



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



In the matter of: )  
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----- ) ISCR Case No. 14-06131  
 )  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel  
For Applicant:  
Skylar Sam, Esquire  
Claery & Green LLP

March 24, 2016

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on November 1, 2012. (Government Exhibit 1.) On March 27, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning 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 on September 1, 2006.

Applicant answered the SOR in writing on May 7, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 7, 2015. This case was assigned to me on July 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 22, 2015. I convened the hearing as scheduled on September 1, 2015. The Government offered Government

Exhibits 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through E, which were also admitted without objection. DOHA received the transcript of the hearing on September 10, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 56, divorced, but has a long-time companion. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted both allegations (1.a and 1.b) in the SOR under this Paragraph. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

The SOR lists 2 delinquent debts, totaling approximately \$35,090. The existence and amount of these debts is supported by credit reports dated March 19, 2013; March 20, 2014; July 6, 2015; and July 22, 2015. (Government Exhibits 4, 5, 6, and 7.)<sup>1</sup>

According to Applicant, his current financial difficulties began in 2002, when he lost his job and was unemployed for two years. It took him many years to come close to regaining the annual income he had before the job loss. (Applicant Exhibit D; Tr. 24.)

1.a. Applicant admitted that he owed \$11,043 for a delinquent credit card debt. Applicant stated that he had paid this debt in 2015. Government Exhibit 6 at page 4 states, "Account paid for less than full balance." This credit report also states that the last payment was in April 2015. (Tr. 26, 34-36, 38-39.) This debt is resolved.

1.b. Applicant admitted that he owed bank 3 \$24,047 for a past-due credit card account. Government Exhibit 6 at page 4 indicates that the last payment on this account was in April 2010. Applicant was asked how many times he had talked to this creditor or their agent. He stated, "Roughly two to three. Not a lot." No agreement had been made as to a payment arrangement. (Tr. 36-41, 45, 49-50, 57-61.) This debt is not resolved.

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<sup>1</sup>Government Exhibit 2 indicates that Applicant was subject to a garnishment from bank 1 in the amount of \$18,799 effective August 3, 2012. Government Exhibits 3 through 6 indicate that Applicant was subject to a judgment from bank 2 in the amount of \$16,676 effective June 2011. Applicant claims that the judgment to bank 2 was paid from a garnishment on his wages and was completed. (Tr. 25-26, 31-34.) No documentary evidence was submitted by Applicant to show that either judgment had been paid off. The Government elected not to allege these judgment debts in the SOR. Accordingly, they will be considered only in terms of determining any mitigation, and under the whole-person concept.

Applicant indicated in his financial spreadsheet that he had approximately \$2,000 per month available to pay off bills. Yet, he also testified that he had somewhere between \$1,000 and \$3000 in his checking account at any one time and no investments. (Applicant Exhibit A; Tr. 51, 62-63.) Applicant took a financial counseling course on August 18, 2015. (Appellant Exhibit C; Tr. 41-42.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. 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, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has a considerable amount of debt that he has either been unable or unwilling to pay for many years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Under AG ¶ 20(c) it may be mitigating where “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.” Also, AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Applicant's financial difficulties have been in existence since at least 2010, if not before. I have considered the fact of Applicant's loss of employment in 2002, and its impact on his finances. I have also looked at the fact that he has paid off a considerable amount of his past-due indebtedness over the last two years, albeit a lot of it through a garnishment. However, Applicant presented insufficient evidence to show that he has acted responsibly with regard to all of his significant indebtedness. He has resolved the debt set forth in allegation 1.a, which is found for him. He has also recently received credit counseling. However, he has not made any progress whatsoever on the significant debt set forth in allegation 1.b. He acknowledged the fact that his contacts with that creditor, or its agent, have been few and far between and have not resulted in any agreement. Also of concern is the fact that Applicant indicates that he should have approximately \$2,000 per month available to pay down his debt, yet he has very little money in his bank account. Given the state of the record I cannot find that Applicant has "established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan."<sup>2</sup>

Given the state of the record, I cannot find that he has acted responsibly with regard to all of his debts, or that he has initiated a good-faith effort to repay or resolve them. In conclusion, looking at Applicant's entire financial situation at the present time, the evidence does not support a finding that "there are clear indications that the problem is being resolved or is under control," as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

### **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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under

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<sup>2</sup>See 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)).

Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been completely resolved. These problems are not confined to the debts set forth in the SOR. Two major debts had to be resolved through judicial means, which resulted in judgments against Applicant. He does not yet have a history of paying his debts, there is minimal evidence that he can create and maintain a stable budget, and there is insufficient evidence at this time to show that he is now trustworthy and reliable. Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

### **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:	For Applicant
Subparagraph 1.b:	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.

WILFORD H. ROSS  
Administrative Judge