DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04844
	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

February 17, 2016

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Decision

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 19, 2014. On November 14, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 after September 1, 2006.

Applicant answered the SOR in writing on December 2, 2014, and requested an Administrative Determination by an administrative judge. Department Counsel issued a File of Relevant Material (FORM) on August 15, 2015. Applicant did not respond to the FORM. The case was assigned to me on November 10, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

Guideline F - Financial Considerations

Applicant is 42 years old, served on active duty with the Army from 1995~2002, was unemployed for about seven months from 2012~2013, and is currently employed by a government contractor. (Item 4 at pages 5, 11~12, and 15.) He attributes his financial difficulties to his "problems with finding a full time job." (Item 2 at page 1.)

1.a. Applicant admits that he is indebted to State A for delinquent child support in the amount of about $17,699. (Item 2 at page 1.) He has submitted nothing further in this regard; and as such, this allegation is found against Applicant.

1.b. Applicant admits that he was indebted to Creditor B for a past-due debt of $125. In his answer to the SOR, he avers he is now "in good standing with" this creditor. (Item 2 at page 1.) However, the Government's most recent, June 2015, credit report still shows a past-due amount of $40. (Item 5 at page 2.) This allegation is found against Applicant.

1.c. Applicant admits that he is indebted to Creditor C for a past-due, "cable equipment," debt of $429. In his answer to the SOR, he avers "I never received a final bill and was never contacted by anyone." (Item 2 at page 1.) However, this past-due debt appears on the Government's March 2014 credit report (Item 6 at page 5.) This allegation is found against Applicant.

1.d. Applicant admits that he was indebted to Creditor D for a past-due, "school," debt of $569. In his answer to the SOR, he avers that this debt has been "paid . . . in full." This averment is supported by a letter from this creditor, which states the "debt to . . . [Creditor D] has been reduced to $0.00." (Item 2 at page 3.) This allegation is found for Applicant.

1.e. Applicant admits that he was indebted to Creditor D for another past-due, "school," debt of $124. In his answer to the SOR, he avers that this "balance will be taking (*sic*) from . . . [his] education benefits in January 2015." (Item 2 at page 1.) As this debt does not appear as past due on the Government's most recent, June 2015, credit report, this allegation is also found for Applicant.

1.f.~1.l. Applicant admits that he is indebted to Creditor F for past-due, "medical bills," totaling about $3,479. In his answer to the SOR, he offers documentation showing, as of November 2014, he was making monthly payments of $60 with a "current balance due: $3,453.00." (Item 2 at pages 4~5.) As these debts do not appear as past due on the Government's most recent, June 2015, credit report, these allegations are found for Applicant.

1.m. Applicant admits that he is indebted to Creditor J for past-due debt of $36. In his answer to the SOR, he avers that he "will pay this account on the 18th of

December” 2014. (Item 2 at page 1.) As this debt does not appear as past due on the Government’s most recent, June 2015, credit report, this allegation is found for Applicant.[1]

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. (AG Paragraph 2.) The administrative judge’s over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as to 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 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.

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[1]The Government alleges two Subparagraphs 1.j. This is obviously Subparagraph 1.m., and I have designated it accordingly.

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 Paragraph 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 notes several conditions that could raise security concerns. Under Subparagraph 19(a), an "*inability or unwillingness to satisfy debts*" is potentially disqualifying. Similarly under Subparagraph 19(c), *"a history of not meeting financial obligations*" may raise security concerns. Applicant has significant past-due debts, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Although Applicant attributes much of his past-due debts to his seven months of unemployment from 2012~2013, he has failed to act "*responsibly under the circumstances*," as required by Subparagraph 20(b) with respect to his debts. Furthermore, Subparagraph 20(d) requires that "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*." Applicant has yet to credibly address his past-due debts totaling over $18,000. Accordingly, Applicant has not met his burden of persuasion.

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. Under AG Paragraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Applicant has about $18,000 in past-due indebtedness that he has yet to address. For these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from his 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
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	For Applicant
Subparagraph 1.j.	For Applicant
Subparagraph 1.k.	For Applicant
Subparagraph 1.l.	For Applicant
Subparagraph 1.m.	For 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.

Richard A. Cefola
Administrative Judge