



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-03420
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

05/15/2014

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of Case**

On June 6, 2007, and on September 1, 2011, Applicant completed and certified Electronic Questionnaires for Investigations Processing (e-QIPs). On December 16, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOD acted 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 for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated December 30, 2013. By email communication dated January 9, 2014, he declined a hearing and requested that his case be determined on the written record. The Government compiled its File of

Relevant Material (FORM) on February 25, 2014. The FORM contained documents identified as Items 1 through 9.<sup>1</sup>

DOD forwarded a copy of the FORM to Applicant on March 19, 2014, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on March 24, 2014. His response was due on April 23, 2014. Applicant submitted a nine-page response within the required time period. On April 29, 2014, the case was assigned to me for a decision. I marked Applicant's nine-page response as Item A and entered it in the record without objection.

### **Findings of Fact**

The SOR contains 12 allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In his Answer to the SOR, Applicant admitted all allegations, with the exception of the allegation at SOR ¶ 1.i., which he denied. Applicant's admissions are entered as findings of fact. (Item 2; Item 3.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's e-QIPs of June 6, 2007, and September 1, 2011; official investigation and agency records; Applicant's responses to DOD interrogatories;<sup>2</sup> Applicant's credit reports of February 25, 2014; July 11, 2013; and September 13, 2011; and Applicant's response to the FORM. (See Items 4 through 9; Item A.)

Applicant is 27 years old, unmarried, and without children. He is employed as a government contractor. He seeks renewal of a security clearance. (Item 4; Item 5.)

Applicant earned a high school diploma in 2004. From 2004 until June 2011, he pursued part-time, full-time, and intermittent studies at a university. He was awarded a bachelor's degree by the university in 2011. Beginning in June 2007, Applicant worked full time for his employer during summer and winter academic breaks, and from December 2008 until August 2010. After his graduation in 2011, he began to work full time again for his employer. (Item 6.)

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<sup>1</sup> By letter dated February 25, 2014, Department Counsel provided Applicant with a copy of the Directive and directed Applicant's attention to Enclosure (2) and a current version of Guideline F, Financial Considerations. (Item 1.)

<sup>2</sup> Applicant was interviewed by authorized investigators from the U.S. Office of Personnel Management (OPM) on September 20, 2011 and October 12, 2011. In response to DOD interrogatories, he reviewed the investigators' reports, and, on August 28, 2013, Applicant signed a notarized statement after reviewing his interviews and stated that he found that the reports accurately reflected the information he provided to the investigators. He further stated that he agreed with and adopted the investigators' summaries as accurately reflecting his interviews. (Item 6.)

The SOR alleges that Applicant owes 12 delinquent debts totaling approximately \$65,630. They include a delinquent account in collection status for \$1,603 (SOR ¶ 1.a.); ten delinquent student loan accounts in collection status, totaling approximately \$54,488 (SOR ¶¶ 1.b. through 1.k.); and a federal tax lien entered against him in 2007 for approximately \$9,539 (SOR ¶ 1.l.). Applicant's financial delinquencies are listed on the three credit reports in the FORM, and the balances due on his delinquent student loan accounts are specified in a documentary response to DOHA interrogatories. (Item 6; Item 7; Item 8; Item 9.)

In his interview with an authorized investigator in September 2011, Applicant attributed his financial delinquencies to traveling back and forth from his home to his university in another state and working to pay for his education. He stated that his current financial situation was very tight and he was living paycheck to paycheck. He stated that he hoped to find a better-paying job after he earned his bachelor's degree. (Item 6.)

In his response to the SOR, Applicant failed to provide documentation showing payment of the debts alleged at SOR ¶¶ 1.a. through 1.k. He denied responsibility for the debt alleged at SOR ¶ 1.l., a tax lien served on him in August 2007. In his response to the FORM, he provided a transcript of his Form W-2 wage and tax statement for the tax year ending December 2007. However, he failed to provide documentation showing his taxable earnings for the calendar years before 2007. (Item 3; Item A.)

In his interview with the investigator, Applicant stated that he had never filed federal income tax returns because he believed that as a student he was not required to do so. However, the record reflects that he was employed from August 2000 until November 2003 as a newspaper delivery person. Additionally, he was employed from November 2003 until February 2004 as a part-time crew member at a theatre, and from May 2006 until June 2006, he was employed as an account manager and compensated by commissions. (Item 6.)

On his e-QIPs, Applicant reported that he was unemployed from June 2004 until May 2006, and from June 2006 until June 2007. He stated that during his unemployment he was supported by his mother and by student loans. (Item 6.)

In his response to the FORM, Applicant provided a copy of an agreement he had entered into with a student financial aid firm on August 23, 2013. The firm agreed to assist Applicant in seeking a consolidation of his delinquent student loan debt. Applicant agreed to pay the firm \$199 each month in August, September, and October of 2013 for the services the firm agreed to provide. Thereafter, Applicant would pay \$69.49 each month for 300 months on his consolidated delinquent student loan debt. It is not clear from the record if Applicant made the initial payments to the firm for its services or if he made any payments on his student loan debts under the agreement. (Item A.)

Applicant did not provide a personal financial statement for the record, and there is no documentation showing his income, monthly expenses, or current debt. Moreover,

there is no documentation showing if Applicant has savings or other income sources. He told the investigator that he had not had financial credit counseling. (Item 6.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an 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 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, the administrative judge applies these 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 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security 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 Executive Order 10865 provides that 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 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 in this case. 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.

In his answer to the SOR, Applicant denied responsibility for the debt alleged at SOR ¶ 1.i., a federal tax lien of approximately \$9,539. The debt appears on Applicant’s credit report of September 2011. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), DOHA’s Appeal Board explained: “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” (Internal citation omitted). Applicant failed to demonstrate that he was not responsible for the debt alleged at SOR ¶ 1.i.

Applicant admitted the delinquent debts alleged at SOR ¶¶ 1.a. through 1.k. He failed to provide documentation establishing that any of the debts had been settled or paid or that he had an active payment plan in place. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies, and his delinquencies remain unresolved. He asserted that his travel back and forth between his home and his university affected his ability to meet his financial obligations. Additionally, he reported periods of unemployment. Applicant's unemployment may have been a condition beyond his control. However, he failed to provide documentation that he had taken responsible steps to contact his creditors, inform them of his unemployment and diminished capacity to pay his debts, and to request forbearance.

Applicant has not had financial credit counseling, and there is no information in the record showing his current income, expenses, and debt. I am unable to conclude that his financial situation is under control. I conclude that none of the financial considerations mitigating conditions apply to the facts of Applicant's case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 poten-

tial 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. Applicant is a mature adult. His financial delinquencies are significant in number and in duration. He has been aware of them since at least 2011, when he was interviewed by an authorized investigator. He has been employed full-time since his university graduation in 2011. Applicant's inability or unwillingness to resolve his debts raises concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.l.:	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.

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Joan Caton Anthony  
Administrative Judge