



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



In the matter of: )  
)  
) ISCR Case No. 11-04831  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

March 20, 2012

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of financial indebtedness. He currently has 18 delinquent debts, and has failed to submit proof that any of them are satisfied. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 26, 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 revised adjudicative guidelines (AG) effective on September 1, 2006.

Applicant answered the Statement of Reasons (SOR) in writing on October 6, 2011, and elected to have the case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on November 17, 2011. A complete copy of the file of relevant material (FORM) was received by Applicant on January 26, 2012. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. As of February 27, 2012, he had not responded. The case was assigned to me on March 13, 2012.

### **Findings of Fact**

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer from October 2009 to present. He honorably served in the U.S. Air Force from 1972-1974, and reported he previously held a security clearance in 1972. He is married and has three children, ages 13, 23, and 33. (Item 4; Item 5.)

In November 2007, Applicant was laid-off from his job. He was unable to find a full-time position until October 2009. During the time he was unemployed, his family lived on his wife's income and profits from odd jobs he performed. He was unable to satisfy all of his financial obligations with his reduced income. In February 2011, after he had been fully employed for over a year, he hired a law firm to assist him with contesting debts and repairing his credit. He agreed to pay the firm \$2,850 between February 2010 and May 15, 2011 to manage his debt. However, Applicant failed to introduce evidence that any of his debts were resolved through the law firm or any other means. Applicant's credit reports dated August 23, 2011, July 31, 2011, and December 24, 2010 establish that he is indebted to 18 creditors in the approximate amount of \$36,072. Applicant's debts are as follows. (Item 6; Item 7.)

Applicant is indebted to a medical creditor in the amount of \$76, as stated in SOR ¶ 1.a. Applicant admits this debt. He indicated this debt was for his co-payment for ex-rays. He indicated he was waiting for the attorney assisting him with his debt management to help him address this debt. (Item 7; Item 8.)

Applicant is indebted to a medical creditor in the amount of \$93, as stated in SOR ¶ 1.b. Applicant admits this debt. Applicant claims the hospital has no record of this debt, but he failed to produce any documentation from the hospital verifying his assertion. (Item 7.)

Applicant is indebted to a collection agent for a telecommunications company in the approximate amount of \$235, as stated in SOR ¶ 1.c. Applicant admits this debt. Applicant failed to present documentation that he has paid or otherwise addressed this debt. (Item 8.)

Applicant is indebted on a charged off account in the approximate amount of \$746, as stated in SOR ¶ 1.d. Applicant admits this debt. Applicant failed to present documentation that he has paid or otherwise addressed this debt. (Item 8.)

Applicant is indebted on a charged off account in the approximate amount of \$181, as stated in SOR ¶ 1.e. Applicant denies this debt. He indicated this debt was for

an air conditioner and that he would be paying off this debt in July 2011. He presented no proof of payment. (Item 6; Item 7.)

Applicant is indebted on a collections account in the approximate amount of \$2,308, as stated in SOR ¶ 1.f. Applicant admits this debt. He indicated he was waiting for the attorney assisting him with his debt management to help him address this debt. (Item 7; Item 8.)

Applicant is indebted on a collections account in the approximate amount of \$2,367, as stated in SOR ¶ 1.g. Applicant denies this debt. Applicant indicated he has no idea how he incurred this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a collections account in the approximate amount of \$1,281, as stated in SOR ¶ 1.h. Applicant admits this debt. Applicant indicated he has no idea how he incurred this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a collections account in the approximate amount of \$2,478, as stated in SOR ¶ 1.i. Applicant admits this debt. He believes the account was for a gas card, but claims that he never had a gas card. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a charged-off account in the approximate amount of \$5,493, as stated in SOR ¶ 1.j. Applicant admits this debt. This debt was for a credit card account. Applicant indicated he tried to make payments on this debt but that the creditor engaged in "deceptive business practices." He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is past due on his home loan in the approximate amount of \$12,440, as stated in SOR ¶ 1.k. Applicant admits this debt. He indicated he incurred this debt by falling behind on one payment. He indicated he was waiting for the attorney assisting him with his debt management to help him address this debt. (Item 7.)

Applicant is indebted on a medical collections account in the approximate amount of \$64, as stated in SOR ¶ 1.l. Applicant admits this debt. Applicant indicated he has no idea how he incurred this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a medical collections account in the approximate amount of \$2,200, as stated in SOR ¶ 1.m. Applicant denies this debt. Applicant indicated he has no idea how he incurred this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a medical collections account in the approximate amount of \$184, as stated in SOR ¶ 1.n. Applicant admits this debt. This debt was for a

hospital bill that Applicant disputes. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a collections account in the approximate amount of \$2,077, as stated in SOR ¶ 1.o. Applicant admits this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a medical collections account in the approximate amount of \$279, as stated in SOR ¶ 1.p. Applicant admits this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a collections account in the approximate amount of \$2,191, as stated in SOR ¶ 1.q. Applicant denies this debt. He claims he is disputing this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

Applicant is indebted on a collections account in the approximate amount of \$1,379, as stated in SOR ¶ 1.r. Applicant denies this debt. He presented no documentation establishing that he has contested this debt or otherwise resolved this account. (Item 7.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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. 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 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 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 accumulated a number of delinquent debts and has been unable or unwilling to pay his obligations. Further, his financial problems have been ongoing for at least the past five years, without resolution. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions 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.

The evidence does not show that Applicant has resolved any of the 18 debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant did have a two-year period of unemployment due to his lay-off. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has worked for his current employer since October 2009. He did not submit evidence of any payments, even on the smallest debts. He did not present a plan on how he will address his delinquent debts, other than to contract an attorney in 2011. He failed to provide evidence to show any recent progress in addressing his debts. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant did not produce any evidence to suggest he attended any financial counseling. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve his delinquent debts. The record fails to establish that any payments have been made any of his 18 debts. AG ¶ 20(d) is not applicable.

Applicant disputed owing the debt alleged in 1.e, 1.g, 1.m, 1.q, and 1.r. in his answer to the SOR. However he presented no evidence to show that he was in the process of disputing this debt or that he had successfully disputed this debt in the past. He hired an attorney to assist him with his debts, but he failed to document any actions that attorney has taken on his behalf. AG ¶ 20(e) is inapplicable.

### **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 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 is 57 years old. He is clearly aware of the need to be financially responsible. He has had ample opportunity to address his financial delinquencies since becoming gainfully employed, but has failed to do so.

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, I conclude Applicant has not mitigated 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.r:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Jennifer I. Goldstein  
Administrative Judge