



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 14-02691 |
|                                  | ) |                        |
|                                  | ) |                        |
| 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 \$38,000 of delinquent debts between 1998 and 2009. Over the past four years he has taken positive steps to address the delinquencies, and substantially resolved them. 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 March 21, 2013. On July 23, 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 August 11, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 21, 2014. The case was assigned to me on October 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on November 18, 2014, setting the hearing date for December 1, 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 4, which were admitted without objection; and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibit (AE) A, which was admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until January 7, 2015, for submission of additional evidence. Applicant timely submitted AE B, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 9, 2014.

### **Findings of Fact**

Applicant is a 55-year-old employee of a defense contractor, where he has worked since October 2011. He is a high school graduate, who has no military service. He has held a security clearance since 1989, without incident, after starting his 21 years of employment at a major shipyard in 1977. He is a welder, and worked for defense contractors in various Navy shipyards and maintenance facilities since 1998. He has three adult children, and was divorced in 2001 after 12 years of marriage. Before they separated, his wife handled their family finances. (GE 1; Tr. 8, 33, 42-48.)

Applicant admitted the factual allegations set forth in the SOR, with explanations that some of the delinquencies had been paid. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant incorrectly thought that a tax accountant he hired was filing his federal income tax returns with the Internal Revenue Service (IRS) for tax years 1998 through 2005. The IRS filed tax liens totaling \$32,555 against him in 2004, 2007, and 2009, as alleged in SOR ¶¶ 1.a through 1.c. He worked with several different financial counselors to help resolve his tax liens, and in 2011 entered into a repayment agreement with the IRS. He initially paid \$700 per month, but that was reduced to \$400 per month after several months so that he could afford payments without incurring other debt. He also reduced his claimed exemptions to zero in order to increase the amount of regular withholding. As a result, he overpaid the IRS \$7,693 during 2013. These funds were applied to fully repay all of his remaining taxes owed for prior years, after which he was refunded the remaining \$2,155 in August 2014. Since his taxes are fully paid, he stopped making the monthly \$400 payments to the IRS after receiving notice of the refund. (AR; AE A; Tr. 30-39, 49-62.)

---

<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 requested, and I granted him, an additional 38 days to submit evidence due to the pending holidays, as well as his planned return to the state in which he keeps his personal records at his brother's house. (Tr. 11-13, 77-78, 87.)

The \$2,083 debt alleged in SOR ¶ 1.d was the amount charged off by the lender after the repossession and sale of a truck he purchased with a \$14,000 loan in February 2007. He stopped making payments toward this loan in September 2008, shortly after moving to a different state for a new job. He has not been contacted by the creditor with any attempt to collect this charged-off deficiency. (AR; GE 2; GE 3; Tr. 63-65.)

The delinquent debts alleged in SOR ¶¶ 1.e through 1.h were medical bills placed for collection in 2007 or 2009, totaling \$2,695. Only the most recent one, for \$565, appears on his latest credit report. He could not recall incurring these debts or being contacted about them, thinking that his health insurance would have paid them. (AR; GE 2; GE 4; Tr. 65-70.)

The delinquent \$301 debt alleged in SOR ¶ 1.i was also a medical bill that Applicant incurred in 2013 but did not receive because it was mailed to his brother's house in another state. When he learned of the debt he paid it, and it was removed from his latest credit report. He also fully paid the \$299 collection account alleged in SOR ¶ 1.j, which he formerly owed to a furniture company. His most recent credit report shows a zero balance due on this account. (AR; GE 2; GE 3; GE 4; AE B; Tr. 70-73.)

Applicant has no recurring living expenses other than two car loans with total monthly payments of \$850, two credit cards toward each of which he pays about \$120 per month, and vehicle operating and insurance costs. He lives in company-provided lodging facilities and receives per diem payments for food. He has not incurred any recent delinquent debts. (GE 2; Tr. 80-83.)

### **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 three Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant thought he had filed his federal tax returns for the years from 1998 through 2005, but was informed by the IRS that he had not successfully done so. This resulted in about \$32,500 in tax debts, for which liens were filed. He also failed to pay about \$2,700 in medical debts, of which he was not aware during 2007 and 2009; and had a \$2,083 deficiency resulting from a 2008 vehicle repossession charged off by the lender. These facts provide substantial evidence under the foregoing three 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 due to his inattention to some aspects of his finances during and following his separation and divorce, and while he was traveling to Navy facilities around the country as a contract welder. When he became aware of the nature and extent of his tax problems, he took reasonable and necessary steps to correct the sources of the problem and prevent any such 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 financial counselors to assist him in successfully resolving his IRS debts for more than four years. He brought most of his accounts current and expressed his current willingness and ability 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 debts and resolved most of 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. He is a welder, not a bookkeeper or accountant, who paid insufficient attention to his financial situation until about five years ago when he initiated successful efforts to resolve most of his outstanding debts. 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