



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. 11-11493

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

05/02/2013

**Decision**

HOWE, Philip S., Administrative Judge:

On April 25, 2011, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On December 5, 2012, the Department of Defense Consolidated Adjudications Facility 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 February 11, 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 February 11, 2013. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 13, 2013. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on March 15, 2013. I received the case assignment on April 18, 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.b, 1.c, and 1.f. He admitted the allegations in Subparagraphs 1.a, 1.d, and 1.e. (Item 4)

Applicant is 44 years old and works for a defense contractor. He is married and does not have any children according to his e-QIP. (Item 5)

The SOR alleges six delinquent debts totaling \$31,643. He admits owing three debts totaling \$18,695. Applicant denies the remaining three debts totaling \$12,948 because he allegedly paid one debt and the other two were "charged off" by the creditor. (Items 1 and 4)

The three debts Applicant admits owing are for a cell telephone service in the amount of \$558, a credit card with a balance of \$12,000, and a loan account for \$6,137. These debts date from 2009. Applicant did not submit any documents to show he has paid or made any effort to repay the debts. They are enumerated in the two credit reports in the file. They are unresolved. (Items 1, 4, 6-8)

The three delinquent debts Applicant denies owing are two credit cards owed to the same bank in the amounts of \$5,451 and \$4,961. The accounts were opened in 2005 and the accounts were reported as past due in 2011. The third account for \$2,536 is for windows in Applicant's home. He claims the debt is paid; however, there are no documents to verify that it is. The window company obtained a judgment against Applicant in 2006 for that amount. The February 7, 2013 credit report in the file lists the judgment as unpaid. The same debts appear on the April 30, 2011 credit report. (Items 1, 4, 6-8)

Applicant has been employed by the same company since March 2008. He retired from active military service in 2007. (Item 5)

### **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 concerns relating to the guideline for Financial Considerations are 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. Of 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 2009 to the present, Applicant accumulated six delinquent debts totaling \$31,643 that remain unpaid or unresolved.

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

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

The debts arose in recent time and show a pattern of neglect, which casts doubt on Applicant's current reliability, trustworthiness, and good judgment. Applicant has been gainfully employed in the military or a defense contractor since 1987 except for a period of time in 2007 after he retired from military service. He had his retirement income. That time of unemployment did not significantly affect his ability to pay his debts. Applicant did not show the circumstances of his finances were beyond his control. He did not demonstrate he acted responsibly during that time period. AG ¶ 20 (a) and (b) do not apply.

Applicant did not submit any evidence that he received any financial counseling. There is no document in the file from Applicant showing the financial problem is under control. Nor is there any information that the debts are being paid in an orderly manner. Applicant denies two debts because the creditor used an accounting procedure of "charging off" to remove them from its books after it sold them to a collector. Applicant did not pay those credit card debts. Nor did he present evidence that he paid the 2006 judgment against him for his house windows. He has not shown any attempt to pay any of the debts that he admits he owes. Applicant did not demonstrate any good-faith effort to pay his delinquent debts since 2007. Therefore, AG ¶ 20 (c) and (d) do not apply

Applicant has not shown any legitimate basis to dispute any of the six debts. There is no relevant basis to consider the final mitigating condition that affluence shown by Applicant is from a legal source of income because that condition is not relevant. AG ¶ 20 (e) and (f) do 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 the 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 five years.

Overall, the record evidence leaves me with questions and 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.f:	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.

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PHILIP S. HOWE  
Administrative Judge