



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



In the matter of:	)	
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	)	ISCR Case No. 11-09170
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

June 26, 2013

**DECISION**

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 29, 2011. (Item 4.) On October 3, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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, and requested a decision by an administrative judge without a hearing.<sup>1</sup> (Item 4.) Department Counsel submitted the Government’s File of Relevant Material (FORM) to Applicant on February 14, 2013. The FORM contained eight Items. Applicant acknowledged receipt of the FORM on

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<sup>1</sup>Item 4 is undated, but has a date stamp indicating that it was received by the Defense Office of Hearings and Appeals on December 5, 2012.

February 28, 2013. He was given 30 days from receipt of the FORM to file objections or submit any additional documentation. Applicant submitted additional documents on March 21, 2013, and April 24, 2013. Department Counsel indicated he had no objection to these documents, and they are admitted into evidence as Applicant Exhibits A and B. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 53 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this Paragraph, except 1.g, 1.h, and 1.m. The admissions are findings of fact. With regard to 1.g, 1.h, and 1.m, I view his responses as denials of those allegations. He also submitted additional information to support his request for a security clearance.

The SOR lists 17 delinquent debts, totaling approximately \$101,325. The existence and amount of these debts is supported by credit reports dated April 13, 2011; and June 28, 2012. (Items 5, and 6.) (See *also* Interrogatories submitted by Applicant. (Item 7.)) Applicant states that the cause of most of his financial issues is that he was diagnosed with colon cancer in July 2004. Subsequent to that event Applicant was diagnosed with lung cancer that resulted in two surgeries in 2007. He had additional cancer surgeries in 2011 and 2012 and is currently undergoing chemotherapy. He states:

The fight with cancer has taken up a large amount of my time for the entire 8½ year period I have been fighting it. Recovering from surgery, radiation and chemotherapy makes it quite difficult to deal with not only normal day to day things but also extraordinary things like my financial issues. My Doctors advise me to put fighting cancer and recovery from the fight first as many people that have done otherwise have lost the battle with cancer. (Applicant Exhibit A at 3.)

As a result of his cancer, Applicant was unable to run a horse farm that he owned and was forced to sell the property at a \$500,000 loss in the 2004-2005 time frame. (Item 7 at 6.)

The current status of the debts is as follows:

1.a. Applicant admits that he is indebted to the Internal Revenue Service (IRS) as a result of a tax lien in the amount of \$39,432. According to Applicant this lien occurred as a result of he and his wife not filing tax returns for the 2004 and 2005 tax years. (Item 7 at 6.) Applicant stated in an interview on May 5, 2011, with an investigator from the Office of Personnel Management, that he was “in the process of resolving” this tax lien. In his Answer he states:

We are in the process of fixing this and when we do we expect the entire debt to the IRS to go away and we expect to receive a refund for taxes paid over the past several years that will be more than enough to cover our remaining debts. We will also see a significant increase in our take home pay that will allow [us] to quickly pay off any that might remain and keep up with the costs of my cancer battle. (Item 3 at 4.)

In Applicant Exhibit A he continues to state that his tax accountant is preparing tax returns for those years. However, “Due to the nature of the returns being complicated with the horse farm business it is taking some time to reassemble the records to get the returns properly filed.” According to Applicant, the IRS has not paid to him any of his tax refunds since 2006. “The total not refunded to me is now well over \$36,000. . . . This amount will more [than] satisfy all my remaining debts that I admit to owing.” (Applicant Exhibit A at 3-4.)

Applicant did not provide any estimated date as to when the tax returns would be completed and submitted to the IRS. While he did include some tax return information in Applicant Exhibit B, he did not provide any documentation from the IRS regarding the current status of his past taxes, such as documentation showing that his potential tax refunds have been applied to those taxes or any other communication from the IRS. This tax debt is not resolved.

1.b. Applicant admits that he is indebted to a medical creditor for a past-due debt in the amount of \$51. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.c. Applicant admits that he is indebted to a medical creditor for a past-due debt in the amount of \$16. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.d. Applicant admits that he is indebted to a medical creditor for a past-due debt in the amount of \$167. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.e. Applicant admits that he is indebted to a medical creditor for a past-due debt in the amount of \$748. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.f. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$133. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.g. It is alleged in this subparagraph that Applicant owes a mortgage company a past-due amount of approximately \$23,425 on a mortgage loan of \$275,000. Applicant states in his Answer, "The foreclosure has been completed and they took the property to satisfy the debt." (Item 3 at 2.)

1.h. It is alleged in this subparagraph that Applicant owes a timeshare company a past-due amount of approximately \$1,975 on a total balance due of \$12,806. Applicant states in his Answer, "This account was foreclosed on and the property taken (timeshare) to satisfy the debt." (Item 3 at 2.)

Regarding the above two debts Applicant stated, "In both cases I have been assured that the debts are no longer valid." (Applicant Exhibit A at 4.) There is no information as to who "assured" Applicant that these two debts were satisfied. He later stated, "I tried to obtain documentation that the mortgage debts for the home and the timeshare have been satisfied; however, the companies involved have not been cooperative and I have not yet [April 24, 2013] received any documentation from them." (Applicant Exhibit B at 5.) Based on all of the available information, I find that these two debts are unresolved.

1.i. Applicant admits that he is indebted to a creditor for a past-due municipal court debt in the amount of \$75. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.j. Applicant admits that he is indebted to a medical creditor for a past-due debt in the amount of \$101. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.k. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$4,000. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.l. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$13,000. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.m. It is alleged in this subparagraph that Applicant is indebted to a creditor for a past-due debt in the amount of \$15,000. Applicant states in his Answer, "I believe that this has been paid off." (Item 3 at 3.) No other information was provided by Applicant. This debt is unresolved.

1.n. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$99. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.o. Applicant admits that he is indebted to a medical creditor for a past-due debt in the amount of \$487. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.p. Applicant admits that he is indebted to a creditor for a past-due debt in the amount of \$2,005. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

1.q. Applicant admits that he is indebted to a medical creditor for a past-due debt in the amount of \$611. No evidence was submitted by Applicant showing that this debt has been paid, or that he has any plans to pay this debt. This debt is not resolved.

Regarding the unpaid debts, other than the tax debt, Applicant states, "A number of the other debts that are listed as having admitted to I do owe but the amounts are in dispute as some payments have been made. I have been advised that I need to first finish taking care of the IRS debt before I fix the other debts, so I have not begun working out these payments. I will do this once the IRS debt is settled." (Applicant Exhibit A at 4.) There is no information as to who advised Applicant to handle his debts this way.

Applicant submitted no evidence that he has received any financial counseling. The evidence shows that he has been employed by his company since 1982, making approximately \$136,000 a year with a monthly remainder of approximately \$1,800. (Item 7 at 16; Applicant Exhibit B at 8.)

Applicant provided no 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**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."<sup>2</sup>

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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).

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<sup>2</sup>It appears that Applicant may have been somewhat unsure of his responsibilities with regards to the presentation of his case. He states, "I was never asked for proof of these claims or any explanation of these claims. Based on that, I had no reason to think that there was any reason that they were doubted." (Applicant Exhibit A at 3.) Department Counsel subsequently wrote Applicant an email dated April 5, 2013. In that email he sets forth Applicant's responsibilities in responding to the FORM in an appropriate and detailed way. I find that Applicant has had a full and fair opportunity to state his case and provide corroboration for his claims.

## Analysis

### Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant has over \$100,000 in past-due debts, all of which have been due and owing for several years.<sup>3</sup> The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties have been in existence since at least 2004. He has not resolved any of the debts that caused the problems, which continue to date. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "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." It is obvious that Applicant's physical condition has had an impact on his ability to resolve his taxes and pay his debts. However, Applicant has simply not shown sufficient evidence that he has acted responsibly under the circumstances. He has known for two years of the Government's concerns with his financial situation. To date he has not shown that he has paid a single debt, not even one for \$16. Regarding his taxes, the Applicant's argument is that the Government should trust him, because at some unknown point in the future he will file these tax returns and all will be solved. Even allowing Applicant great leeway, which I do, he simply has not shown that this mitigating condition has application to his case.

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<sup>3</sup>Subtracting the figures in allegations 1.g, 1.h, and 1.m, which Applicant denied, the past-due debt figure is \$60,925. Even if that figure is reduced by the amount of the tax lien in allegation 1.a, his past-due indebtedness still totals \$21,493.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not submitted any evidence to show that he has made successful payment arrangements with, or made payments to, any of the creditors listed in the SOR. He was interviewed by an investigator connected with the Defense Department in May 2011. (Item 7 at 4-9.) Accordingly, he has had knowledge for almost two years that his financial situation was of security concern to the Government.

In conclusion, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

### **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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. I have carefully considered the fact of Applicant’s continuing medical issues with regards to his ability to pay his debts. He simply did not show sufficient information to support his allegations. It is Applicant’s burden to do that and he did not meet it. Applicant’s conduct, with regards to his finances, was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).



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 the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

### **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. through 1.q.:	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.

WILFORD H. ROSS  
Administrative Judge