



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



In the matter of: )  
)  
) ISCR Case No. 12-03113  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: Henry Ward Kendrick, Personal Representative

03/31/2014

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 19, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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) implemented on September 1, 2006.

On July 12, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on December 6, 2013. The Defense Office of Hearings and Appeals (DOHA) first issued a notice of video teleconference hearing in this case on December 20, 2013, scheduling the hearing for January 21, 2014. The hearing was postponed due to a shutdown of the Federal Government in the Washington, DC

metropolitan area on that date because of a snow storm. After coordinating with Applicant, a second notice of video teleconference hearing was issued on January 23, 2014, and the hearing convened as scheduled on February 3, 2014.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4 that were admitted into evidence. Applicant's objection to a portion of GE 2 was overruled. Applicant testified, called one witness, and submitted Applicant's Exhibits (AE) A through I, which were admitted into evidence without objection. The record was left open until February 17, 2014, to provide Applicant an opportunity to submit additional matters. He timely submitted additional documents that were marked as AE J through L and admitted into evidence without objection. Department Counsel's forwarding email reflecting that he had no objection to Applicant's post-hearing submission is part of AE J. DOHA received the hearing transcript (Tr.) on February 11, 2014.

### **Findings of Fact**

Applicant is a 59-year-old electronic technician who works for a defense contractor. He has held that position since November 2001. He earned an associate's degree in 1974. He has been married for 31 years and has two children, ages 27 and 28. He has held a security clearance without incident since about 1975.<sup>1</sup>

The SOR alleged that Applicant had six delinquent debts totaling about \$70,258. In his Answer to the SOR, Applicant admitted two allegations totaling \$33,029. His admissions are incorporated as findings of fact. Each debt is addressed separately below.<sup>2</sup>

SOR ¶ 1.a – charged-off account in the amount of \$15,841. Credit reports reflect this bank debt was opened in September 2003, had a date of last activity of June 2007, and was placed for collection in January 2010. Applicant testified that he never had an account with this bank. His son, who has the same name as him, had an account with this bank. After learning of this and other debts, Applicant filed a police report claiming that he was the victim of identity theft. This debt was listed in that police report. He disputed this account with the credit reporting bureaus. It was deleted from his credit report.<sup>3</sup>

SOR ¶ 1.b – collection account in the amount of \$32,000. Applicant admitted this debt. This was his son's student loan that Applicant cosigned. His son graduated with an associate's degree in December 2010 and a bachelor's degree in December 2012, and he is now working in his field of study. At some point before obtaining his bachelor's degree, Applicant's son failed to carry sufficient college credits to defer the student loan

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<sup>1</sup> Tr. at 8-9, 87; GE 1, 2.

<sup>2</sup> Applicant's Answer to the SOR.

<sup>3</sup> Tr. at 65-79, 83-87, 92-99, 101-107; GE 3, 4; AE A, B, C, E, H, L.

and it became due. At that time, Applicant was not aware that the student loan became due. In December 2006, Applicant made a payment of \$5,250 toward a student loan and claimed that payment was not credited to the account. He also provided documents showing he is a party to a class action lawsuit that claims the creditor engaged in illegal debt collection practices. Applicant's son testified that he has not yet made any payments toward this debt, but indicated that he intended to file for a deferment. His son also stated that he would resolve this debt.<sup>4</sup>

SOR ¶ 1.c – collection account in the amount of \$1,029. Applicant admitted this debt. This telephone account was opened in November 2010 and had a date of last activity of October 2011. In his Answer to the SOR, he provided documentation showing this account was paid in June 2012 and had a zero balance.<sup>5</sup>

SOR ¶ 1.d – past-due account in the amount of \$86. The debt is apparently from a local government employees' federal credit union in a state that Applicant does not reside. He testified that he had no knowledge of this account. This debt was listed in the police report in which Applicant claimed he was the victim of identity theft. Of particular note, this debt is not listed in the credit reports admitted into evidence. Insufficient evidence was presented to establish this debt.<sup>6</sup>

SOR ¶ 1.e – collection account in the amount of \$555. The SOR listed that the original creditor of this debt was a bank. Applicant denied that he ever had an account with that bank. This debt was listed in the police report in which Applicant claimed he was the victim of identity theft. Like the debt in SOR ¶ 1.d, this debt is not listed on the credit reports admitted into evidence. Insufficient evidence was presented to establish this debt.<sup>7</sup>

SOR ¶ 1.f – past-due account in the amount of \$20,747. This allegation involved the same creditor listed in SOR ¶ 1.a. As noted above, Applicant denied that he ever had an account with this creditor. This debt was listed in the police report in which Applicant claimed he was the victim of identity theft. Like the debts alleged in SOR ¶¶ 1.d and 1.e, this debt is not listed on the credit reports admitted into evidence. Insufficient evidence was presented to establish this debt.<sup>8</sup>

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<sup>4</sup> Tr. at 44-61, 80-81, 109-113; GE 2-4; AE D, G, I, L. The caption of the class action lawsuit does not list the creditor alleged in the SOR. However, the law firm representing that creditor is listed as one of the defendants in that class action lawsuit. See the last page of AE D and the caption of AE I. Apparently, the other defendants in that class action lawsuit are not listed in the caption.

<sup>5</sup> Tr. at 81-82; GE 3, 4; AE L; Applicant's Answer to the SOR.

<sup>6</sup> Tr. at 82-84; GE 3, 4; AE E, L.

<sup>7</sup> Tr. at 84-85; GE 3, 4; AE E, L.

<sup>8</sup> Tr. at 85-87, 92-99; GE 2, 3, 4; AE E, H, L. Both GE 3 and GE 4 listed accounts from this creditor with different account numbers. Because both of those accounts had balances of \$15,000, they apparently are duplicate entries of SOR ¶ 1.a.

Applicant has received financial counseling. In May 2013, he submitted a Personal Financial Statement (PFS) that reflected he had a total monthly income of \$5,266, that his total monthly expenses were \$2,993, that his total monthly debt payments were \$1,362, which left him a net monthly remainder of \$911. The PFS also indicated that he had \$3,484 in a savings account, \$6,700 in a checking account, and \$95,000 in a 401(k) account. He testified that his adjustable rate mortgage payment recently doubled to about \$2,000, but he could cover those higher payments with his wife's income. He and his wife also used a debt consolidation company in the past to resolve debts.<sup>9</sup>

A station manager who has known Applicant for 20 years indicated that Applicant's integrity, honesty, dependability, and reliability are beyond reproach. The manager described him as exhibiting high character and moral fortitude and noted he performed his duties as a classified material custodian with no deficiencies.<sup>10</sup>

A supervisor stated:

I have had the good fortune to work with and get to know [Applicant] for over twenty years. [Applicant] is a high quality individual with sound morals and values. I would say that [Applicant] serves a higher purpose and instills good behavior in others. He is steadfast in his beliefs, always striving to maintain his humility, while exemplifying honesty, and integrity. I personally have been inspired by [Applicant]; he brings out the best in people. He is one of the most trustworthy people I know. He's dependable, conscientious and I know I can count on him.<sup>11</sup>

### **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 list potentially disqualifying conditions and mitigating conditions that 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 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

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<sup>9</sup> Tr. at 87-92, 99-101; GE 2; AE K.

<sup>10</sup> Applicant's Answer to the SOR.

<sup>11</sup> Applicant's Answer to the SOR.

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 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. Two are potentially applicable in this case:

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

Substantial evidence was presented to establish that Applicant had two delinquent debts (SOR ¶¶ 1.b and 1.c) that he did not satisfy over an extended period. AG ¶ 19(a) and 19(c) apply.

Several 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.

Although SOR ¶ 1.a was initially listed on Applicant's credit reports, he stated that he never had an account with that creditor. He disputed that debt, and it was deleted from his creditor reports. AG ¶ 20(e) applies to SOR ¶ 1.a.

Applicant paid the debt in SOR ¶ 1.c about one year before the issuance of the SOR. AG ¶ 20(d) applies to SOR ¶ 1.c.

Applicant cosigned a student loan for his son. Unbeknownst to Applicant, his son's student loan became due because his son was not carrying enough college credits. Applicant made a \$5,250 payment toward this debt in December 2006 that was not credited to the account. He has become a party to a class action lawsuit against the collection agency handling this debt. With litigation pending on this debt, the delay in resolving this debt is not unreasonable. This debt occurred under unusual circumstances that are unlikely to recur and does not cast doubt on Applicant's current

reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies and ¶ 20(e) partially applies.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has held a security clearance without incident for about 39 years. He is a valued employee and devoted father. He was sincere and candid at the hearing. He established that he is a reliable and trustworthy individual. The remaining unresolved debt is in litigation. Action to resolve that debt will be instituted following that legal action.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under Guideline F.

### **Formal Findings**

Formal findings 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
Subparagraphs 1.a – 1.f:	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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James F. Duffy  
Administrative Judge