



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



In the matter of: )  
)  
) ISCR Case No. 11-07409  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro se*

July 29, 2013

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had five delinquent debts totaling \$180,301, identified on the Statement of Reasons (SOR). While his student loan debt of \$156,000 is in good standing, Appellant has not addressed his additional \$24,301 in delinquent consumer debt. He failed to produce sufficient documentation that his debts have been addressed or are otherwise satisfied. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 13, 2012, the Department of Defense 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 on September 1, 2006.

Applicant answered the Statement of Reasons on July 20, 2012, (Answer 1), and on October 9, 2012, (Answer 2). Applicant elected to have the case decided on the written record in lieu of a hearing in Answer 2. Department Counsel submitted the Government's written case on May 6, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on May 14, 2013. He was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit any information within the time period of 30 days after receipt of the copy of the file of relevant material. The case was assigned to me on July 24, 2013.

### **Findings of Fact**

Applicant is 50 years old. He served on active duty in the Marine Corps from April 1981 to August 1985. He is divorced and has one adult child. He has been working for his current employer since October 2006. (Item 4.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information. The SOR identified five delinquent debts totaling \$180,301. Applicant's debts appear in credit reports entered into evidence. Applicant admitted SOR allegations ¶¶ 1.a, 1.b, 1.c, and 1.d. He denied SOR allegation ¶ 1.e. (Answer; Items 3, 5, 6.)

Applicant attributes his debts to being laid off by his employer in approximately October 2006. He listed on his security clearance application that he has been employed by a Defense contractor since October 2006. He failed to provide evidence of the scope and duration of his unemployment. (Item 4; Item 7.)

His debts are as follows:

Applicant is indebted on a delinquent consumer account in the amount of \$1,991 (as alleged in SOR ¶ 1.a). This debt has been delinquent since March 2008. It remains unsatisfied. (Item 5; Item 6.)

Applicant is indebted on a delinquent consumer account in the amount of \$3,011 (as alleged in SOR ¶ 1.b). This debt has been delinquent since March 2008. It remains unsatisfied. (Item 6.)

Applicant is indebted on a delinquent consumer account in the amount of \$4,923 (as alleged in SOR ¶ 1.c). It has been past due since April 2008. This item has been charged off. It remains unsatisfied. (Item 5; Item 6.)

Applicant is indebted on a delinquent consumer account in the amount of \$14,376 (as alleged in SOR ¶ 1.d). It has been past due since February 2011. This debt remains unsatisfied. (Item 5; Item 6.)

SOR ¶ 1.e alleges that Applicant is indebted on student loans that were reported in March 2011 to be in “deferred status/not in repayment” in the approximate amount of \$156,000. Appellant’s credit report of March 10, 2011, indicated: “student loan not in repayment” and “payment deferred.” Applicant denied this allegation and explained that this loan is currently in repayment with the creditor. Applicant’s credit report dated May 23, 2012, lists all of Applicant’s student loans in “I1” status, indicating Applicant has never missed a payment. On his personal financial statement, he indicated he was paying \$435 per month on his federal student loans and \$70 on his state student loans. Applicant is acting responsibly with respect to his student loans. (Item 5; Item 6; Item 7.)

Applicant’s personal financial statement indicated he had \$36 available after paying his monthly living expenses and student loan payments. He presented no evidence that he has utilized credit counseling services. (Item 7.)

Applicant provided no additional evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 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 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 has had financial problems since at least 2008, when he became delinquent on several of his accounts. He has failed to present any evidence that he is addressing the debts in SOR allegations ¶¶ 1.a, 1.b, 1.c, and 1.d. 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.

Applicant indicated that his financial problems were the result of being laid off from work. However, he failed to indicate the duration of his unemployment or that he acted responsibly once he found a new job. Further, he has only \$36 available after meeting his monthly expenses. Therefore, I cannot conclude that future financial delinquencies are unlikely to occur. His financial issues are recent and ongoing as he has failed to address the debts identified in SOR allegations ¶¶ 1.a, 1.b, 1.c, and 1.d. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) does not apply. Applicant explained that he incurred debts as a result of unemployment. This was a circumstance beyond his control. However, he identified on his security clearance application that he was laid off in October 2006, and he started his new position in October 2006. The duration and impact of the unemployment on his financial situation is unclear. Further, his debts date back to 2008, not 2006. To be fully applicable AG ¶ 20(b) also requires that the individual demonstrate that he acted responsibly under the circumstances. Applicant has acted responsibly with respect to the repayment of his student loans. He was granted a deferment on his loans when he was having financial difficulties, instead of lapsing into delinquency. When the deferment expired, he responsibly resumed repayment of his student loans. However, he has not acted responsibly with respect to his remaining \$24,301 in consumer debt. There is no evidence that he has addressed his consumer accounts.

There is no evidence that Applicant attended financial counseling. Further, there is little indication that four of Applicant's five 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 consumer debts totaling \$24,301. He presented no evidence of any payments or progress toward the settlement of his consumer debts. As noted earlier, he has acted responsibly with respect to his student loans and is in good standing on those accounts. The record fails to establish that any payments have been made on his consumer debts. AG ¶ 20(d) is not applicable to allegations ¶¶ 1.a, 1.b, 1.c, and 1.d.: but does apply to ¶ 1.e.

Applicant failed to present evidence to show that he was in the process of formally disputing any of his debts. 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 failed to address \$24,301 in delinquencies. While he has experienced a period of unemployment in 2006, he failed to demonstrate how that brief period of unemployment impacted his financial situation over six years later. Accordingly, continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. 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:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	Against Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	For 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.

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Jennifer I. Goldstein  
Administrative Judge