



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



In the matter of:	)	
	)	
-----	)	ISCR Case: 12-01550
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

November 22, 2013

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

**Statement of Case**

On November 8, 2011, Applicant submitted a security clearance application (SF-86). (Item 5.) 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 June 27, 2013 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) Department Counsel submitted the Government's written case on August 30, 2013. A complete copy of the File of Relevant Material (FORM), containing nine Items,

was mailed to Applicant on September 6, 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 16, 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 October 30, 2013.

### **Findings of Fact**

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

Applicant is a 39 years old. He lives with his girlfriend and three children. He has been employed by the same defense contractor since 1994.

According to credit bureau reports, dated April 2013, November 2011, and July 2006, Applicant's delinquent debts began accumulating in 2006 and continued into 2013. (Items 7, 8, and 9.) Based on those reports, the SOR alleged 26 delinquent debts totaling \$37,319. The smallest debt is for \$46 (1.c), the largest for \$8,081 (1.r). According to his June 27, 2013 Answer, all debts remain unpaid or unresolved. (Item 4.)

In November 2011 Applicant submitted a SF-86. (Item 5.) That same month a security investigator interviewed Applicant about his background and delinquent debts. During that interview, he addressed delinquent debts. He attributed the majority of the debts to his ex-wife. (Item 6.)

Applicant discussed his financial situation further in DOHA interrogatories dated May 6, 2013. (Item 6.)<sup>1</sup> He stated that he has custody of his three children, with his ex-wife paying \$100 a month child support. Applicant reports that his gross annual income is approximately \$52,000. Finally, he says that his family, including his live-in girlfriend, "live pay check to pay check."

He states in his Answer:

I admit I have debt. I will pay my debts off. The reason I have stated for having these debts is due to my now ex wife [sic] quitting jobs and then leaving me for a "better life". When she wasn't working we got some credit cards and charge electric bills, food and whatever else we had bills on. When she finally left I couldn't afford the house so it went in to foreclosure. I have full custody of my three girls . . . . They are with me all the time except every other weekend. Since she has left I have lived in an

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<sup>1</sup> Item 6 contains both a handwritten statement by Applicant, and a Report of Investigation prepared by an investigator for the Office of Personnel Management.

apartment for 18 months and was never late on rent. After that I moved to a rent house and I haven't been late on the rent since I have been there for the last 3 years. I have turned things around and do not live outside my means. All my bills are paid on time except the old debts from my marriage. . . . Please give me more time to start getting these paid off and I will show you I can do it.

Applicant did not provide a budget. 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 2006 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 2006 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 concerns arose because he experienced financial problems related to his ex-wife leaving him, and their eventual divorce. 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 \$37,000, remain unresolved. Hence, mitigation under AG ¶ 20(c) was not established, 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 of the debts, even the smallest, 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 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.

According to 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 is a 39-year-old man, who began working for a defense contractor in 1994. In November 2011 he discussed his delinquent accounts with a security investigator. He indicated that he knew about the debts and would resolve them. In June 2013 Applicant admitted that none of the 26 SOR-listed debts were resolved. After receiving the FORM in September 2013 he was given an opportunity to submit more information pertinent to his delinquent debts in response to the Department's arguments regarding their unresolved status. He failed to do so, further raising questions about his personal finances, reliability, and judgment.

Overall, the record evidence leaves me with doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.z:	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.

WILFORD H. ROSS  
Administrative Judge