



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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) ISCR Case No. 11-11336  
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Applicant for Security Clearance

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: Paula Phinney, Esq.

May 21, 2013

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing 14 delinquent debts totaling \$40,094. Additionally, his home was foreclosed upon in December 2008. Applicant is making payments on two debts. The remainder of Applicant's debts are resolved. Based on a review of the testimony, pleadings and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 6, 2011. On January 11, 2013, the Department of Defense issued an SOR to Applicant, detailing security concerns under Guideline F (Financial Considerations). 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 effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on February 11, 2013, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 1, 2013. DOHA issued a notice of hearing on April 2, 2013, scheduling the hearing for April 24, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered Exhibits (AE) A through DD, which were admitted without objection. Applicant testified on his own behalf. The record was left open until May 6, 2013, for the receipt of additional documentation. On May 6, 2013, Applicant presented additional exhibits, marked AE EE through AE LL. Department Counsel had no objections and they were admitted into evidence as identified. DOHA received the transcript of the hearing (Tr.) on May 6, 2013.

### **Findings of Fact**

Applicant is a 45-year-old government contractor. Applicant served in the Marine Corps from 1986 to 2008. He achieved the rank of gunnery sergeant (E-7). He has been married for 25 years. Applicant and his wife have three children, ages 25, 22, and 16. (GE 3; AE R; Tr. 41-48, 116-117.)

The Government alleged that Applicant is ineligible for a clearance because he has 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 Applicant as owing 14 delinquent debts totaling \$40,094, as identified on five credit reports and Applicant's Answers to Interrogatories. Applicant denied each of the debts in his Answer, with the exception of SOR ¶¶ 1.i, 1.k, and 1.o, which he admitted. (Answer; GE 1; GE 2; GE 4; GE 5; GE 6; GE 8.) His debts are as follows:

Applicant is indebted on a judgment in the amount of \$948 (as alleged in SOR ¶ 1.a). This debt was for unpaid community association dues. Applicant presented documentation from the court that acknowledges satisfaction of the judgment. This debt is satisfied. (AE A; Tr. 64-66.)

Applicant was indebted on a collection account in the amount of \$4,520 (as alleged in SOR ¶ 1.b). This debt was for a water softener system that Applicant installed in his former home. Applicant provided a letter from this creditor that acknowledged Applicant agreed to make payments of \$100 per month for 31 months, beginning February 15, 2013. Applicant provided documentation showing he made two timely payments to this creditor according to the agreement. Applicant is addressing this debt. (AE B; AE KK; Tr. 66-68.)

Applicant was indebted on a delinquent medical debt in the amount of \$107 (as alleged in SOR ¶ 1.c). Applicant produced a letter from this creditor that indicated Applicant "completely satisfied [his] obligation to our office." This debt is satisfied. (GE 5; AE C; Tr. 68-71.)

Applicant was indebted on a collection account in the amount of \$627 (as alleged in SOR ¶ 1.d). This debt was for a cell phone and became delinquent when Applicant was unemployed. Applicant provided a letter from the collection agent that shows this debt is paid in full. This debt is satisfied. (AE D; Tr. 71-72.)

Applicant is indebted on a collection account in the amount of \$3,058 (as alleged in SOR ¶ 1.e). This debt is a duplicate of SOR ¶ 1.b. Applicant is making payments on this debt, as set out above. (AE B; AE E; AE KK; Tr. 66-68, 72-74.)

Applicant was indebted on a collection account for a wireless cable bill in the amount of \$622 (as alleged in SOR ¶ 1.f). Applicant provided a letter from the collection agent that shows this debt is paid in full. This debt is satisfied. (AE E; AE F; Tr. 74-76.)

Applicant was indebted on a collection account in the amount of \$109 (as alleged in SOR ¶ 1.g). This debt was for a personal loan. A letter from the creditor indicated that this debt was paid in full on February 8, 2013. (AE G; Tr. 77-78.)

Applicant was indebted on a collection account in the amount of \$3,730 (as alleged in SOR ¶ 1.h). Applicant provided a letter from this creditor that acknowledged he agreed to make payments of \$100 per month. Applicant provided documentation showing he made two timely payments to this creditor according to the agreement. Applicant is addressing this debt. (AE G; AE JJ; Tr. 78-81.)

Applicant was indebted on a vehicle that was repossessed in the amount of \$23,248 (as alleged in SOR ¶ 1.i). Applicant contacted the creditor to arrange payments and learned that this debt was part of a class action suit against the creditor. The creditor informed Applicant by letter dated April 23, 2013, that as part of the settlement of the suit Applicant's account had been closed and the deficiency was deleted from Applicant's credit report. This debt is resolved. (AE AA; Tr. 82-84.)

Applicant was indebted on a collection account in the amount of \$528 (as alleged in SOR ¶ 1.j). This debt was for an unpaid dental bill. Applicant produced a letter from this creditor showing this debt is paid in full. This debt has been satisfied. (AE I; Tr. 85-87.)

Applicant was indebted on a collection account in the amount of \$1,413 (as alleged in SOR ¶ 1.k). This debt was for a time-share property that Applicant purchased in 2003. He was unable to make payments on this property when he was unemployed and the debt became delinquent. Applicant produced an account statement showing this debt as "\$0 past due" and "\$0 current balance." This debt is resolved. (AE J; Tr. 87-89.)

Applicant was indebted on a collection account in the amount of \$170 (as alleged in SOR ¶ 1.l). This debt was for cable television services. Applicant produced a letter from this creditor showing this debt was paid in full on February 7, 2013. This debt is resolved. (AE K; Tr. 90-91.)

Applicant was indebted on a collection account in the amount of \$393 (as alleged in SOR ¶ 1.m). This debt belonged to Applicant's son, who bears the same name as Applicant. Applicant satisfied this debt on February 5, 2013. (AE L; Tr. 91-92.)

Applicant was indebted on a collection account in the amount of \$621 (as alleged in SOR ¶ 1.n). Applicant provided a letter from this creditor that stated this debt was a duplicate of the debt alleged above in SOR ¶ 1.f. This debt is satisfied. (AE E; AE F; AE M; Tr. 74-76, 92-94.)

Applicant's home was foreclosed upon in December 2008 (as alleged in SOR ¶ 1.o). He purchased his home in January 2005. It was the first time he had purchased a home and was not financially savvy. He purchased the home for \$408,000. He put \$4,000 down and financed the rest of the purchase with two mortgages. The first was for approximately \$367,000. The second was for approximately \$50,000. He believed that the first mortgage had a fixed-interest rate at the time he signed the loan documentation. However, in January 2008, the monthly payments due on the first mortgage doubled from \$2,200 to \$4,400. At that time, he learned he had an adjustable rate mortgage. In July 2008, the interest rates on the first mortgage adjusted again, and his payments went up to \$8,800 per month. His second mortgage also had adjustable interest rates. When the interest rates increased, he could no longer afford to make his payments. He attempted to refinance the property, but the refinance applications were denied because he owed more on the loans than the property was worth. Applicant abandoned the home in December 2008. He provided documentation from the creditors of both the first and second mortgages that shows he owes nothing further on either mortgage. (AE W; AE X; AE LL; Tr. 41-63, 108-116, 118-120.)

Applicant attributed his debts to a number of causes. When he retired from the Marine Corps in 2008, he went from a salary of \$6,200 per month to retirement pay of \$2,000 per month. He had a job lined up before he left the Marine Corps, but it was only for four months. Applicant was unemployed from January 2009 to August 2011, although he was actively looking for work. His wife also suffered a job loss in April 2009, and they were unable to pay their delinquent accounts. In February and April of 2009, Applicant's wife also incurred significant debt for medical procedures that were medically necessary, although not covered by their medical insurance. (Tr. 41-48.)

Applicant was hired by his current employer in August 2011. Since that time, he and his wife prioritized creditors and worked to pay off their delinquent debts. He is often deployed overseas and placed his wife in charge of their bills. She admitted in a declaration that she has "not always kept [their] accounts in good order." However, both Applicant and his wife have recently completed credit counseling classes on "Setting Your Financial Goals and Creating a Budget;" "Banking;" and "Understanding Credit & Credit Reports." They both are committed to repaying their debts and to building a savings to avoid debt in the future. Applicant now earns a monthly take-home pay of \$10,000. His monthly remainder, after meeting all of his expenses, is \$5,900. He has been using all of the remainder to satisfy his delinquent accounts listed above. Given his monthly surplus, he expects to pay off his two remaining debts faster than his

agreement with the creditors and grow his savings. (GE 6; AE V; AE BB; AE II; Tr. 47-48, 94-98, 112, 120.)

Applicant presented five letters of recommendation, from four retired Marines who served with Applicant, and from Applicant's martial arts instructor. Each wrote of Applicant's high moral character, trustworthiness, and dedication. One letter noted Applicant "was entrusted with highly classified material and was accountable for equipment in excess of \$2 million" and "maintained these accounts flawlessly." Among Applicant's many accomplishments during his Marine Corps service, he was awarded two Navy and Marine Corps Achievement Medals; a Combat Action Ribbon; a Navy Unit Commendation; three Navy Meritorious Unit Commendations; seven Marine Corps Good Conduct Medals; a Marine Corps Expeditionary Medal; and two National Defense Service Medals. His current employer rates Applicant's performance as "Exceeds Requirements" or "Exceptional" in all areas. (AE N; AE O; AE P; AEQ; AE R; AE S; AE T; AE U.)

### **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant was unable or unwilling to resolve a large amount of delinquent debt that began accumulating in 2008. The evidence supports the application of AG ¶¶ 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial difficulties:

- (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; and

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

A security clearance adjudication is not a debt collection procedure. It is a process designed to evaluate an applicant's judgment, reliability, and trustworthiness.<sup>1</sup> An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first.<sup>2</sup>

Applicant's financial difficulties began in 2008 as the result of his unemployment. His financial problems were exacerbated by his wife's subsequent unemployment and her health problems. Applicant's financial problems were largely caused by factors beyond his control. While his wife prioritized repaying her health care expenses over their delinquent debt in the past, they have resolved nearly all of their past-due accounts. Applicant only has two accounts that are not resolved, and he has written agreements with both of those creditors to accept payments of \$100 per month on each account. He produced documentation that he has made two payments to both creditors under the agreements. Applicant earns a significant monthly income and has the ability to avoid future financial delinquencies. After attending financial counseling, he now has the tools to manage his finances and avoid delinquencies in the future.

Applicant's financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. Applicant made a good-faith effort to pay his debts. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are applicable.

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<sup>1</sup>See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>2</sup>See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

## **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 pertinent facts and circumstances surrounding this case. Applicant is highly respected by those who know him. Applicant was honest and candid about his finances. Even before receiving the SOR, Applicant was acting responsibly to resolve his debts. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. Applicant has responsibly resolved almost all of his financial problems, thereby demonstrating the significant action required. He has a plan to repay his remaining two delinquent accounts. His finances do not constitute a security concern.

Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

### **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:	FOR APPLICANT
Subparagraph 1.a through 1.o:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

JENNIFER I. GOLDSTEIN  
Administrative Judge