



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-00949

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

04/14/2016

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his finances. Eligibility for access to classified information is denied.

**History of the Case**

On August 28, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on September 29, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on January 11, 2016, and did not respond to the FORM. The case was assigned to me on March 29, 2016.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated the following delinquent debts: an Internal Revenue Service (IRS) debt for \$19,000; three judgments exceeding \$31,000; and 13 debts exceeding \$28,000. Allegedly, each of the listed delinquent debts remains outstanding.

In his response to the SOR, Applicant admitted most of the allegations in the SOR, with explanations. He denied the alleged debts to creditor 1.b (claiming he established monthly plans of \$300 a month, which the IRS canceled and resumed); creditors 1.c and 1.d (claiming he satisfied the judgment debts through wage garnishment); creditor 1.e (claiming he established a monthly payment plan in 2011 for \$300 a month that was canceled by the judgment creditor when he missed a payment), creditors 1.g-1.h, and 1.j) (claiming he established automatic payment plans with the creditors); creditor 1.i (claiming the creditor confirmed the debt was charged off); and creditor 1.k (claiming he made a \$1,726 payment to the creditor, believing at the time the debt was charged off).

### **Findings of Fact**

Applicant is a 51-year-old software engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in January 1988, divorced his spouse in June 1990, and has no children from his marriage. (Item 3) Applicant enlisted in the U.S. Air Force in July 1983. He served 21 years of active duty and received an honorable discharge in October 2004. (Item 2) He earned two associate's degrees: one in avionics systems and one in computer systems. (Item 3) He attended classes at a local community college between April 2003 and April 2004 and from an online university between August 2004 and August 2005. He did not earn a degree from either institution. Applicant has been employed by his current employer since August 2004 as a software engineer. (Items 2)

### **Finances**

Applicant accumulated a number of delinquent debts between 2005 and June 2014. His debts included \$19,000 owed to the IRS for past due income taxes (creditor 1.a). Records revealed that he accrued three judgments: one in 2012 from creditor 1.c in the amount of \$3,462; another in 2011 from creditor 1.d in the amount of \$23,089;

and another in 2010 from creditor 1.e in the amount of \$5,227. (Items 3-7) Applicant also accrued 13 delinquent consumer debts exceeding \$22,000. (Items 3-7)

Addressing his three judgments, Applicant admitted all three judgments entered by creditors 1.c-1.e). He claimed the judgment entered by creditor 1.c was discharged in full (i.e., \$4,088) by wage garnishment. (Items 2-3) And he claimed the creditor 1.d judgment (i.e., \$19,631) was satisfied in part by wage garnishment. He provided no documentation, however, to verify his claims. Concerning his judgment creditor 1.e \$5,227 judgment, he claimed the judgment was satisfied in part by voluntary \$300 monthly payments, commencing in 2011, before it was cancelled by the creditor after he missed a payment. (Items 2-3) He claimed, too, that he contacted the law firm representing the judgment creditor to explore payment options, but was told the firm no longer represents creditor 1.e. Applicant provided no documented proof of his payments or explanations as to why he did not pursue the creditor with a reinstatement proposal.

Applicant attributed many of his financial problems to legal gambling between 2005 and 2014. Introduced to gambling in 2005, he gradually increased the frequency of his gambling to the point in 2009 when he started using all of his disposable income on gambling. (Item 3) The majority of his gambling entailed "pull tabs," but he did make two trips to Las Vegas, where blackjack and slot machines combined to form his games of choice. (Item 3) He estimated the frequency of his gambling to be four days a week before curtailing his gambling in 2014. (Items 2-3) Applicant incurred an estimated \$75,000 in gambling losses, lost his home due to gambling, and unsuccessfully attended gamblers anonymous. Still, he continues to gamble on occasion. (Items 2-3)

In the past, Applicant has made payment plans with some of his creditors, but defaulted for unexplained reasons. While he has done little himself to satisfy his three judgment debts (creditors 1.c-1.e), he claimed to have satisfied all or most of the creditor 1.c and 1.d judgment debts through wage garnishment. He provided no documentation, though, to verify his claims, or clarify what amounts are still owing on the three judgments.

Besides his three judgment debts, records document that Applicant is indebted to creditor 1.b for delinquent federal taxes in the amount of \$19,000. (Items 2-7) Applicant initiated automatic monthly installment plans with the IRS of \$300 a month back in 2009, which the IRS cancelled (date not provided). Applicant claimed he is on a current monthly payment plan of \$500 a month that he initiated in November 2014.

Except for two months in August and September 2015, he continues to have his payments deducted from his checking account by the IRS. And he claimed to have made one time payments to the IRS in April and June 2015. (Item 2) Applicant estimated his current balance on his owed federal taxes is \$12,230. (Item 3) He provided no documentary proof, though, to corroborate his claims. Without documented proof, Applicant's claims cannot be verified and accepted.

Records show that Applicant also accumulated 13 delinquent consumer debts totaling \$22,000. (Items 2-7) These listed 13 delinquent debts exceed \$22,000 in aggregate indebtedness. ((Items 2-7) Applicant provided no evidence to verify any of his claimed payments to these listed creditors (i.e., creditors 1.g, and 1.j-1.k).

### **Endorsements**

Applicant provided no character references on his behalf, either with his answer or with his response to the FORM. Nor did he furnish any performance evaluations or evidence of community and civic contributions.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

The AGs must be considered before deciding whether or not a security clearance should be granted, continued, denied, or revoked. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

## **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

## **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## **Analysis**

Applicant is a fully employed software engineer manager for a defense contractor, and he has accumulated delinquent debts exceeding \$50,000. His listed

debts are comprised of a an IRS debt for past due federal taxes (\$19,000), three adverse judgments (exceeding \$31,000 in the aggregate), and 13 consumer debts exceeding \$22,000. While Applicant claims to have addressed some of his listed debts, he provided no documentation to verify his claims. As matters stand, Applicant has made no verifiable payments on any of the listed debts in the SOR that can be validated and approved.

Applicant's collective accumulation of delinquent debts warrant the application of four of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), "inability or unwillingness to satisfy debts," DC ¶19(c), "a history of not meeting financial obligation," and DC ¶19(f), "financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern," and DC ¶19(i), "compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e., increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict, or problems caused by gambling." apply to Applicant's situation.

Applicant's pleading admissions with respect to his accumulation of unaddressed delinquent debts covered in the SOR negate the need for any independent proof (*see McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed filing lapses and debts are fully documented in his credit reports. Some judgment problems persist over Applicant's insufficiently explained accrual of mortgage debts with his principal lender and other consumer creditors. To date, he has taken insufficient corrective steps to resolve his delinquencies and demonstrate he acted responsibly in addressing his listed debts. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. *See Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Inferentially, Applicant's delinquent debts are attributable for the most part to gambling losses. Without more information from Applicant about his debt delinquencies and the status of any delinquencies on his past-due tax debts, outstanding judgments, consumer debts, more detailed assessments cannot be made. Based on the documented materials in the FORM, no extenuating circumstances can be credited to Applicant. While likely contributory to his financial difficulties, gambling losses cannot be considering extenuating when evaluating an applicant's clearance worthiness. MC ¶ 20(b), "the conditions that resulted in the behavior 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,” has no applicability to Applicant’s situation.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of past due federal taxes, three outstanding judgments, and delinquent consumer accounts. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances. Based on the limited information provided by Applicant, the evidence of record does not permit Applicant to establish judgment and trust levels sufficient to overcome security concerns associated with his accumulation of past due federal taxes, adverse judgments, and delinquent consumer debts.

Taking into account all of the documented facts and circumstances surrounding Applicant’s accrual of delinquent federal taxes and consumer accounts (inclusive of three judgments) and lack of documented resolution of them, it is still too soon to make safe predictions of Applicant’s ability to satisfactorily resolve his debts. More time is needed to facilitate’s Applicant’s making the necessary progress with his creditors to facilitate conclusions that his finances are sufficiently stabilized to permit him access to classified information. Allegations covered by subparagraphs 1.a through 1.r of Guideline F are resolved unfavorably to Applicant.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraphs. 1.a through 1.r:	Against Applicant
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### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

