



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01616
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/11/2015

**Decision**

WHITE, David M., Administrative Judge:

Applicant incurred about \$20,000 of delinquent debts while he was in college, most of which arose from post-accident medical expenses that should have been paid by his medical insurance. He has taken positive steps to address the delinquencies. 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 December 8, 2013. On June 16, 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 July 9, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 15, 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 November 21, 2014, setting the hearing date for December 2, 2014.<sup>1</sup> I convened the hearing as scheduled, with Department Counsel participating from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant offered Exhibits (AE) A through J, which were admitted without objection, and testified on his own behalf. His spouse also testified. DOHA received the transcript of the hearing (Tr.) on December 10, 2014.

### **Findings of Fact**

Applicant is a 26-year-old employee of a defense contractor, where he has worked since October 2013. He is a college graduate, who has no military service. He has never held a security clearance. He is recently married, with no children. His spouse has been on active duty in the Army with a security clearance since 2008. (GE 1; Tr. 8-9, 47, 75-77.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a, 1.c through 1.f, and 1.i, with explanations. He denied the allegations in SOR ¶¶ 1.b, 1.g, 1.h, and 1.j. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant's alleged delinquencies fall into three groups: medical debts, cell phone bills, and a suspected credit card debt. The medical debts are alleged in SOR ¶¶ 1.c through 1.f, and 1.j, totaling \$16,067. The cell phone bills are alleged in SOR ¶¶ 1.a, 1.b, 1.g, and 1.i, totaling \$4,321. The suspected credit card debt is \$209.

The medical debts arose from an automobile accident in which Applicant, who was not at fault, was involved while a freshman in college during May 2008. He was taken by ambulance to the hospital (\$878 in SOR ¶ 1.j), and kept overnight for treatment, tests, and observation (\$15,189 in SOR 1.c through 1.f). At the time, he was covered under his parents' health insurance plan so he thought the bills were paid. He moved several times over the succeeding summer vacation and fall semester, and never received any bills in the mail. His parents did not receive the bills either. Applicant did not learn about these debts until September 2013 when he began preparations to apply for his clearance. He contacted the collection agency holding the four non-ambulance debts and made agreed payments of \$40 per month toward them from November 2013 through February 2014. In March 2014, following the advice of an Army legal assistance attorney, he submitted letters requesting validation of various debts on his credit report under the Fair Debt Collection Practices Act. The debt collection

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<sup>1</sup>Applicant confirmed that he received actual notice of the hearing date more than 15 days in advance, and that he was ready to proceed without needing any additional time to prepare. He declined my offer to keep the record open after the hearing to permit submission of additional evidence. (Tr. 12-14, 81.)

agency responded on April 30, 2014, advising him that three of those debts, totaling \$14,815, were not validated and were placed in a status to prevent further collection activity. The \$374 debt alleged in SOR ¶ 1.d was validated, and remains in collection. The collection agent for the \$878 ambulance bill did not respond to Applicant's validation request letter. His health insurance carrier advised Applicant to have the creditors submit claims to them for adjudication if they contact him to attempt collection. (AR; GE 1; GE 2; AE A; AE B; AE C; Tr. 33-36, 42-44, 48-58.)

Applicant and a friend opened a joint cell phone account during his freshman year of college. They were unable to pay the resulting bills on their budgets, resulting in the \$2,509 debt alleged in SOR ¶ 1.a. The collection agent holding this debt responded to Applicant's validation request and agreed to accept the original balance of \$1,484 in full settlement. Applicant began making agreed \$50 monthly payments toward this debt in November 2013, resulting in a balance of about \$900 at the date of his hearing. This debt is being resolved. (AR; AE J; Tr. 40-41, 58-60, 63-65.)

Applicant denied the \$865 cell phone debt alleged in SOR ¶ 1.b, and the \$259 cell phone debt alleged in SOR ¶ 1.g. He recalled making the required payments on the former account in 2009, at the time of the service. He also disputed the latter account, which involved a 30-day free internet trial in 2009. The collection agencies reporting these debts did not respond to his validation request, and he has filed complaints with the Consumer Financial Protection Bureau (CFPB) concerning these matters. Applicant admitted receipt of proof of the original debt from a different collection agent for the \$688 debt alleged in SOR ¶ 1.i, but this concerns the same account and service involved in SOR ¶ 1.b, and is also pending resolution by the CFPB. (AR; GE 2; GE 3; Tr. 60-62.)

Applicant has no idea how the \$209 collection account alleged in SOR ¶ 1.h arose, but suspects that it may have involved a retail store credit card. The last activity on the account reportedly occurred in July 2009, and it was placed for collection in 2011. He received no response to his validation request letter from the collection agency, and Applicant filed a complaint with the CFPB concerning the matter. (AR; GE 2; GE 3; AE A; Tr. 63.)

As noted above, Applicant consulted an Army legal assistance attorney to assist with resolution of these debts and is following the advice he received. He made regular payments toward the validated debts, and made appropriate reports to complete resolution of those he had a sound basis to dispute. His spouse testified that he is conscientious about meeting all current financial obligations and pursuing resolution of the SOR-listed debts. He fully satisfied another delinquent debt he disclosed on his SF 86, which was not alleged in the SOR. He worked full time while in college to pay educational expenses, and is current on payments toward his remaining student loan debts. (AR; AE H; AE I; Tr. 56-67, 65-69, 74-78.)

Applicant's most recent performance plan reflects supervisor's comments about his exceptional performance and excellent support of mission success. He received

three special achievement awards during his first ten months in his present job, and performs substantial volunteer work in his community. His spouse testified that he is reliable, responsible, and mature. (AE D; AE E; AE F; Tr. 77-78.)

### **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 from 2008 and 2009, his freshman and sophomore college years, reported by collection agencies. One of these, for cell phone service, was caused by his inability to pay it at the time. 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 during his early college years more than six years ago, in part due to his inattention to some aspects of his finances at the time. When he became aware of the nature and extent of his credit problems, he took reasonable steps to make payments toward the valid debts and disputed the others. He is conscientious about managing his finances to prevent any recurrence. His remaining few delinquencies are both old and minor. The evidence strongly suggests that financial issues are unlikely to recur and do not reflect adversely on Applicant's current reliability and judgment, establishing substantial mitigation under AG ¶ 20(a).

Applicant has been actively engaged with a legal assistance attorney and his creditors to resolve his reported delinquencies. He is current on most of his accounts and expressed his willingness to continue efforts to resolve the few remaining delinquencies. He demonstrated improved financial management by resolving the vast majority of his debts, and has sufficient income to remain financially solvent. These facts establish additional mitigation under AG ¶¶ 20(c) and (d).

"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.'" 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)). Applicant has successfully established a meaningful track record of debt resolution that predated his security clearance application and successfully continues to date.

### **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 has accepted accountability for his valid debts and taken substantial steps to resolve 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 arose when he was less mature and experienced. 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