



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. 10-09264

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

02/28/2013

**Decision**

HOWE, Philip S., Administrative Judge:

On October 15, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On June 4, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 July 15, 2012 (Answer). Applicant requested his case be decided on the written record in lieu of a hearing.

On November 20, 2012, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on November 26, 2012. He was given the opportunity to file objections and

submit material in refutation, extenuation, or mitigation. Applicant received the file on December 7, 2012. Applicant filed a Response to the FORM on January 1, 2013, within the 30 day time allowed that would have expired on January 6, 2013. I received the case assignment on January 31, 2013. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant denied the allegations in Subparagraphs 1.h and 1.i and admitted all other allegations. (Item 4)

Applicant is 47 years old and separated from his wife since 2008. He has two adult children. He served in the U.S. Army from 1983 to 1998. Applicant works for a defense contractor. Applicant asserts in his FORM Response he remarried in 2012 and is trying to repay his debts. (Item 5)

The SOR lists nine delinquent debts. Applicant admits the first seven debts and denies owing the last two debts. These debts total \$121,543, including his delinquent house mortgage. Applicant attributed his financial difficulties to debts incurred by his wife before their separation and his obligation to pay for two residences after their separation. (Answer; Items 6, 7)

Applicant interviewed with government investigators in November 2009 and March 2010. He discussed his delinquent debts with the investigators at both sessions. He also had a third interview in August 2010 to discuss a driving under the influence arrest which is not the subject of any allegation in the SOR. (Item 6)

Applicant owes a community college \$866 (Subparagraph 1.a). The current amount of the debt is \$715.47. Applicant claims he arranged a \$50 monthly payment plan starting on July 11, 2012. His Response contained two billing documents showing another \$50 payment was due December 12, 2012. Applicant's regular payment plan is shown in two documents submitted with his FORM Response. This debt is being resolved.

Applicant owes a music mail-order club \$95 (Subparagraph 1.b). Applicant claims this debt was paid on July 10, 2012, but he did not submit any information validating his assertion. The credit report of November 14, 2012, contained in the FORM shows the debt as unpaid as of that date. This debt is unresolved. (Answer; Item 11)

Applicant owes a bank \$427 on a credit card debt (Subparagraph 1.c). The debt appears on his April 6, 2012 credit report in the File. His November 14, 2012 credit report in the File shows the balance as zero. Applicant paid this debt on October 23, 2012. The debt was owed on a credit card his former wife had. This debt is resolved. (Items 10, 11; FORM Response)

Applicant purchased an automobile operated by his former wife. It has a \$5,023 balance on the loan (Subparagraph 1.d). He claims in his Answer he is paying \$250 monthly to repay this loan. Applicant did not submit any documents proving he is making these payments. However, the debt continues to appear on Applicant's credit reports as unpaid, as late as November 14, 2012. This debt is unresolved. (Items 8-11; Answer)

An automobile purchased by Applicant has a debt balance on the purchase loan of \$7,724 (Subparagraph 1.e). The seller repossessed the car. Applicant contends he pays \$101 monthly to repay this debt. Applicant submitted a document with the same final four digits of the loan number showing a check sent to the creditor in December 2012 on a balance of \$6,713.78. The November 14, 2012 credit report shows this debt is a paid repossession. This debt is being resolved. (Items 8-11; Answer; FORM Response attachment)

Applicant's mortgage lender listed his home as a foreclosure with a loan balance of \$106,000. The house was purchased in 2001. This home was foreclosed in 2009 (Subparagraph 1.f). The house was to be sold as part of the divorce arrangement with his first wife but Applicant could not do so because he claimed it needed too much repair work to present favorably for a sale. The mortgage lender obtained a \$94,715.08 judgment plus costs against Applicant in December 2010. There is no information regarding any current debt on the balance between the \$97,824 sale price at the sheriff's sale in 2010, or any tax consequences from the house sale at less than the amount owed on the mortgage balance. It was appraised at \$120,000 as shown on a document dated December 9, 2010, submitted in Applicant's Response to the FORM. Applicant did not submit any current information concerning the status of any residue debt from the sheriff's sale. The November 14, 2012 credit report states the foreclosure process started. The status of the balance of the debt is uncertain and therefore it is unresolved, (Items 6 at pages 312, 315 and 324, 8-11; Answer; FORM Response)

Applicant owes a bank \$580 on a closed account (Subparagraph 1.g). He claims he contacted the bank to resolve the debt but the person to whom he was directed has not returned his telephone calls. This debt continues to appear on Applicant's credit reports. It is unresolved. (Items 8-11; Answer)

Applicant owes another entity \$206 (Subparagraph 1.h). Applicant denies owing this debt and knowing who the creditor is. His Answer stated he would research this debt. No further information was sent by Applicant. This debt is unresolved. (Items 8-11; Answer)

Applicant also denies owing a cell telephone bill for \$622 (Subparagraph 1.i). Applicant claims he purchased a cell phone in 1999 through a website. The number he received was not a local number and he requested a local telephone number for his cell phone number. He got a new number and completed the contract in 2001. He asserts

he disputed the debt in 2001 and has continued to do so. There has not been a resolution of this debt. This debt is in dispute and is unresolved. (Items 8-11; Answer)

Applicant is paying or has paid three delinquent debts totaling \$9,027 (Subparagraphs 1.a, 1.c, and 1.e). Six of the remaining nine debts are under \$900 and Applicant has worked to resolve only two of those debts. The total amount of those six debts is \$2,790. The remaining three debts are over \$5,000 each. Applicant is paying on one of those debts. (Items 6-11; Answer; FORM Response)

Applicant was unemployed in 2009 for three months. He attributes his 2008 separation from his first wife, his loss of employment, and the need to relocate to another state to work at a job paying 50% less than he made previously as the basic causes of his financial difficulties. Applicant did not present, in his written documents, a comprehensive and coherent plan to repay his debts within a certain time. The burden of proof is on Applicant to show he resolved his debts or is not obligated to pay listed debts. (Items 5-7; Answer; FORM Response)

Applicant had a federal tax obligation of about \$1,439 he had to pay. His statement to the government investigators in 2009 and his answer to Question 26P of the SF-86 disclose this debt. Applicant arranged an installment payment plan with the Internal Revenue Service (IRS) and apparently is current with the plan and the matter is resolved. (Items 5-7)

Applicant submitted in his FORM Response a Contempt Citation from February 11, 2010, in his divorce action. His former wife alleged Applicant did not make the payments on the automobile which is the subject of the delinquent debt in SOR subparagraph 1.d. Applicant's former wife operated this car. She also alleged Applicant failed to make payments on the mortgage for their marital home and did not send the temporary alimony payments of \$600 monthly as ordered by the divorce court. Applicant was cited for contempt and ordered to appear in court on March 11, 2010, to respond to his former wife's allegations. The disposition of this action is not shown in any documents Applicant submitted. (Items 5-7; FORM Response attachments)

## **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, the administrative judge applies 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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. 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. 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2009 to the present, Applicant accumulated nine delinquent debts totaling \$121,543 that remain unpaid or unresolved. Applicant is paying or has paid three delinquent debts totaling \$9,027 (Subparagraphs 1.a, 1.c, and 1.e). Six of the remaining nine debts are under \$900 and Applicant has worked to resolve only two of those debts. These debts have been unresolved for the past three years. AG ¶ 19 (a) and (c) apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions might apply:

(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; and

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

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. Since 2008, Applicant has been unemployed three months. He was separated from his wife and eventually divorced her. His largest debts involve the former marital home and two automobiles they owned (Subparagraphs 1.d, 1.e, and 1.f). The remaining six debts total \$2,796, a comparatively small amount of money. One of the auto loans is being paid and the car was repossessed previously.

The debts arising from the separation and divorce, and Applicant's move to another state for a job paying less than he earned previously, affected his financial situation adversely. However, for less than \$2,800 he could have resolved six delinquent debts during the past three years. His marital home debt is not resolved because Applicant did not submit any documents to show the balance due on the mortgage was paid, compromised, or settled. Therefore, a debt likely exists. Regardless of the foreclosure, Applicant did not pay his mortgage in a regular and timely manner, thereby necessitating the foreclosure action by the creditor. While there does not appear on his credit reports any significant pre-2009 delinquent debt, he has not acted responsibly under the circumstances because he allowed his debts to accumulate and remain unpaid. He did not meet his burden of proof on the AG ¶ 20 (b) issue.

Applicant is paying three debts in a regular manner. The remaining six debts are at issue. Applicant did not submit a written repayment plan or pay his six smaller debts first to demonstrate he is making an effort to resolve his debts within his available financial resources. Therefore, AG ¶ 20 (d) does not 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He knew he was in financial trouble when his divorce started in 2008 and he could not make his mortgage payments. He started to take some action on his debts in 2010, before the SOR was issued in 2012, but after he was aware of the government's security concerns evidenced by the investigative reports in 2009 and early 2010.

Applicant's debt of \$622 for a cell telephone debt dates from 1999. It remains unresolved, even though it is one of his smaller debts. His lack of action to resolve the obligation before this time shows an inattention to his debts which demonstrates his ability to procrastinate on resolving delinquent debts. This debt is one example of Applicant's failure to resolve in a timely and responsible manner his debts.

The contempt of court citation in 2010 shows a lack of adherence to his legal obligations regarding the marriage separation agreement of 2009. Applicant also failed to pay his federal income tax in 2008 and had to make an installment payment agreement with the IRS to resolve it. Again, this action shows he has continuing problems managing his legal obligations involving money.

Applicant's financial problems are recent and continuous. He did not submit any plan to resolve them in an orderly manner. He also did not submit any documents to show his history of regular payments on debts he claims to be paying. He did not show when he started paying the debts so that a judgment could be made about his reliability and trustworthiness in adhering to his payment schedule.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

### **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
Subparagraphs 1.a, 1.c, and 1.e:	For Applicant
Subparagraphs 1.b, 1.d, 1.f to 1.i:	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.

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PHILIP S. HOWE  
Administrative Judge