



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



In the matter of: )  
)  
) ISCR Case No. 11-12252  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Corey Williams, Esq.

April 25, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 62-year-old employee of a defense contractor. He is alleged to be indebted to nine creditors in the approximate amount of \$243,062. He has acted responsibly with respect to his debts by resolving all of his delinquencies. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 15, 2013, 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 September 1, 2006.

Applicant answered the SOR on July 3, 2013 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 12, 2014. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2014, scheduling the hearing for March 27, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE I) and Exhibits (GE) 1 through 6, and they were admitted without objection. Applicant offered Exhibits (AE) A through R, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on March 31, 2014, Applicant presented five additional exhibits marked AE S through AE W. Department Counsel had no objections to AE S through AE W and they were admitted. DOHA received the transcript of the hearing (Tr.) on April 9, 2014.

### **Findings of Fact**

Applicant is a 62-year-old employee of a defense contractor. He has worked for his employer since 1999. He served in the Navy from 1971 to 1991 and achieved the rate of E-7. He has held a security clearance since he was in the Navy, without incident. He is married and is a college graduate. (GE 1; Tr. 29-34, 52-56.)

As stated in the SOR, Applicant was alleged to be indebted nine creditors in the approximate amount of \$243,062. Applicant admitted all of the debts listed in the SOR subparagraphs, with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6.)

Applicant was indebted to a creditor for two accounts; a delinquent credit card in the approximate total amount of \$19,344, and a debt consolidation loan in the amount of \$35,000, alleged in SOR subparagraphs 1.d and 1.e. The creditor consolidated Applicant's debts and received a judgment against him for the total amount of \$55,735 in August 2007 as alleged in SOR subparagraph 1.a. The writ of execution was filed in November 2007, creating a new entry for the same debt on Applicant's credit report, which is identified in SOR allegation 1.c. Applicant satisfied the judgment in June 2013 for approximately "\$15,000 to \$20,000." Applicant provided an "Acknowledgement of Satisfaction of Judgment" issued by the Court as proof these debts are resolved. (GE 6; AE A; AE U; Tr. 34-35, 39, 62-63.)

Applicant had an additional account with this creditor in the amount of \$2,140, identified in SOR subparagraph 1.h, which was not consolidated in the judgment. Applicant accepted a written settlement offer from this creditor. He submitted a payment of \$856.47 to satisfy this account on March 25, 2010. This debt is resolved. (AE C; Tr. 48-49.)

Applicant was indebted on another credit card in the amount of \$19,498, as alleged in SOR subparagraph 1.g. The creditor obtained a judgment against Applicant in the total amount of \$22,974, as stated in SOR subparagraph 1.b. Applicant settled the debt to this creditor in June 2013. He was issued an "Acknowledgement of Satisfaction of Judgment" that showed he resolved this debt in full. This debt is resolved. (AE B; Tr. 41-42, 66.)

Applicant has also resolved his remaining two SOR listed debts identified in subparagraphs 1.f and 1.i, delinquent accounts in the amounts of \$13,138 and \$19,498, respectively. He provided documentation from both creditors showing he settled the accounts for less than the full balances. (AE L; AE M; AE N; AE O; Tr. 46-50.)

Applicant's SOR-listed debts are attributable to his wife's gambling in 2005. She drained their resources and took cash advances on credit cards to fund her gambling habit. Applicant estimates that she lost approximately \$150,000 gambling in that year. He frequently traveled for work and she gambled when he was away. She hid her losses from him. He did not discover her gambling losses until 2006. At that time, he was unable to effectively manage their financial obligations and his accounts became past due. He slowly paid off the debts as he could afford the negotiated settlements. When Applicant became aware of his wife's gambling habits, he closed their joint accounts. He began taking his wife with him on all of his business trips. He monitors his credit for new accounts and negative entries several times per month. He gives his wife \$1,000 per month for spending money. He admits that his wife still gambles, but that it is on a limited basis. She has not incurred large gambling losses since 2005. He believes the precautions he has put in place have been successful in limiting her gambling and his exposure to financial difficulties. (GE 2; Tr. 36-38, 40, 51-52, 60-62, 70.)

In 2001, Applicant completed on-line financial counseling to help him understand his debt and how to resolve it. He created a budget that he utilizes and he currently lives within his means. Applicant has a monthly income of \$4,144. After his monthly expenses are paid, he has a net remainder of \$3,004. He has \$40,000 saved and assets totaling \$4,130,836.<sup>1</sup> No new recent delinquencies have been incurred. (AE S; AE T; Tr. 32-34, 40, 46, 67.)

Applicant presented eight letters of recommendation from colleagues and friends. They recognized Applicant for his outstanding performance at work. They noted that he was reliable. Applicant has received commendations from his employer for his outstanding professionalism. He testified that he was awarded Good Conduct Medals, and the Navy and Marine Corps Achievement Medal, during his 20 years of military service. (AE H; AE I; Tr. 53-54.)

### **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 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

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<sup>1</sup> Applicant, along with his six siblings, owns a large property in another state that they inherited from their father. They are in the process of listing that property for sale. Applicant estimates his share of the property totals \$4,000,000.

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(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.

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 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.

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, as follows:

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 applicable in this case:

(c) a history of not meeting financial obligations; and

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

Applicant became delinquent on a significant number of financial obligations in 2006, after his wife lost \$150,000 gambling. He was unable to settle the delinquent accounts until 2013. While all of those debts have now been satisfied, the Government established that Applicant had a history of not meeting financial obligations from 2006 to 2013 and that his financial problems were linked to his wife's gambling in 2005. The Government established a case for disqualification under Guideline F.

Three 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;

(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.

Applicant's wife's gambling problem occurred nine years ago and has not recurred due to Applicant's careful monitoring of their finances. He has acted responsibly and made a good-faith effort to repay his creditors by contacting each of his creditors and satisfying his debts. Similar circumstances are unlikely to recur since Applicant has taken significant steps to closely monitor his wife's gambling. Applicant has acted responsibly under the circumstances. All of the above mitigating conditions 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 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 those guidelines, but some warrant additional comment. Applicant is well respected by his colleagues who wrote letters in support of Applicant. He performs well at his job. He served in the Navy, honorably, for 20 years. He has never had a security violation, though he has held a clearance for over 40 years. His financial difficulties are attributable to his wife's irresponsible gambling and he has acted responsibly by repaying his debts and closely monitoring his wife's gambling. No new debts have been incurred. There is little likelihood of recurrence.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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.

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Jennifer I. Goldstein  
Administrative Judge