



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. 11-08337

**Appearances**

For Government: Candace Le'l Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

04/26/2013

**Decision**

HOWE, Philip S., Administrative Judge:

On April 5, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On August 3, 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. Applicant requested his case be decided on the written record in lieu of a hearing.

On January 25, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on January 28, 2013. He was given the opportunity to file objections and

submit material in refutation, extenuation, or mitigation. Applicant received the file on February 6, 2013. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on March 8, 2013. I received the case assignment on March 28, 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.f through 1.h and admitted all other allegations contained in Subparagraphs 1.a through 1.e. (Item 2)

Applicant has eight delinquent debts totaling \$20,626. Applicant claims he made payment arrangements on the \$1,067 debt in Subparagraph 1.f to settle it, but he provided no documentation to support his claim. He also claims he does not owe the \$4,899 to an auto dealer because the statute of limitations expired (Subparagraph 1.g). Regardless of the statute of limitations in his state of Texas, he has not resolved this debt by payment of the financial obligation. All of the delinquent debts are listed on the five credit reports in the File. Applicant has not paid the debts listed in Subparagraphs 1.a through 1.g of the SOR. (Items 4, 5, 7-11)

Applicant asserts he paid and settled the \$331 debt owed to a payday lender and it was deleted from his credit report (Subparagraph 1.h). He did submit a letter from the collector of the debt in this subparagraph. The letter states that the debt was paid or settled in full. This debt is resolved. (Items 6-11)

Applicant works for a defense contractor. He is 36 years old. He had a security clearance that was revoked on June 16, 2011. Applicant served in the U.S. Army from August 1996 to February 2000 when he was discharged with a General Discharge. He joined the Army National Guard in August 2002 and served until March 2005, achieving the rank of E-4. Applicant married his wife in July 1996 and divorced her in December 1997. His statement in the file discloses he married again in June 2011. He does not state anywhere that he has any children. (Items 4, 5)

A government investigator interviewed Applicant in May 2010. At that time Applicant stated he would resolve his delinquent financial accounts. He told the investigator he intended to be debt free by December 2010. Applicant has not achieved that goal. The earliest debt listed in the credit report dates from 2008. (Item 6 at page 14)

### **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 2008 to the present, Applicant accumulated eight delinquent debts totaling \$20,626. He has not taken sufficient action to resolve more than one debt. These disqualifying conditions apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No mitigating condition has applicability.

AG ¶ 20 (a) requires the financial behavior to have occurred long ago, be infrequent, or occur under unusual circumstances not likely to happen again. Based on the facts, that mitigating condition is not applicable.

AG ¶ 20 (b) applies if the conditions causing the financial problems were beyond the Applicant's control, such as unemployment, a business downturn, a medical emergency, or death, divorce, or separation, and the Applicant acted responsibly under the circumstances. Applicant in this case did not present any evidence to support any of these conditions. Therefore, this mitigating condition is not applicable.

AG ¶ 20 (c) requires evidence of financial counseling and/or clear indications that the financial difficulty is under control or being resolved. Applicant has not paid seven of his delinquent debts in the past four years. This mitigating condition does not apply.

AG ¶ 20 (d) applies if Applicant has made a good-faith effort to repay his debts. Applicant has presented no evidence establishing that effort. The mitigating condition has no applicability.

AG ¶ 20 (e) states Applicant must have a reasonable basis to dispute the debt. He must also submit evidence of the basis for the dispute or provide evidence of actions to resolve the financial issue. Applicant has not met those requirements, so the mitigating condition does not apply.

AG ¶ 20 (f) requires proof of any affluence must be from a legal source of income. That condition is irrelevant on the facts of this case and the condition 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 his debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past four years, despite his promises to address them.

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 to 1.g:                      Against Applicant

Subparagraph 1.h:                                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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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PHILIP S. HOWE  
Administrative Judge