



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



In the matter of:	)	
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	)	ISCR Case No. 11-15016
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

December 18, 2013

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**DECISION**  
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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on August 22, 2011. (Government Exhibit 1.) On May 29, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 on June 27, 2013, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 8, 2013. This case was assigned to me on August 20, 2013. DOHA issued a notice of hearing on August 20, 2013. I convened the hearing as scheduled on September 10, 2013. The Government offered Government Exhibits 1 through 6, which were admitted without objection. Applicant submitted Applicant Exhibits A through F, which were admitted without objection, and testified on his own behalf. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted

Applicant Exhibit G on September 13, 2013, and it was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 17, 2013, and the record closed. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 43 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant denied both allegations in the SOR under this Paragraph. He also submitted additional information to support his request for a security clearance.

The SOR lists two delinquent debts, totaling approximately \$38,182. The existence and amount of these debts is supported by credit reports dated April 2, 2009; September 3, 2011; January 26, 2013; and August 8, 2013. (Government Exhibits 3, 4, 5, and 6.) (See *also* Interrogatories dated March 13, 2013. (Government Exhibit 2.)) The current status of the debts is as follows:

1.a. This is a debt to an unidentified medical provider in the amount of \$182. Applicant denied any knowledge of this particular bill. However, Applicant admits that he was involved in serious motorcycle accidents in 2010 and 2013. He also had gall bladder surgery in 2012. In addition, he also admits that he has past-due medical debts connected with his treatment for these accidents. According to Applicant, the past-due medical bills were due to confusion over the hospital's billing procedures. He has since made proper arrangements with the hospital regarding billing. (Tr. 28-29.)

Applicant has made payment arrangements with the debt collection agency handling all of his past-due medical bills. He provided documentary evidence showing such an arrangement. One of the bills being paid is in the amount of \$182. (Applicant Exhibit D; Tr. 29-31, 33-34, 38-42.) Since Applicant was unsure about the original creditor on the debt alleged in 1.a, he has also written to the credit reporting firm asking them to investigate the debt. (Applicant Exhibit G.) This debt is being resolved.

1.b. Applicant admits that he was indebted to a credit union for a second mortgage on his house in the amount of \$38,000. The house was foreclosed upon in 2009 by the first mortgage holder. (Applicant Exhibit F.) Applicant stated that the financial issues concerning the house were a combination of actions by the mortgage

companies that affected his ability to pay the loans, as well as the recession, which made it impossible to sell his home.<sup>1</sup>

The situation regarding the status of the second mortgage is confusing. Applicant admits receiving phone calls or other communications from the credit union after the foreclosure. According to Applicant, he was never informed by the credit union that he remained personally liable for the second mortgage. His assumption was that the foreclosure had wiped out the second as well.

The day of the hearing Applicant went to the credit union to obtain documentary information about the status of this loan. He received a 2009 IRS Form 1099-A, "Acquisition or Abandonment of Secured Property." (Applicant Exhibit B; Tr. 34-36.) According to Applicant, it was while reading this form that he learned he was still personally liable for the debt.<sup>2</sup>

Once Applicant was told that the second mortgage debt was not satisfied, he wrote a letter to the Chief Executive Officer of the credit union. In this letter he states that he was not aware until September 10, 2013, that he was still liable for that loan. He further indicates a desire to settle the loan and sets forth a possible repayment schedule. (Applicant Exhibit C.) As of the date the record closed Applicant had not indicated whether there was a response to his proposal.

Other than the debts discussed above Applicant's financial situation is stable. He is able to pay his monthly bills and make the payments on the past-due debts that he has proposed. (Government Exhibit 2 at 15, Exhibit 6; Tr. 40-42.)

## **Mitigation**

A personal friend of Applicant, the executive director at an assisted living facility, wrote a letter of recommendation for Applicant. (Applicant Exhibit A.) She strongly supports Applicant stating, "He [Applicant] takes pride in the fact that he does not waiver from his own personal ethics and would not consider intentionally violating any rules, policies, or boundaries he is given."

Applicant also submitted numerous certificates of appreciation, and outstanding performance, presented to him by his employer. (Applicant Exhibit E.)

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<sup>1</sup>The Trustee's Deed Upon Sale, Applicant Exhibit F, indicates that the mortgage company paid \$113,664 for the property. The unpaid debt at the time amounted to \$277,684.23.

<sup>2</sup>It appears that this form should have been provided to Applicant by the credit union in 2009, when the property was foreclosed upon after being abandoned by Applicant. See Internal Revenue Service 2009 *Instructions for Forms 1099-A and 1099-C* (available at <http://www.irs.gov/pub/irs-prior/i1099ac--2009.pdf>).

## Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had two delinquent accounts that he could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. The past-due medical bill was the result of confusion between Applicant and the hospital about how he was being billed due to his recent medical issues. He has successfully resolved that debt. The non-payment of the second mortgage debt was due to confusion by Applicant regarding the status of that loan. Part of that confusion was the result of a lack of required communication from the credit union regarding that debt. Applicant has now made an offer to pay this debt. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counselling. However, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Finally, Applicant has attempted to resolve the status of the debt in 1.a. This action brings him under the orbit of AG ¶ 20(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 acted in a way that shows good judgment, making the best he could out of a difficult situation. The DOHA Appeal Board has stated, “A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness.”<sup>3</sup> As the DOHA Appeal Board has also said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”<sup>4</sup> All of these mitigating conditions apply to the facts of this case.

### **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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems for several years, he is on the road to having them resolved.

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<sup>3</sup>ISCR Case No. 07-09966 at 3 (App. Bd. June 27, 2008).

<sup>4</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

### **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
Subparagraphs 1.a. and 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.

WILFORD H. ROSS  
Administrative Judge