



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 12-03328  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 29, 2014

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on November 17, 2011. (Government Exhibit 1.) On February 21, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant.<sup>1</sup> 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on March 17, 2014 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 11, 2014. This case was assigned to me on April 15, 2014. The

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<sup>1</sup>The caption of the SOR states Applicant was an "Applicant for Public Trust Position." This was incorrect. Applicant is applying for a security clearance, as confirmed by reference to the Joint Personnel Adjudication System (JPAS). (Government Exhibit 1; telephone conversation with Chief Administrative Judge, DOHA (May 28, 2014).)

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 15, 2014. I convened the hearing as scheduled on May 1, 2014. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through D, also without objection. DOHA received the transcript of the hearing (Tr.) on May 12, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 66 and married. He has been employed by a defense contractor (Company One) since October 2011, and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted subparagraph 1.a in the SOR under this Paragraph. That admission is a finding of fact. He denied the remaining allegations. He also submitted additional information to support his request for a security clearance.

The SOR lists eight delinquent debts, totaling approximately \$117,002. The existence and amount of the debts is supported by credit reports dated November 30, 2011; June 11, 2013; April 11, 2014; and April 30, 2014. (Government Exhibits 4, 5, 6, and 7.) (See *also* Interrogatories dated July 11, 2013. (Government Exhibit 2.))

Applicant's financial difficulties began when he was laid-off from a previous employer (Company Two) in July 2007. (Government Exhibit 1 at Section 13A.) His wife was laid off from her job. He was able to fall back on a small business he owned, which kept him going through 2009. In 2010, however, a customer failed to pay him a \$25,000 debt, and his income fell precipitously to about a third of what he was making in 2006. When he became employed by his new employer, he found that he was unable to pay the debts that had fallen behind with his current income. These debts included the mortgages on his house and various tax debts. (Applicant Exhibit C; Tr. 34-38.)<sup>2</sup>

1.a. In early 2012 Applicant and his wife made the difficult decision to file for bankruptcy. They retained a bankruptcy lawyer and submitted their petition under Chapter 7 of the Bankruptcy Code in about May of that year. All of the debts alleged in

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<sup>2</sup>His adjusted gross income, as reflected in his tax returns, was \$88,216 in 2006; \$88,219 in 2007; 78,113 in 2008; \$44,939 in 2009; and \$34,582 in 2010. His adjusted gross income for 2013 was \$77,419. (Applicant Exhibit C.)

the SOR were properly referenced in the schedules attached to the petition.<sup>3</sup> Applicant received a Discharge from the bankruptcy court on September 17, 2012. As part of the bankruptcy filing, Applicant and his wife received the required credit counseling. (Government Exhibit 2 at 40-123; Tr. 38-39.)

The current status of the debts is as follows:

1.b. through 1.f. These debts are student loans of Applicant. These debts were not dischargeable in the bankruptcy. In 2013 Applicant contacted the successor servicer of these loans to discuss how to pay them off. He was required to make nine monthly payments, starting in January 2013, which he successfully did. At that time his loans were no longer viewed as being delinquent, and he was allowed to begin a regular repayment schedule. He is current on his payments, as confirmed by documents provided by Applicant, as well as the most recent credit report in the record. (Government Exhibit 2 at 3-18, Government Exhibit 7 at 2; Applicant Exhibit A; Tr. 31-33.)

1.g. This unsecured nonpriority debt in the amount of \$3,153 was included in Applicant's bankruptcy petition and was discharged. It has been resolved. (Government Exhibit 2 at 69.)

1.h. This unsecured nonpriority debt in the amount of \$1,993 was included in Applicant's bankruptcy petition and was discharged. It has been resolved. (Government Exhibit 2 at 69.)

1.i. This unsecured nonpriority debt in the amount of \$3,627 was included in Applicant's bankruptcy petition and was discharged. It has been resolved. (Government Exhibit 2 at 70.)

Applicant's current financial situation is stable. He is current on his mortgage payments and his student loans, and is able to pay all of his regular monthly bills without problems. (Government Exhibit 7: Tr. 29-31.)

### Mitigation

Applicant submitted documentation showing that he is a highly respected person and employee. He was the recipient of the 2012 Outstanding Performance Award at Company One. (Government Exhibit 2 at 155-156.) He has also received a Certificate of Recognition from his church. (Government Exhibit 2 at 157.)

Applicant Exhibit D consists of four letters of recommendation. They are from a Defense Department employee who is a friend of fifteen years, two pastors who have worked with Applicant, and the president of Company One. Applicant is described by all the writers as a person of "character" and "integrity."

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<sup>3</sup>The schedules show that Applicant had \$324,750 in secured claims; \$46,066 in unsecured priority claims; and \$76,294 in unsecured nonpriority claims. (Government Exhibit 2 at 54.)

The president of Company One, who has promoted Applicant to an important position regarding personnel issues, states that Applicant is “a hard-working, conscientious, honest and courteous individual.” (Applicant Exhibit D at 4.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. 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, “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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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, by his own admission, and supported by the documentary evidence, had eight delinquent accounts that he formerly could not resolve. The 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. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. In 2007 Applicant was laid-off from his job, and by 2010 his small business was in trouble. This resulted in his inability to pay his debts. Once he was employed by Company One Applicant did not try to avoid this situation, but made the personally difficult decision to file for bankruptcy relief. He successfully completed the process and has been discharged of certain debts. The student loans, which are not dischargeable in bankruptcy, Applicant has begun to repay in a way satisfactory to the current holder. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has received financial counseling as required by the Bankruptcy Code. In addition, as found above, his current financial situation is stable. Accordingly, I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. All of these mitigating conditions apply to the facts of this case.

### **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems in the past, they have been resolved, and he has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant’s debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

## **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:                      FOR APPLICANT

Subparagraphs 1.a. through 1.i.:              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.

WILFORD H. ROSS  
Administrative Judge