



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



In the matter of:

ISCR Case No. 14-05672

Applicant for Security Clearance

**Appearances**

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

June 11, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant filed Chapter 7 bankruptcy in May 2004 and discharged his debts on December 2004. Applicant is currently delinquent on five debts, in the total amount of \$48,918. His debts have not been resolved. The security concern raised by Applicant's failure to disclose his debts on his electronic Security Clearance Application (e-QIP) was mitigated because the failure to list them was unintentional. Applicant failed to mitigate the financial concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 27, 2012, Applicant submitted an e-QIP. On December 31, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations), and E (Personal Conduct). The action was taken under Executive Order (EO) 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 effective September 1, 2006.

Applicant answered the SOR on January 10, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 24, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 24, 2015, scheduling the hearing for April 22, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I, and Exhibits (GE) 1 through 5. All were admitted without objection. Applicant testified on his own behalf and offered four exhibits marked Applicant Exhibit (AE) A through E, which were admitted without objection from Department Counsel.<sup>1</sup> The record was left open for receipt of additional documentation. On April 23, 2015, Applicant submitted a two-page fax, marked AE F. Department Counsel had no objections to AE F, and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on April 30, 2015.

### **Findings of Fact**

Applicant is 64 years old. He is a high school graduate and earned an associate's degree in 1972. He worked as a Federal civil servant from 1997 until he retired in 2010. He was unemployed for ten-to-eleven months. In approximately December 2010 he and his wife purchased a restaurant. He financed the restaurant purchase through the proceeds from the sale of a home, his credit cards, and personal loans from friends. The restaurant failed, and Applicant sought work as a Government contractor in 2012. However, he was terminated from several Government contractor positions for his failure to obtain a security clearance. He was unemployed all of 2014. He was hired by another Government contractor in January 2015 and seeks a security clearance in connection with that job. He is married to his second wife and has a daughter.<sup>2</sup> (GE 1; AE A; AE C; AE D; Tr. 32-40.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which raise questions about his reliability, trustworthiness, and ability to protect classified information. Paragraph 1 of the SOR alleged that Applicant discharged debt in his 2004 Chapter 7 bankruptcy, and is delinquent on five debts, in the total amount of \$48,918. Applicant admitted the debts alleged in SOR subparagraphs 1.a through 1.f. (Tr. 9-12.) He denied falsifying his e-QIP as alleged in SOR subparagraph 2.a. The alleged debts were listed on credit reports dated July 11, 2012; September 8, 2014; and March 11, 2015. (GE 3; GE 4; GE 5.)

Applicant testified that due to his 2003 divorce, he was unable to resolve his debts. As a result he filed for Chapter 7 bankruptcy in May 2004. The bankruptcy was discharged in December 2004. (Tr. 58.)

---

<sup>1</sup> AE E, ten pages of leave and earnings statements, was returned to Applicant during the hearing for his reference. (Tr. 61.) He failed to return it to the Court after the hearing. On June 4, 2015, I called and emailed Applicant to request he resubmit AE E, in its entirety. On June 8, 2015, he submitted a five page exhibit. When I inquired further about the five additional missing pages, he indicated he wished to withdraw the missing pages. Department Counsel had no objection to the withdrawal of the five missing pages, and AE E was amended to a five page exhibit.

<sup>2</sup> Applicant failed to identify any children on his e-QIP, however he testified he has a daughter that is a senior in high school. (Tr. 87.)

Applicant is indebted for delinquent mortgage payments in the amount of \$40,985, as alleged in SOR subparagraph 1.a. This debt is for the principal mortgage on his residence, and is now approximately \$507,000 past due. While Applicant had the restaurant in 2011 or 2012, he sometimes diverted his mortgage payment money to help try to keep the restaurant business operational. Applicant stopped paying this mortgage when he could no longer afford the payments in July 2012. Applicant has been in contact with this creditor and hopes to get a mortgage modification. He still resides in the home. The home was scheduled for a foreclosure sale on May 18, 2015. Applicant still hoped to reach a modification agreement on the delinquent mortgage at the time of the hearing. In his post-hearing exhibit, Applicant presented a letter dated April 6, 2015, which indicated the mortgage holder had received Applicant's modification application, but no further status was given. This debt is unresolved. (GE 3; AE B; AE F; Tr. 33, 44-50, 92.)

Applicant is indebted to a collection company in the amount of \$3,170, as alleged in SOR subparagraph 1.b. This debt was for a credit card that became delinquent in 2012. Applicant testified that he sent this creditor a letter a month prior to the hearing, offering to settle the debt. He has not received a reply to his letter. He did not provide a copy of the letter into evidence. This debt is unresolved. (Tr. 53-55.)

Applicant is indebted to a bank in the amount of \$2,590, as alleged in SOR subparagraph 1.c. This debt was for a credit card. Applicant testified that he has been unable to locate the account holder. This debt is unresolved. (Tr. 56-57.)

Applicant is indebted on a delinquent credit card account in the amount of \$1,181, as alleged in SOR subparagraph 1.d. Applicant has not attempted to contact this creditor. This debt is unresolved. (Tr. 57.)

Applicant is indebted to a communications company in the amount of \$992, as alleged in SOR subparagraph 1.e. Applicant attempted to contact this creditor a month prior to the hearing and was told the debt had been placed with a collection company. He has not received anything from the collection company. This debt is unresolved. (Tr. 57-58.)

Applicant has not taken any financial counseling. Applicant's take-home pay is currently \$8,300 per month, although he has only been making this amount for the past two months. (TR. 63-64.) His expenses are \$1,020 per month. He calculated he has a surplus of \$7,200 per month, although part of that surplus goes toward paying for a new vehicle Applicant acquired in 2014 for his daughter. He also anticipates an additional monthly expense for his daughter's college tuition, beginning August 2015. He intends to use the remaining surplus to resolve his debts. (AE E; Tr. 83-91, 99.)

In Applicant's June 27, 2012 e-QIP, section 26 asked "Other than previously listed, have any of the following happened? In the past seven (7) years, you had bills or debts turned over to a collection agency? . . . In the past (7) years, have you been over 180 days delinquent on any debt not previously entered? [and] You are currently over 120 days delinquent on any debt?" He answered, "No," to these questions, and failed to

disclose the debts listed above. He testified that he thought he had listed the debts on his e-QIP, and genuinely seemed confused as to why they were not identified. He also had other unintentional omissions on his e-QIP like his failure to list his daughter and parts of his work history. (GE 1; Tr. 67-77.)

## **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 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) 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 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, the 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." The applicant has the ultimate burden of persuasion to obtain 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 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.

Section 7 of EO 10865 provides that adverse 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 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 notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant is delinquent on five debts, in the total amount of \$48,918. The majority of his SOR-listed debt has been delinquent since 2012. He has a history of indebtedness that extends as far back as 2004, when he filed Chapter 7 bankruptcy. Despite discharging his delinquencies in 2004, he subsequently accumulated a significant amount of unpaid debt. He demonstrated both a history of not addressing debts and an inability or unwillingness to do so over a substantial period. The evidence is sufficient to raise the above disqualifying conditions.

The following Financial Considerations mitigating conditions (MC) under AG ¶ 20 are potentially applicable:

- (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 incurred substantial delinquent debt over the past four years, which continue to date despite his recent employment status. He offered no evidence from which to establish a track record of debt resolution. While the restaurant business' failure was a condition beyond his control and contributed to his financial problems, he failed to show that he acted responsibly under such circumstances. He has not received financial counseling and his financial problems are not under control. There has been no good-faith effort to address his debts. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant admitted all of the alleged delinquencies. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions concerning his financial irresponsibility.

#### **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to disclose the SOR-listed debts on his e-QIP. However, his omissions were unintentional. He testified he thought he had listed his debts on the e-QIP. Given his demeanor, his long history of Federal service, and other unintentional omissions on his e-QIP, I find AG ¶ 16 (a) was not fully established.

## **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 all of the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has the burden to demonstrate sufficient mitigating information in this case and he has failed to meet that burden. Overall, he has not demonstrated that he has acted responsibly with respect to his finances. Applicant's inability to resolve his financial obligations raises concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has not mitigated the Financial Considerations security concerns.

## **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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Jennifer I. Goldstein  
Administrative Judge