



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



|                                  |   |                     |
|----------------------------------|---|---------------------|
| In the matter of:                | ) |                     |
|                                  | ) |                     |
|                                  | ) | ISCR Case: 12-00719 |
|                                  | ) |                     |
| Applicant for Security Clearance | ) |                     |

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

11/26/2013

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant accumulated 17 delinquent debts totaling \$111,003. They include three federal tax liens that total \$56,793, and two state tax liens that total \$17,473. At this time all SOR-listed debts remain unpaid or unresolved. He failed to demonstrate that he is reliable in addressing his financial delinquencies. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On May 26, 2011, Applicant submitted a security clearance application (SF-86). On June 5, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), 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 within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on July 31, 2013 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on September 13, 2013. A complete copy of the File of Relevant Material (FORM), containing ten items, was mailed to Applicant on September 18, 2013, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on September 27, 2013, and returned the receipt to the Defense Office of Hearings and Appeals (DOHA). He did not provide additional information in response to the FORM within the 30-day period. I received the case assignment on November 7, 2013.

### **Findings of Fact**

In his response to the SOR, Applicant admitted all allegations contained in the SOR. (Item 4.)

Applicant is a 53 years old. He lives with his wife and four adult children. He was born in Saigon, Vietnam, and became a naturalized citizen in 1986. In May 2011 he was hired as a technician for a defense contractor. Prior to obtaining this current position, he had been unemployed since August 2008, when his position with a casino was terminated because he was unable to renew his gaming license due to delinquent debts owed for unpaid traffic tickets. He had worked at the casino for four years. From 1992 until 2007, he was a part owner of a restaurant. From 2001 to 2004, he held a position as a senior technician with a computer company. (Items 5, 6.)

In May 2011 Applicant submitted a SF-86. (Item 5.) In July 2011 a security investigator interviewed Applicant about his background and delinquent debts. During that interview, he addressed his mortgage problems, unpaid tax liens, and other delinquent debts. He attributed the majority of the debts to his failed restaurant business and problems with his business partner, and periods of unemployment. He indicated that he intended to file a Chapter 7 bankruptcy to resolve the debts. He disclosed that his home mortgage was foreclosed in 2006. (Item 6.)

According to credit bureau reports, dated May 2013, February 2013, and June 2011, Applicant's delinquent debts began accumulating in 2004 and continued into 2012. (Items 8, 9, and 10.) Based on those CBRs, the SOR alleged 17 delinquent debts totaling \$111,003. They include three federal tax liens that total \$56,793, and two state tax liens that total \$17,473. According to his July 31, 2013 Answer, all debts and taxes remain unpaid or unresolved. (Item 4.)

Applicant provided a copy of his May 2013 budget. His net monthly income is \$1,270, and expenses total \$1,250. He indicated that he has some money remaining at the end of the month because he works overtime. He did not include how much he

earns in overtime because it is not “predictable.” (Item 7.) He did not submit evidence of participation in financial or credit counseling.

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 describing his judgment, morality, trustworthiness, integrity, 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. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, 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 relating to 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Since 2004 Applicant has been accumulating delinquent debts that he has been unable or unwilling to satisfy. The evidence raises both security concerns, 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:

- (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;

(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's delinquent debts began accumulating in 2004 and remain unresolved. He failed to demonstrate that such problems are unlikely to continue or recur, calling into question his reliability and trustworthiness. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that his financial problems arose because he experienced financial problems related to periods of unemployment and a business failure. Those were circumstances beyond his control. However, he did not provide evidence that he attempted to responsibly address the delinquent debts as they were accumulating, a factor that must be considered in establishing mitigation under AG ¶ 20(b). Thus, this mitigating condition has limited application.

Applicant did not provide evidence that he participated in credit or financial counseling. He acknowledged that all of the SOR-listed delinquent debts, totaling over \$111,000 remain unresolved. Hence, AG ¶ 20(c) has limited application, as there are not clear indications that the problems are under control. Applicant did not provide evidence that he made a good-faith effort to resolve any debts, as required under AG ¶ 20(d). There is no evidence that Applicant disputed any delinquent debt. AG ¶ 20(e) has no application.

### **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

