



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



In the matter of: )  
)  
) ISCR Case No. 10-01657  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

January 26, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has mitigated the Financial Considerations security concerns by satisfying all but one delinquent account. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 (AG) effective for cases after September 1, 2006.

Applicant answered the SOR on April 11, 2011, and requested a hearing before an administrative judge. The case was assigned to another Judge on October 24, 2011,

and then reassigned to me on November 7, 2011. DOHA issued a notice of hearing on November 7, 2011, and the hearing was convened as scheduled on December 14, 2011. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant testified on his own behalf. The record was held open for Applicant to submit additional information until December 23, 2011. Applicant submitted AE A through M, which were admitted without objection, post hearing. DOHA received the transcript of the hearing (Tr.) on December 27, 2011.

### **Findings of Fact**

Applicant admits all of the SOR allegations, with the exception of 1.a, which he denied. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 42-year-old employee of a defense contractor. He has worked in his present position since 2003 and has held security clearance since approximately 2003. He also held a security clearance from 1980-1991, when he previously worked for a government contractor. He has never been cited for a security violation. He is married and has no children. He is the main bread winner in his household, which includes his wife, mother-in-law, and another in-law. (GE 1; Tr. 23-28, 47-53.)

Applicant was indebted to nine creditors in the approximate total amount of \$19,801. He attributes his debts to unexpected expenses such as replacing appliances, automotive repairs, and funeral expenses for three in-laws. He also acknowledged that he was "young and dumb" and made poor judgments when he chose to purchase items on credit. (GEs 1-7; Tr. 23-28.) His debts are as follows:

Applicant is indebted to a collection agent for a department store credit card in the approximate amount of \$5,688. Appellant testified that this debt is now held by the creditor listed in SOR allegation 1.i. The credit reports in evidence appear to show that 1.a is a duplicate entry for 1.i. It is addressed, below. (GEs 3-7; Tr. 29.)

Applicant was indebted to a collection agent for a department store credit card in the approximate amount of \$3,154. Applicant used this credit card to purchase appliances and clothing. He fell behind in payments on this account in the late 1980's and had been trying to catch up on payments since that time. He had stopped communicating with this creditor approximately two years prior to receiving the SOR. Once Appellant received the SOR, he testified he satisfied this account. Applicant's December 9, 2011 report of credit lists this debt as "paid collection." (GEs 3-7; Tr. 37-39.)

Applicant is indebted to a collection agent for a credit card in the approximate amount of \$1,244. Applicant testified that he fell behind on this account because he charged too much on the credit card. He indicated that he contacted the creditor listed on the SOR, but that creditor no longer holds his account. He attempted to track down who now holds this debt, but was unable to find out who to repay. This debt is still listed

on Applicant's December 9, 2011 credit report as a "charged off account." (GEs 3-7; Tr. 39-41.)

Applicant was indebted on a department store credit card in the approximate amount of \$387. He presented a copy of his bank statement showing a \$386.94 payment made by debit card. Applicant's December 9, 2011 report of credit lists this debt as "paid." (GEs 3-7; Tr. 41-42.)

Applicant was indebted to a collection agent for a store credit card in the approximate amount of \$2,172. Applicant testified that this account was settled. Applicant's December 9, 2011 report of credit lists this debt as "account paid for less than full balance." (GEs 3-7; Tr. 42.)

Applicant was indebted to a collection agent for his city in the approximate amount of \$195. This debt was for the registration of Applicant's vehicle. He testified that he paid this debt. He presented a receipt from this creditor that showed Applicant's account was "paid in full." (GEs 3-7; AE F; Tr. 43-44.)

Applicant was indebted to a collection agent for a communications company in the approximate amount of \$236. Applicant testified that he incurred this debt as a result of switching to another provider after the terms of his contract were satisfied. He was charged an early termination fee in error. He testified he disputed the debt, but has since satisfied this account. Applicant presented a copy of his bank statement that shows on March 30, 2011, Applicant paid \$151.95 on this debt. Applicant's December 9, 2011 report of credit lists this debt as "paid." (GE 7; AE D; Tr. 44-45.)

Applicant was indebted to a collection agent in the approximate amount of \$1,939. This debt was for a personal loan he took approximately four years ago. He testified this debt is now satisfied. Applicant's December 9, 2011 report of credit lists this debt as "paid collection." (GEs 3-7; Tr. 45-47.)

Applicant was indebted to a collection agent in the approximate amount of \$4,786. This debt is a duplicate of the debt listed in 1.a. Applicant presented a copy of his bank statement showing a check for \$3,922.24 was drawn on his account on April 1, 2011. He testified that he settled this debt with that payment. Applicant's December 9, 2011 report of credit lists this debt as "paid collection." (GEs 3-7; Tr. 29.)

To satisfy his debts, Applicant was able to obtain funds from a savings account his father established for him as a "nest egg." Initially, he was hesitant to use the funds in the account, but decided it was the only way to satisfy all of his delinquencies. Prior to receiving the SOR, Appellant knew of his debt but had not realized his financial situation was so severe. Applicant has now exhausted the funds in the trust account and it has been closed. He testified that he lives within his means but does not have much money left over after he pays his monthly bills. His personal financial statement shows a positive monthly remainder of \$123. Applicant has looked into credit counseling classes online, but had not completed any financial management courses at the close of the

record. His most recent credit report reflects his sole open account is in good standing. (GE 2; GE 7; Tr. 23.)

Applicant is well respected by his mother-in-law, neighbor, friends, coworkers, and former employer. He is known to all to be responsible and a hard worker. (Ex. G-M.)

### **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 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 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.

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 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.

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, as follows:

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 a security concern 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 accumulated eight (1.a was a duplicate of 1.i) delinquent debts that went unaddressed for a significant period of time. Some of his delinquencies have been in and out of collections since the 1980s, without full resolution. The evidence is sufficient to raise the above disqualifying conditions.

Three Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties were caused in-part by the unexpected deaths of three of his in-laws. However, it was also caused by normal life expenses like replacing appliances and vehicle maintenance. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not acted responsibly with respect to his debts. He failed to address any of them until after he received the SOR. While he has satisfied all but one, the history of ignoring his delinquencies is not mitigated by his recent actions. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. However, he has presented evidence that his problem is being resolved or is under control. He has repaid all but one of his delinquent accounts. Applicant had the ability to repay his debts by using a savings account that had been set aside for his "nest egg." Applicant systematically handled each of his debts by contacting the creditors, negotiating repayment, and following through on his promises to his creditors. While his efforts to repay these debts are only recent, his efforts have been thorough. In this case, Applicant established a meaningful track record of debt payment, as demonstrated by actual debt reduction through payment of debts. He currently has reduced his debt to a single delinquent account of \$1,244 from the \$14,113 (the total of the debt without 1.a) in debt he owed when he first received the SOR. In other words, he has satisfied over approximately 90% of his debt. He credibly testified that he has been unable to ascertain which collection agent holds his remaining account after contacting the agent listed on his most recent credit report. Applicant has undertaken significant action to reduce his debt and acted responsibly toward his financial obligations. An applicant is not required to establish that he paid each and every debt listed, but demonstrate a good faith effort to resolve them. While his history of poor financial practices is of concern, his recent efforts show that he has matured and will act responsibly with respect to his finances in the future. AG ¶ 20(c) and 20(d) apply.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant's letters of support show he is a valued employee and trusted friend. However, he has a long history of failing to satisfy his past due accounts. His choices in his past with respect to his debts did not demonstrate judgment, reliability, or trustworthiness. However, his recent efforts to repay all of his debts, but one, indicate Applicant has now matured and understands the importance of remaining financially solvent. While Applicant has little left over after meeting his monthly expenses each month, he is able to maintain a positive remainder. He understands that he must remain financially solvent. Applicant has exercised good judgment in satisfying seven out of eight creditors. He is believed to be responsible by his friends and colleagues. He can be trusted to continue on the path toward financial health.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For 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

## **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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge