



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-02369
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: Timothy Whelan, Esq.

January 15, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 59-year-old employee of a defense contractor. He is alleged to be indebted to four creditors in the approximate amount of \$26,686. He has acted responsibly with respect to his present debts by repaying one debt, successfully contesting one debt, and making payment arrangements with the remaining collection agents. He did not intentionally omit his debts on his November 2011 Electronic Questionnaires for Investigations Processing (e-QIP). Eligibility for access to classified information is granted.

**Statement of the Case**

On July 24, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on August 30, 2013, and requested a hearing before an administrative judge. The case was assigned to me on November 4, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 5, 2013, scheduling the hearing for November 21, 2013. Applicant's Counsel requested a continuance and the case was rescheduled on November 19, 2013, for hearing on December 16, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 10. Applicant's Counsel objected to the admission of all of the GE because they contained information beyond what was alleged in the SOR. I overruled the objection. (Tr. 23-25.) Applicant offered Exhibits (AE) A through L, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on January 2, 2014, Applicant presented seven additional exhibits marked AE M through AE S. Department Counsel had no objections to AE M through AE S and they were admitted. DOHA received the transcript of the hearing (Tr.) on December 24, 2013.

### **Findings of Fact**

Applicant is a 59-year-old employee of a defense contractor. He has worked for his employer for 36 years. He has held a security clearance for 30 years, without incident. He is married and has three adult children. He is a high school graduate. (GE 3; GE 5; Tr. 45-46, 150.)

As stated in the SOR, Applicant was alleged to be indebted to four creditors in the approximate amount of \$26,686. Applicant admitted subparagraphs 1.a, 1.b, and 1.c. He denied 1.d. He also was alleged to have intentionally omitted the debts listed on the SOR when he completed his November 4, 2011 e-QIP, as stated in subparagraph 2.a. He denied the intentional omission. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 6; GE 7; GE 10.)

Applicant attributes his recent debts to his wife's unemployment. He indicated that in May 1995 he filed for Chapter 7 bankruptcy due to his unemployment for three years beginning 1991, but that he was current on all of his debts after the bankruptcy was discharged until early 2010. His claim is supported by a February 21, 2007 credit report that displays all accounts as "paid" or "in good standing." However, in May 2010 Applicant's wife was unexpectedly laid off. As a result, their household income decreased by 50%. She performed contract work from mid-2010 to December 2012, but was under-employed during that period. Additionally, during the same period, Applicant's adult daughter and two grandchildren moved in with Applicant. Applicant and his wife also required costly medical treatment during this time. (GE 1; GE 2; GE 3; GE 4; GE 8; Tr. 51-57, 74-80.)

Applicant's wife got a new job in January 2013. She is now fully employed and has acquired seniority in her position. He no longer supports his daughter or his grandchildren. Applicant's monthly budget shows a remainder of \$430, after he makes payments on his monthly bills including the accounts that were identified on the SOR as delinquent. Applicant and his wife also have retirement savings, which they could

borrow against in future times of financial strife. Applicant and his wife produced documentation that shows they paid off other debts that were not listed on the SOR. Applicant is current on his payments to the IRS for a tax liability that Applicant disclosed on his November 2011 e-QIP.<sup>1</sup> Applicant has no new delinquent accounts. In 2011 Applicant spoke to a financial counselor on the phone. The counselor offered him suggestions on how to save money. (AE M; AE N; AE O; AE P; AE R; Tr. 51-57, 112, 126-130, 151.)

Applicant's debts as listed on the SOR are as follows:

Applicant was indebted to a collection agent in the approximate amount of \$328, as identified in subparagraph 1.a. This debt was for dental treatment and was incurred while Applicant's wife was unemployed. This debt was listed as a collection account in October 2010. Applicant presented a receipt for this creditor showing that he paid this debt in full. This debt is satisfied. (GE 7; AE A; Tr. 81-82, 86-89.)

Applicant is indebted to a collection agent for a credit card in the approximate amount of \$9,150, as identified in subparagraph 1.b. This debt was for a store credit card that Applicant used to make ends meet when his wife was unemployed. Applicant's credit report reflects this debt was reported 150 days past due in November 2011. He presented a letter from this creditor showing he made arrangements to pay \$120.18 per month until this debt is satisfied in full. He presented documentation that shows he made payments in accordance with this agreement from August through December 2013. He testifies that he intends to continue to make payments on this debt until it is satisfied and will pay it off early if his resources allow. This debt is being resolved. (GE 6 AE B; AE K; AE Q; Tr. 82-84, 89-96, 129, 133.)

Applicant is indebted to a collection agent for a credit card in the approximate amount of \$17,204, as identified in subparagraph 1.c. This debt was for a credit card that Applicant used to make ends meet when his wife was unemployed. Applicant's credit report reflects this debt was reported 150 days past due in November 2011. Applicant presented documentation from this creditor that shows the current balance of this account was \$10,594.74, as of November 22, 2013. That letter documented that Applicant made payment arrangements with the creditor for payments of \$150 per month. Applicant presented documentation that shows he successfully made \$150 payments to this creditor from October to December 2013. This debt is being resolved. (GE 6; AE C; AE L; AE S; Tr. 83, 96-106, 134-140.)

Applicant was identified as being indebted to a collection agent in the approximate amount of \$4, as identified in subparagraph 1.d. Applicant testified that he did not recognize this debt and contested it directly with this creditor. On August 21, 2013, Applicant received a letter from this creditor stating, "Your account has been updated to paid in full/settled in full." This debt was an error on his credit report and is now satisfied. (AE D; Tr. 106-107.)

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<sup>1</sup> Applicant mistakenly identified two \$2,000,000 debts and one \$20,000 debt owed to the IRS on his November 2011 e-QIP. Applicant owes one debt to the IRS totaling \$20,000 for the 2008 and 2009 tax years. Applicant made payment arrangements with the IRS in December 2011 at the rate of \$400 per month. (GE 5; GE 8.)

Applicant completed his e-QIP in November 2011. He testified that when he completed the form, he was rushed due to deadlines for projects that he was working on. He also had difficulties with the computer he was using to input his answers. On the e-QIP, Section 26 asked him about his financial record. In answering this section, he identified a Federal tax debt multiple times and indicated it resulted from his wife's unemployment in 2010. The e-QIP questions further inquired whether, in the past seven years, he had "bills or debts turned over to a collection agency;" "any account or credit card suspended, charged off, or cancelled for failing to pay as agreed;" or whether he had been "over 120 days delinquent on any debt not previously entered?" He answered, "no," to all of these questions. However, the credit reports establish the accounts listed in subparagraphs 1.b and 1.c on the SOR had been suspended by the creditors, and were delinquent over 150 days at the time he completed the e-QIP. Similarly, the debt listed in 1.a was already placed for collections when he completed the e-QIP. (GE 5; GE 8.)

Applicant testified that his omission of these three debts was not intentional. In hind-sight, he attempted to guess why he did not list the debts, but could not articulate exactly why he answered these questions, "no." He noted that he disclosed the IRS debt multiple times and had no intent of hiding information from the government. He had completed previous e-QIPs, and knew he had to report his financial difficulties. He testified that he reported his 1995 bankruptcy on a past security clearance application. His demeanor during his testimony suggested that the omissions were inadvertent. (GE 8; Tr. 60-70, 140-148.)

Applicant presented a declaration of support authored by a co-worker, who has sometimes supervised Applicant's work. He opined that Applicant "exercises the highest degree of judgment, morality, trustworthiness, integrity, and reliability on a daily basis." Applicant also presented a copy of an award he received from his employer on July 2, 2013, in recognition of his "knowledge, professionalism, responsiveness and overall dedication." (AE F; AE J.)

## **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 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, administrative judges apply the guidelines 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(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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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. 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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. One is potentially applicable in this case:

(c) a history of not meeting financial obligations.

Applicant was alleged to be indebted to four creditors in the approximate amount of \$26,686. Applicant satisfied the debt in subparagraph 1.a for \$328. He successfully contested the debts in subparagraph 1.d for \$4. Applicant recently began making payments on the debts in subparagraphs 1.b and 1.c. These debts have been past due since 2011. His recent indebtedness comes after discharging an unspecified amount of debt through a 1995 Chapter 7 bankruptcy. The Government established a case for disqualification under Guideline F.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially 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;

(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 financial problems in 1995 and in 2010 occurred during to unforeseen periods of unemployment. After Applicant discharged the debt in 1995 that resulted from his unemployment, he lived within his means and paid his bills, as evidenced by a 2007 credit report. His wife's unemployment in 2010, along with unexpected medical bills, and having additional household members during the same time period, caused the SOR listed debts and other delinquencies. Applicant has acted responsibly and made a good-faith effort to repay his creditors by contacting each of his creditors and establishing repayment plans (as with subparagraphs 1.b and 1.c) or satisfying the debt (as he did with the debt listed in subparagraph 1.a). His remaining debts are being resolved. Similar circumstances are unlikely to recur since Applicant's wife now has seniority in her position, their ailments have been treated, and his daughter no longer requires his support. Applicant has acted responsibly under the circumstances. He contested the one debt that he did not recognize, and the creditor corrected his credit report to reflect that the debt was satisfied. All of the above mitigating conditions apply.

## **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not deliberately omit his delinquent debts from his November 4, 2011 e-QIP. He credibly testified that the omission was unintentional and inadvertent. He disclosed a much larger debt owed to the IRS on that same application and had disclosed his Chapter 7 bankruptcy on a prior application. His credibility is supported by the declaration of support that Applicant offered into evidence. This disqualifying condition is not applicable. Applicant did not exercise questionable judgment or show a lack of candor.

## **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by his colleague who wrote a letter in support of Applicant. He performs well at his job. He has never had a security violation in the 30 years he has held a clearance. His financial difficulties are attributable to events beyond his control and he has acted responsibly with respect to his debts. He did not intentionally omit his debts from his e-QIP.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations and Personal Conduct security concerns.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

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Jennifer I. Goldstein  
Administrative Judge