



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-02355

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

02/03/2016

**Decision**

HOWE, Philip S., Administrative Judge:

On January 9, 2014, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On April 23, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 May 21, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 29, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of

Items 1 to 5, was provided to the Applicant on September 30, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 14, 2015.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on November 13, 2015.

Department Counsel submitted five Items in support of the SOR allegations. Item 5 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on February 25, 2014. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on January 7, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted all the allegations in Paragraph 1 of the SOR. (Items 1, 2)

Applicant is 41 years old and married. He has one stepchild. He served in the U.S. Army from 1996 to 2000. He has been employed by a defense contractor for the past decade. (Item 3)

Applicant has 10 delinquent debts listed in the SOR. They have been delinquent since 2010 and total \$36,050. The debts include money owed on an auto purchase that resulted in repossession, several credit cards, a utility debt, a cable television company debt, and a judgment for \$6,501 stated in Subparagraph 1.a. Applicant contends the allegations in Subparagraphs 1.a and 1.f are the same debt, merely sold from the original creditor to a debt collector. Applicant did not submit any documents to show he has taken any payment action to repay these delinquent debts. None of them are resolved. (Items 1-4)

Applicant submitted a statement with his Answer. In it he stated he had family situations that forced him to choose between paying his debts or taking care of his immediate family. He chose to provide for his family. He also explained his wife started suffering a physical ailment in 2006. She was not able to continue working and the decreased family income prevented him from paying his debts. His wife returned to employment in 2011. Since then he has not indicated he took any effort to repay his delinquent debts during those four years. (Item 2)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his

job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 are useful 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, the administrative judge applies the guidelines 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(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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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. 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. 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2009 to the present, Applicant accumulated 10 delinquent debts, totaling \$36,050 that remain unpaid or unresolved.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

- (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.

AG ¶ 20 (b) would apply if the loss of employment by his wife from 2006 to 2011 were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past four years, Applicant's spouse has been employed. Six of the debts are under \$1,000 each and Applicant has not shown he took any action to repay them. He did not show the family income from 2011 was inadequate to repay some or all of these delinquent debts. He did not show he took any action to resolve any of the 10 debts. He failed to meet his burden of proof on that issue.

Lastly, Applicant contends his wife's medical problems from 2006 onward prevented him from resolving his delinquent debt. Applicant failed to prove AG ¶ 20 (b)

applied because he did not submit sufficient evidence of the conditions that he asserted were beyond his control and show that he acted responsibly in resolving his delinquent debts during the time the debts were accumulating.

The remaining mitigating conditions are not established. The conduct is continuing and casts doubt on Applicant's current reliability, trustworthiness, and good judgment. Applicant did not submit any evidence of financial counseling. There is no evidence of any good-faith efforts to repay his debts. He has not shown a reasonable basis to dispute the validity of any of the debts. There is no affluence from a legal income source involved in the facts.

### **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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past four years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not 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
Subparagraph 1.a to 1.j:	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.

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PHILIP S. HOWE  
Administrative Judge