



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-14201  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

June 18, 2013

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing two delinquent debts totaling \$31,628. Applicant's financial problems happened so long ago, were limited to two emergency medical debts, and occurred under circumstances that are unlikely to recur. He has now negotiated resolution of those debts. They do not cast doubt on his current judgment. 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 July 28, 2011. On February 20, 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 March 14, 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 11, 2013. DOHA issued a notice of hearing on April 11, 2013, scheduling the hearing for May 13, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf. The record was left open until June 14, 2013, for the receipt of documentation from Applicant. On June 11, 2013, Applicant presented five additional documents, marked AE A through AE F. Department Counsel had no objections and they were admitted into evidence as identified. DOHA received the transcript of the hearing (Tr.) on May 21, 2013.

### **Findings of Fact**

Applicant is a 31-year-old government contractor. He has worked for his current employer since June 2011. He is single and has no children. (GE 1; Tr. 23, 25-26.)

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 two delinquent debts totaling \$31,628. Applicant admitted both of the debts, as alleged in SOR ¶¶ 1.a and 1.b, in his Answer.

Applicant attributes his two delinquent debts to medical bills associated with an emergency appendectomy that occurred when he was 24 years old. Applicant did not have medical insurance at the time, but was told he would be covered by a state program that helped low-income earners afford medical care. A year after the surgery, he received the two bills alleged in SOR ¶¶ 1.a and 1.b. He learned that an error had been made in the state benefits paperwork, and that the time to refile a claim with the state had lapsed. Applicant was unable to afford to pay these debts. He was young and inexperienced with how to manage debt, as he had never had a delinquency before. He contacted the hospital and was told that the account had been forwarded to collections. He contacted the collection agent but was unable to reach a negotiated settlement. (GE 1; GE 2; GE 3; GE 4; Tr. 23-45.)

In May 2013 Applicant called the credit agency and negotiated a settlement for \$11,058 for both debts. He testified he is in the process of applying for a loan to cover this negotiated settlement amount. His loan payments will be \$150 per month, an amount which testified he can afford. (Tr. 35-38; AE F.)

Prior to his medical emergency, Applicant was current on all of his bills. He is currently in good standing with all of his other financial accounts, as reflected on his May 13, 2013 credit report. Applicant now maintains medical insurance. (GE 7; Tr. 23-24, 29, 43.)

Applicant is well respected by those who know him. His previous employer of twelve years indicated, "He was the best employee I ever had and the most trustworthy." Applicant's sister indicated that, since the passing of their father in 2012, Applicant has stepped up and taken responsibility for their household, to include paying their bills. A former teacher wrote that Applicant "is an honest individual who recognizes hard work as the path toward achieving his long term goals." (AE A; AE B; AE C; AE D; AE E.)

## **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 accumulated two delinquent debts totaling \$31,628. 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 five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. Three are 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 downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; 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> Applicant incurred his debts as a result of an emergency medical procedure that took place seven years ago. He was young and inexperienced with debt at that time. He came from modest means and did not have medical insurance. He qualified for state assistance on his medical bills, but due to an error in the paperwork, these two debts were not paid by the state. Applicant was unaware of the error until after the time he could re-file the claim had lapsed. He was left with two medical bills that he simply could not afford to pay on his limited income. He contacted the collection agent at the time, but was unable to negotiate a settlement agreement that he could afford to comply with, and was not knowledgeable about other possible debt management solutions. Applicant now maintains medical insurance. He understands the importance of satisfying his delinquencies, and he has negotiated with his creditors. He plans on satisfying the debts as soon as he is able to secure the loan. Applicant's financial problems happened so long ago, were limited to two debts, and occurred under circumstances that are unlikely to recur. Further, he otherwise, and now, pays all of his bills on time, as reflected by his most recent credit report. His delinquent medical accounts do not cast doubt on his current reliability, trustworthiness, or good judgment.

### **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 was honest and

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

candid about his finances. He was young at the time he defaulted on his medical accounts and his inexperience left him feeling he had no other option than to default on his obligations. He is older and wiser now. 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 action to implement the plan. Applicant has applied for an affordable loan that he intends to use to settle the two debts listed on the SOR, thereby demonstrating the significant action. He has sufficient income to avoid financial problems in the future. 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:	For Applicant
Subparagraph 1.b:	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