



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



In the matter of: )  
)  
)  
)  
Applicant for Security Clearance )

ISCR Case No. 12-00008

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2014

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 28, 2011. On August 7, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

On August 26, 2013, Applicant requested a determination on the written record. He responded to allegations in the SOR on September 6, 2013. On December 6, 2013, Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 10, 2014. I

convened a hearing on February 3, 2014, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and entered in the record without objection. Applicant testified and introduced 13 exhibits, which I marked as Ex. A through Ex. M and entered in the record without objection. At the conclusion of the hearing, I left the record open until close of business February 10, 2014, so that Applicant could, if he wished, provide additional information for the record. Applicant timely provided a cover letter and two proposed exhibits.<sup>1</sup> I marked the documents as Ex. N through Ex. P and admitted them to the record without objection.<sup>2</sup> DOHA received the hearing transcript (Tr.) on February 11, 2014.

### **Findings of Fact**

The SOR contains seven allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.) In his Answer to the SOR, Applicant admitted all seven allegations. Applicant's admissions are entered as findings of fact.

Applicant is 53 years old, a high school graduate, married, and the father of two adult children. He has been steadily employed by a government contractor as a supply technician since 2008. He was first awarded access to classified information in 2001. He seeks renewal of his security clearance. (Ex. 1; Tr. 55-56.)

In 1980, Applicant enlisted in the U.S. military, where he served on active duty for 21 years. He received an honorable discharge and retired from the military in 2001. (Ex. 1; Ex. L; Tr. 51.)

After his military retirement, Applicant did not work and lived on his wife's earnings and his military retirement pay for two years. In 2002, Applicant began a program of college study. In 2003, he obtained work with a federal contractor. He was laid off when the contract that supported his work ended. From 2006 until 2008, Applicant was employed in the automotive industry as a quality coordinator. However, during this time, he experienced periodic unemployment as his employing company struggled with financial issues and laid off employees. When he was unemployed, he received unemployment benefits. In about 2007, he resumed his college studies with the hope of obtaining a degree. (Ex. 1; Ex. K; Tr. 37-38, 52-53, 72-75.)

In 2007, Applicant's wife became ill and required surgery. Applicant stated that his wife was unable to work for about a year after her surgery. Applicant's wife is now fully employed as a certified nursing assistant. (Tr. 25, 50-54, 57-58.)

---

<sup>1</sup> Because Applicant's cover letter contained information of an evidentiary nature, I marked it as a separate exhibit. (Ex. N.)

<sup>2</sup> Department Counsel's e-mail transmitting the exhibits was marked as Hearing Exhibit (HE) 1.

In 2008, after his employing company shut down, Applicant found employment with his current employer in another state. He left his wife and daughter in the family home and moved to the state where he is currently employed. He rents a small apartment, but stated that he looked forward to his wife and daughter joining him after his daughter graduates from college in December 2014. Applicant testified that he contributed about \$6,000 a year toward his daughter's college expenses. (Tr. 56-57, 82-84.)

The SOR alleges seven delinquent debts totaling approximately \$31,619. Of those delinquencies, three are judgments and four are accounts in collection status. The SOR alleges at ¶ 1.a. that Applicant is responsible for a \$3,437 unsatisfied judgment to an educational institution. The judgment appears on Applicant's credit bureau reports of January 2013 and June 2013. In response to the SOR, Applicant admitted the debt. In his July 2013 response to DOD interrogatories, Applicant stated that the debt had not been satisfied, and he acknowledged that his payments on the debt were less than the actual payments due. He provided documentation showing that he made payments on the debt in 2009 and from January through September 2012. He also made payments in August 2013, November 2013, and January 2014. The balance on the debt as of January 2014 was \$2,874. (Ex. 3; Ex. 4; Ex. 5; Ex. A; Ex. J; Tr. 61.)

Applicant admitted an \$897 judgment, alleged at SOR ¶ 1.b. In his personal subject interview in April 2011, Applicant acknowledged the debt, which he stated was for a computer he purchased in 2003. He told the authorized investigator that he was paying \$100 a month to the creditor. The debt appears as unsatisfied on Applicant's credit bureau reports of April 2011, January 2013, and June 2013. In his answer to the SOR, Applicant stated that the debt was satisfied in 2010. At his hearing, he stated that the debt had been paid, but he failed to provide documentation establishing payment. (Ex. 2; Ex. 3; Ex. 4; Ex. 5; Tr. 61.)

The SOR alleges at SOR ¶ 1.c. that Applicant is responsible for a \$10,578 judgment an unpaid credit card account. At his personal subject interview, he told the investigator that the account was opened in February 2001 and used to make a number of purchases. He also told the investigator that he had settled the account for \$4,795 and was making payments of \$100 a month to the creditor. The judgment appears on Applicant's credit bureau reports of April 2011, January 2013, and June 2013. In his July 2013 response to DOD interrogatories, Applicant provided a letter from the creditor's agent demanding payment of the debt. At his hearing, Applicant provided an exhibit in which he agreed to authorize payment of \$60 a month to the creditor until the debt was satisfied. However, the exhibit authorizing the payments was not dated or signed by Applicant. He stated at his hearing that he would provide a signed and dated authorization as a post-hearing submission. However, he failed to do so. The debt remains unresolved. (Ex. 2; Ex. 3; Ex. 4; Ex. 5; Ex. M; Tr. 61-62.)

The SOR alleges at ¶ 1.d. that Applicant owes a debt of \$3,093 to a creditor on an account in collection status. In response to DOD interrogatories in July 2013, Applicant stated that the debt had not been paid. He provided documentation, dated

July 3, 2013, from the creditor, confirming the amount of the debt and providing an address where payment in full could be sent. At his hearing, Applicant provided a settlement offer from the creditor, dated August 20, 2013, stating that the debt could be settled for \$785.36, if paid by September 18, 2013. Applicant failed to provide documentation to corroborate payment. The debt remains unresolved. (Ex. 4; Ex. C; Tr. 62-63.)

The SOR alleges at ¶ 1.e. that Applicant owes an \$8,751 debt, in collection status, to a bank card creditor. At his hearing, Applicant provided documentation which included evidence of seven payments, totaling \$850, made between October 2012 and July 2013. He also provided a statement from the creditor showing that the balance on the debt, as of August 2013, was \$8,905. Applicant recognized that the interest charged by the creditor increased the size of the debt, despite his seven payments. He stated that he had attempted to contact the creditor to discuss settlement of the debt. The debt remains unsatisfied. (Ex. D; Tr. 63-64.)

The SOR alleges at ¶ 1.f. that Applicant owes \$4,778 to a creditor on a debt in collection status. At his hearing, Applicant provided a letter from the creditor, offering to settle the debt for \$2,866, if paid by August 30, 2013. Applicant stated that he had not paid the creditor the settlement amount. The debt remains unresolved. (Ex. E; Tr. 64-65.)

The SOR alleges that Applicant owes \$85 to a municipality on a debt in collection status. At his hearing, Applicant stated he had satisfied the debt and would provide documentation to corroborate payment in a post-hearing submission. In a post-hearing submission, Applicant provided documentation showing a credit union withdrawal of \$87.95 to pay an E-Z pass violation in another jurisdiction. The debt alleged in the SOR remains unsatisfied. (Ex. 2; Ex. N; Ex. O; Tr. 65-66.)

Applicant provided a personal financial statement dated July 9, 2013. He stated that he earns \$32 an hour, and reported that his net monthly income, including his military retirement pay is \$5,660. His wife's net monthly income is \$1,000. He also reported other income of \$400 a month from a second job. Applicant's total net family income is \$7,000. (Ex. 4; Tr. 59-60, 79-80.)

Applicant reported the following fixed monthly living expenses: rent, \$1,125; groceries, \$60; utilities, \$100; and car expense, \$200. He listed \$2,700 in monthly debt payments and the following assets: real estate, \$162,000; bank savings, \$2,000; and stocks and bonds, \$2,400. His monthly net remainder is approximately \$2,800. (Ex. 4.)

In his April 2011 personal subject interview, Applicant told the investigator that he had not had financial credit counseling. However, at his hearing, he stated that he had participated in financial credit counseling as a military retiree in the latter part of 2013. (Ex. 4; Tr. 66-67.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider and apply 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 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, the administrative judge applies these 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security 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 Executive Order 10865 provides that 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 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 accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This 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. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay

overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

While Applicant experienced a job loss in 2006, and his wife was unable to work for a year after surgery in 2007, he has been steadily employed with his current employer since 2008. His financial delinquencies occurred in the past and continue to the present time. He has not addressed most of his delinquencies and they remain unresolved.

To his credit, Applicant provided documentation showing payments on the debt alleged at SOR ¶ 1.a. However, he failed to provide documentation establishing that he had satisfied the judgment alleged at SOR ¶ 1.b. or had a payment plan in place to satisfy the judgment alleged at SOR ¶ 1.c.

Applicant failed to provide documentation to establish that the debts alleged at SOR ¶¶ 1.d., 1.f., and 1.g. had been resolved. Moreover, while he provided evidence of payment for the debt alleged at SOR ¶ 1.e, the payments were less than the interest accruing on the debt, and Applicant had not sought a settlement agreement with the creditor.

Applicant’s personal financial statement suggests that he has a net monthly remainder of \$2,800. This would enable him to address the delinquencies alleged in the SOR, even if he provides \$6,000 a year to help his daughter with her college tuition payments. However, Applicant provided little information and documentation to establish that he is attempting to satisfy his long-standing financial delinquencies.

Applicant testified that he had had financial credit counseling sometime in the four months before his hearing. However, the record does not establish that the financial counseling has improved or brought his financial situation under control. Applicant’s current financial situation raises security concerns about his reliability, trustworthiness, and good judgment.

Because Applicant provided evidence of payments on the judgment alleged at SOR 1.a., I conclude AG ¶ 20(d) applies in part to his case. However, Applicant does not appear to have a plan in place to resolve his remaining debts. After carefully weighing the facts of Applicant’s case, I conclude that AG ¶¶ 20(a), 20(b), and 20(c) do not apply in mitigation.<sup>3</sup>

### **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

---

<sup>3</sup> AG ¶ 20(e) does not apply to the facts of this case.

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. Applicant is a mature person of 53 years. His financial problems began several years ago and are ongoing. Despite a steady income since 2008 and a net monthly remainder of \$2,800, he has failed to budget his income to satisfy his delinquent debts. His failure to develop a plan to address his delinquencies raises concerns about his judgment, maturity, reliability, and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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
Subparagraphs 1.b. - 1.g.:	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.

---

Joan Caton Anthony  
Administrative Judge