



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



|                                  |   |                     |
|----------------------------------|---|---------------------|
| In the matter of:                | ) |                     |
|                                  | ) |                     |
|                                  | ) | ISCR Case: 14-02569 |
|                                  | ) |                     |
| Applicant for Security Clearance | ) |                     |

**Appearances**

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

January 21, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated nine delinquent debts totaling \$87,887. Applicant provided documentation he addressed one debt. He failed to present sufficient evidence that he has addressed the remaining delinquencies. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On November 14, 2013, Applicant submitted a security clearance application (e-QIP). On July 16, 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.

Applicant responded to the SOR (Answer) on August 13, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on October 15, 2014. A complete copy of the File of Relevant Material (FORM), containing six Items, was received by Applicant on October 23, 2014. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. No additional information was provided within the 30-day period, and DOHA assigned the case to me on December 9, 2014. However, prior to the expiration of the 30-day period, Applicant requested additional time to submit documentation. That extension was not noted in the file that was forwarded to me. On December 11, 2014, I issued an unfavorable decision. On December 18, 2014, I issued an order to vacate the December 11, 2014 decision, to allow full consideration of Applicant's evidentiary exhibits, marked Applicant Exhibit (AE) A through E, which were submitted by letter dated December 17, 2014 to Department Counsel. Department Counsel had no objection to AE A through AE E, and they were admitted into the record.

### **Findings of Fact**

Applicant is 31 years old. He served on active duty in the Air Force from March 2003 to March 2007, when he was honorably discharged. He has worked for a Government contractor since December 2011. He is a high school graduate. He is married and has three minor children. Applicant's e-QIP reflects that he was unemployed from March 2007 to September 2007 and again from January 2010 to May 2010. (Item 5.)

The SOR alleges Applicant owes approximately \$87,887 in delinquent debt to nine creditors. In his Answer, Applicant admitted all of the debts in SOR ¶¶ 1.a through 1.i. (Item 4.) His debts are also documented in the record credit report dated December 14, 2013. (Item 6.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is alleged to be indebted on a collection account in the amount of \$554, as stated in SOR ¶ 1.a. His December 2013 credit report reflects this debt has been delinquent since at least March 2013. In his Answer, Applicant claimed, "I admit to having this debt but, the balance has been paid in full." However, he failed to submit documentation to support his claim that he satisfied this debt despite Department Counsel's identification of his need to do so in the FORM. His December 17, 2014 submission only notes, "This account is no longer delinquent." It did not provide any support for that claim. It remains unresolved. (Item 4; Item 6; AE A.)

Applicant is alleged to be indebted on a mortgage account that is past due in the amount of \$82,146, as stated in SOR ¶ 1.b. In his Answer, Applicant claimed, "Reason for delinquency is because this account is under remodification and I was directed by my representative to stop payment until negotiations have been completed." He

submitted a one page letter dated April 14, 2014, from a law group regarding a request for further documentation from the lender. He provided additional documentation dated November 8, 2014, which reflected that he was approved for a trial plan where he would make monthly payments of \$1,246.42. However, he failed to provide documentation to show he has made any payments under this modification plan. The debt remains unresolved. (Item 4; Item 6; AE A; AE E.)

Applicant was alleged to be indebted on a collection account in the amount of \$204, as stated in SOR ¶ 1.c. His December 2013 credit report reflected this debt was delinquent since at least April 2012. In his Answer, Applicant claimed, "I admit to having debt. Paid in full." He submitted a letter from the collection agent, dated November 20, 2014, which indicated this debt was a "paid collection account." It is resolved. (Item 4; Item 6; AE A; AE B.)

Applicant is alleged to be indebted to a jeweler on a collection account in the amount of \$2,994, as stated in SOR ¶ 1.d. His December 2013 credit report reflects this debt has been delinquent since at least July 2013. Applicant presented a letter from a collection agent for this creditor, dated November 4, 2014, which shows Applicant made payment arrangements with this creditor. However, he failed to submit documentation to show that he was making payments on this debt pursuant to that agreement. This debt remains unresolved. (Item 4; Item 6; AE D.)

Applicant is alleged to be indebted to a creditor on four medical collection accounts in the amounts of \$620, \$997, \$91, and \$181, as stated in SOR ¶¶ 1.e through 1.h. He submitted a letter, dated December 9, 2014, which memorialized a payment agreement he reached with a collection agency of a different name. He did not present evidence that the agreement can be traced to the four delinquent accounts identified on the SOR. Further, he did not present evidence of making any payments under the agreement. These debts remain unresolved. (Item 4; Item 6; AE A; AE C.)

Applicant is alleged to be indebted to a creditor for a collection account in the approximate amount of \$100 as stated in SOR ¶ 1.i. His December 2013 credit report reflects this debt has been delinquent since at least September 2013. In his Answer, Applicant claimed, "I admit to having debt. Paid in full." However, he failed to submit documentation to support his claim that he satisfied this debt. In his December 17, 2014 submission, he indicated, "I do not Admit to this debt." However, he failed to provide any further information on this delinquency or why he now denies it. It remains unresolved. (Item 4; Item 6; AE A.)

Applicant failed to submit evidence of financial counseling, a budget, or income statement. 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. He noted that he has never been convicted of a criminal offense and is a good citizen.

## **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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Since 2012, Applicant accumulated \$87,887 in delinquent debt that he has been unable or unwilling to satisfy. The evidence raises security concerns under both conditions, 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 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 delinquent debt began accumulating in 2012. He presented sufficient evidence to show he has satisfied one delinquent account. The rest appear to remain outstanding. He did not demonstrate that future financial problems are unlikely to occur. His reliability and trustworthiness in managing delinquent debts remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant experienced two periods of unemployment, but his SOR-listed debts appear to have become delinquent after obtaining his current full-time employment. He failed to provide evidence that his debts are attributable to circumstances beyond his control or that he acted responsibly under the circumstances. Some of his debts are relatively small, including two different collection accounts for approximately \$100, yet they appear to remain unsatisfied. Applicant has failed to document significant effort to act responsibly with respect to his debts. While he did negotiate payment arrangements with some of his creditors, he has not shown he is acting responsibly under the circumstances by making payments according to his agreements. AG ¶ 20(b) has limited application.

Applicant failed to provide evidence that he participated in financial counseling or that he had a plan to fully resolve his debts. Further, AG ¶ 20(c) has no application as there are not clear indications that his delinquent debt is under control. AG ¶ 20(d) does not apply because Applicant failed to show he has made a good-faith effort to repay the majority of his overdue creditors or otherwise resolve his debts. He did resolve one debt, as stated in ¶ 1.c. Applicant had the burden to present evidence to mitigate the Government's concerns and he failed to provide proof of payments on the debts in ¶¶ 1.a, 1.b, and 1.d through 1.i.

Applicant failed provide evidence of a reasonable basis to dispute any of his SOR alleged debts. 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 a 31-year-old employee of a defense contractor. He served honorably in the Air Force for four years. He has no criminal record and believes himself to be a good citizen. However, he failed to demonstrate resolution of eight of his SOR-listed delinquent debts. He also failed to establish a track record of responsibly managing his finances that could support a finding of permanent behavioral change, or of reduced potential for coercion or duress. He presented no budget. While he has made steps toward establishing payment agreements with some of his creditors, he has not shown he has the funds to make payments or the discipline to follow through on his promises. Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance. 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 |
|---------------------------|-------------------|
| Subparagraph 1.a:         | Against Applicant |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | For Applicant     |
| Subparagraph 1.d:         | Against Applicant |
| Subparagraph 1.e:         | Against Applicant |
| Subparagraph 1.f:         | Against Applicant |
| Subparagraph 1.g:         | Against Applicant |
| Subparagraph 1.h:         | Against Applicant |
| Subparagraph 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein  
Administrative Judge