



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12626
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

December 30, 2013

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had 11 delinquent debts totaling approximately \$50,376 identified on the Statement of Reasons (SOR). Two of Applicant’s debts were duplicated on the SOR, which left Applicant with nine validated delinquent debts. He has resolved four of his delinquent debts, totaling \$18,580. However, Applicant failed to produce sufficient evidence that five debts totaling \$12,693 have been addressed or are otherwise satisfied. He has not fully mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 6, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing the 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 on September 1, 2006.

Applicant answered the Statement of Reasons on March 1, 2013 (Answer). In his Answer, Applicant elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 22, 2013. A complete copy of the file of relevant material (FORM) was received by Applicant on August 27, 2013. He was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit any information within the time. The case was assigned to me on December 12, 2013.

### **Findings of Fact**

Applicant is 32 years old. He served on active duty in the Army from July 2001 to July 2005, and in the Reserves and then Army National Guard from September 2005 to June 2010. He has been working for his current employer since May 2008. He is married to his second wife. Applicant has an eight-year old child with his first wife and one step-son through marriage to his current wife. (Item 3; Item 4.)

The Government alleged that Applicant is ineligible for a clearance because he 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 11 delinquent debts totaling approximately \$50,376. Applicant's debts appear in credit reports entered into evidence. Applicant admitted all of the SOR allegations, and included explanations. (Answer; Items 7 through 11.)

Applicant attributes his debts to his divorce in 2006 and his step-son's illness in 2009. His step-son had a mass on his brain that required surgery. (Item 6.)

His debts are as follows:

Applicant is alleged to be indebted on two delinquent medical accounts in the amount of \$847 each (as alleged in SOR ¶¶ 1.a and 1.b). Applicant indicated in his Answer that this was a single debt for an emergency room visit in 2009. Applicant indicated he spoke to the collection agency and they agreed to accept a payment of \$218.75 as a settlement on this account. He presented a receipt that showed this debt was paid in full. This debt is satisfied. (Answer; Item 7.)

Applicant is indebted on a charged off account in the amount of \$761 (as alleged in SOR ¶ 1.c). Applicant claimed to have contacted this creditor and "they informed [him] that this is Charged Off and that [he] cannot pay money on this account any longer," although he was willing to resolve the debt. He failed to offer any documentation to support his claim. This debt is unresolved. (Answer; Item 9; Item 10.)

Applicant is indebted on a delinquent account in the amount of \$13,778 (as alleged in SOR ¶ 1.d). Applicant indicated in his Answer that this debt was for a vehicle that belonged to his ex-wife. He presented an excerpt from a credit report that reflects this account is "paid satisfactorily." The account number appears to match that listed on

the credit reports in the Government's exhibits showing this delinquency. This debt is resolved. (Answer; Item 7; Item 8.)

Applicant is indebted on a delinquent account in the amount of \$10,000 (as alleged in SOR ¶ 1.e). Applicant indicated this debt was for a vehicle loan. He averred that he "contacted the collection agency and have set up a monthly payment of \$100 until this account is paid." He submitted a copy of the agreement. However, Applicant failed to introduce proof he has made any payments in accordance with his agreement. Applicant's credit report dated May 2, 2013, reflects that the balance on this debt is \$10,277. This debt is unresolved. (Answer; Item 7.)

Applicant is indebted on a delinquent account in the amount of \$3,698 (as alleged in SOR ¶ 1.f). Applicant indicated in his Answer that this debt, for a student loan, was paid. Applicant's credit report dated May 2, 2013, reflects that this debt as "paid collection." This debt is resolved. (Item 7.)

Applicant is indebted on a delinquent account in the amount of \$337 (as alleged in SOR ¶ 1.g). Applicant attached a letter from this creditor to his answer indicating that this account was "settled in full." This debt is resolved. (Answer.)

Applicant is indebted on a delinquent account in the amount of \$18,176 (as alleged in SOR ¶ 1.h). Applicant asserted in his Answer that this debt is a duplicate of the vehicle loan alleged in SOR ¶ 1.d. Both debts bear the same account number. This debt is resolved. (Answer; Item 7; Item 8; Item 11.)

Applicant is indebted on a delinquent account in the amount of \$955 (as alleged in SOR ¶ 1.i). Applicant claims, in his Answer that this debt is a duplicate of 1.c. However, these delinquencies bear different account numbers in Applicant's credit reports. Further, he failed to produce documentation that this account is resolved. (Answer; Item 10.)

Applicant is indebted on a delinquent account in the amount of \$528 (as alleged in SOR ¶ 1.j). This debt has been past due since at least December 2010. In his Answer, Applicant indicated that this debt was resolved and he was awaiting documentation from this creditor. Applicant failed to present any documentation to support his claim. This debt is unresolved. (Answer; Item 9.)

Applicant is indebted on a delinquent collections account in the amount of \$449 (as alleged in SOR ¶ 1.k). Applicant indicated this debt was paid. However, he failed to present documentation to support his claim. This debt is unresolved. (Answer; Item 6; Item 9.)

Applicant has not had any financial counseling. His personal financial statement reflects that he has \$535 left over after he meets his monthly obligations. (Item 6.)

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**

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 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. 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." 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 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:

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 potentially applicable in this case:

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

Applicant has a history of financial problems dating back to his divorce in 2006. His financial problems were exacerbated by his step-son’s illness in 2009. He became delinquent on a number of accounts during that time period as evidenced by the credit reports in evidence that established Applicant had nine individual delinquent debts.<sup>1</sup> While Applicant has resolved four of his alleged debts, without further documentation, I must find that he has an inability or unwillingness to resolve his five remaining delinquent accounts. He failed to document that he is addressing the debts alleged in SOR ¶¶ 1.c, 1.e, 1.i, 1.j, and 1.k., totaling \$12,693. The evidence is sufficient to raise the above disqualifying conditions.

Five 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business

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<sup>1</sup> SOR ¶¶ 1.a and 1.b, along with SOR ¶¶ 1.d and 1.h. were shown to be duplicated entries and should only be counted once, each.

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; and

(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.

Applicant has the burden to demonstrate that his delinquent debts are not a security concern. In this instance, he failed to document the status of four of his delinquent accounts. His behavior is frequent and on-going. Without further proof, Applicant failed to show that his financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is not applicable.

Applicant indicated that his financial problems were the result of a number of events, including his divorce and his step-son's illness. These factors were beyond his control. However, he failed to show he acted responsibly in relation to his remaining debt. He failed to present any evidence that he is paying any of his remaining delinquent accounts or that they have otherwise been resolved. AG ¶ 20(b) is not applicable.

There is no evidence that Applicant attended financial counseling. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve his remaining delinquent consumer debts. While he did resolve the majority of his delinquent accounts, his remaining debt is significant. He presented no evidence of any recent payments or progress toward the settlement of his remaining debts. AG ¶ 20(d) is not applicable.

Applicant failed to present evidence to show that he was in the process of formally disputing any of his debts, and admitted to owing each of them. AG ¶ 20(e) is inapplicable.

### **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 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but warrant additional comment.

Applicant addressed four of his delinquencies, but \$12,693 in delinquent debt remains unresolved. He failed to support his assertion that he is handling these remaining financial matters in a responsible manner. He claims to have resolved some of his outstanding accounts, and to have been in contact with the creditors to resolve others, but he presented no evidence to bolster his credibility on these statements. Without character references or other evidence tending to establish good judgment, trustworthiness, or reliability, I cannot give his claims much weight. The potential for coercion, exploitation, or duress remains undiminished. 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 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge