) A subsequent background investigation revealed that Applicant had eight delinquent debts, a total approximate balance of \$19,265. In his response to the SOR, Applicant also admitted that he filed Chapter 7 bankruptcy in December 1999 and the debts were discharged in 2000. (Items 1, 2 and 4)

Applicant's delinquent debts include a \$5,949 collection account (SOR ¶ 1.b: Item 4 at 3); a \$4,503 delinquent credit card account placed for collection (SOR ¶ 1.c: Item 4 at 3); a \$1,234 delinquent credit card account placed for collection (SOR ¶ 1.d: Item 4 at 4); a \$950 account placed for collection (SOR ¶ 1.e: Item 4 at 6); a \$1,234 delinquent credit card account placed for collection (SOR ¶ 1.f: Item 4 at 7); a \$2,589 delinquent credit card account placed for collection (SOR ¶ 1.g: Item 4 at 10); a \$1,851 delinquent account placed for collection (SOR ¶ 1.h: Item 4 at 10); and a \$1,246 account placed for collection. (SOR ¶ 1.i: Item 4 at 11)

In response to the FORM, Applicant indicates he began experiencing financial difficulties between 2011 and 2012. He lost his job as a Department of Defense employee. He took a lesser paying job. From 2010 to 2012, he provided support to his sister-in-law who had cancer. She passed away in 2012. Applicant is in the process of making arrangements with a law group to resolve the debts alleged in SOR ¶¶ 1.c, 1.d, 1.g, 1.h, and 1.i. Applicant hopes to resolve these debts in order for his financial situation to become more manageable. Remaining qualified for a security clearance would allow him to obtain reasonable paying jobs and a more promising career track. He hopes to retain his security clearance. (Item 5)

### **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 must be considered when 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 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 applicant or proven by Department Counsel. . . ." The

applicant has the ultimate burden of persuasion for obtaining a favorable security 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 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 Executive Order 10865 provides that 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 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past several years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

AG ¶ 20(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) does not apply. Although Applicant indicates that he is beginning to resolve his debts, he did not provide

verification that he has a debt repayment plan or proof of any payments made towards resolving his delinquent debts.

AG ¶ 20(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) partially applies because Applicant was underemployed between 2011 and 2012. At the same time, he provided support to his sister-in-law who was undergoing cancer treatment. Applicant encountered circumstances beyond his control which caused some financial problems. However, I cannot conclude that he acted responsibly under the circumstances because he provided no proof he is in the process of resolving his delinquent debts.

AG ¶ 20(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) does not apply. There is no evidence Applicant received financial counseling. The record evidence does not support the premise that Applicant's problems are being resolved.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant maintains he is the process of resolving his delinquent accounts, he did not provide documentation to verify the steps he is taking to resolve his financial problems. Applicant failed to demonstrate that he is making a good-faith effort to resolve the delinquent accounts alleged in SOR ¶¶ 1.b – 1.i.

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.) While Applicant is in the process of disputing all of his delinquent accounts, it is too soon to conclude that his efforts will succeed.

Applicant has not mitigated the concerns raised under financial considerations.

### **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 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 considered Applicant's active-duty service with the U.S. Marine Corps and his Honorable Discharge. I considered his favorable employment history with defense contractors. I considered there were circumstances beyond his control which contributed to Applicant's financial problems. However, Applicant had several years to work on resolving his financial problems, but did not attempt to resolve his delinquent debts until the last minute.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if they have trouble managing their finances, this can raise doubts about their ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

### **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: AGAINST APPLICANT

Subparagraphs 1.a – 1.i: Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge