



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



In the matter of: )  
)  
) ISCR Case No. 12-03604  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Christopher Morin, Esq., Department Counsel  
For Applicant: *Pro se*

04/03/2014

**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 November 20, 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 December 17, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing in this case on February 19, 2014, and the hearing was held as scheduled on March 11, 2014.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4 that were admitted into evidence without objection. Applicant testified, called no witnesses, and offered no exhibits. The record was left open until March 25, 2014, to provide Applicant an opportunity to submit documentary evidence. He timely submitted documents that were marked as AE A through K and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 27, 2014.

### **Findings of Fact**

Applicant is a 50-year-old logistics assistant who works for a defense contractor. He has worked for that employer since September 2011. He graduated from high school in 1981. He served on active duty in the U.S. Army from February 1982 to February 1986, in the National Guard from April to August 1986, and on active duty in the U.S. Marine Corps from August 1986 to April 2003. He retired from the Marine Corps as a gunnery sergeant (E-7). He has been married for 23 years and has one stepson who is 25 years old. He has held a security clearance without incident since about 2002.<sup>1</sup>

The SOR alleged that Applicant had seven delinquent debts totaling about \$50,082. In his answer, Applicant admitted each allegation. His admissions are incorporated as findings of fact.<sup>2</sup>

Applicant's military specialties were motor vehicle operator and motor transport. After retiring from the Marine Corps, he worked part time as a bus driver from April 2003 to May 2004 and then fulltime as a delivery driver from May 2004 to December 2009. Since December 2009, he has worked fulltime for successive defense contractors as a transportation coordinator/logistics assistant on a military installation. In that position, he is responsible for moving people or items.<sup>3</sup>

Applicant disclosed that he had delinquent debts on his Electronic Questionnaire for Investigations Processing (e-QIP) dated December 19, 2011. In responding to interrogatories on September 16, 2013, he stated:

My delinquency started as a result of bad decisions and just plain bad luck. From family medical issues to automobile problems. I was the only source of income at the time, I am not going to sit here and make up excuses, this has been a long hard road but my intention is to pay off every last one of my creditors. The figures look high but with the help of a third party I hope to reduce some of the penalties that was enforced.<sup>4</sup>

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<sup>1</sup> Tr. at 4-5, 16-20; GE 1; AE E.

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

<sup>3</sup> Tr. at 16-20; GE 1.

<sup>4</sup> GE 2.

Applicant's wife was born overseas and still has family members living in her native country. Around the time Applicant was retiring from the military, some of his wife's family members experienced medical problems, and she began sending them money. He did not know how much money his wife sent to her relatives, but that transfer of money contributed to his financial problems. Around that same time, he experienced car problems and other financial setbacks. When he could not keep up with these debts, creditors began charging him interest and penalties. He communicated with the creditors in an attempt to resolve these debts, but he could not afford the amounts they were demanding. He stated that he argued with his wife about her sending money to her relatives and that she now understands the limits. He indicated that she is still sending money to them, but sends money she makes working as a waitress. She has been working in that job for the past five years.<sup>5</sup>

Applicant's credit reports reflected that he had a \$14,802 charged-off account that was opened in September 1994 and had a date of last activity of April 2008 (SOR ¶1.a); that he had a \$7,481 charged-off account that was opened November 1992 and had a date of last activity of May 2007 (SOR 1.b); that he had a \$20,000 collection account that was opened in October 2003 and had a date of last activity of January 2008 (SOR ¶ 1.c); that he had a \$2,516 charged-off account that was opened in October 1993 and had a date of last activity of May 2008 (SOR ¶1.d); that he had a \$4,111 charged-off account that was opened in January 1995 and had a date of last activity of July 2007 (SOR ¶1.e); that he had a \$750 charged-off account that was opened in July 2008 and had a date of last activity of September 2008 (SOR ¶ 1.f); and that he had a \$1,422 charged-off account that was opened in September 2000 and had a date of last activity of May 2008 (SOR ¶ 1.g). He did not provide any proof of payments toward these debts or any repayment arrangements for them.<sup>6</sup>

In about 2008, Applicant also became delinquent on an account that was not listed in the SOR. At one point, this debt was past due about \$3,000. During his Office of Personnel Management interview on January 11, 2012, he stated that he entered into a repayment agreement with this creditor and it would take about two years to pay off that debt. He testified the monthly payments of \$125 were deducted from his military retirement pay. In his post-hearing submission, he provided a letter from the creditor that indicated the last payment was received in March 2014 and that debt was paid in full.<sup>7</sup>

I found Applicant to be a credible witness. At the hearing, he testified that he takes full responsibility for his financial problems and that he was not making any excuses. He indicated that he was committed to paying off his delinquent debts. He stated that, now that he paid off the debt not listed in the SOR, he intended to take that extra money and start paying off the smaller debts listed in the SOR. He also indicated

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<sup>5</sup> Tr. at 21-25, 32-33, 37-38, 44-48; GE 1, 2.

<sup>6</sup> Tr. at 41-42; GE 3, 4.

<sup>7</sup> Tr. at 36-41; GE 2; AE J, K.

that he intended to consult with a financial advisor on how best to attack the larger debts. In this regard, he stated, "I know it is going to take a while. But my main goal is to just get all of these accounts back to zero." In his post-hearing submission, he also provided a letter from the collection company handling the debt listed in SOR ¶ 1.f that indicated the account was closed and noted a request was submitted to the credit reporting agencies to delete this debt.<sup>8</sup>

Applicant testified that he received financial counseling when he first started incurring delinquent debts. On September 16, 2013, Applicant submitted a Personal Financial Statement (PFS) that reflected his total net monthly income was \$4,510, that his total monthly expenses were \$1,855, and that his monthly debt payments were \$985, which left him a net monthly remainder of \$1,670. He lives in a rented property. His PFS listed no assets. He testified that he had \$1,700 in a checking account and \$500 in a saving account. He did not have any money in a retirement account. He has two cars and a motorcycle. Both cars are paid. He owes about \$15,766 on the 2008 motorcycle. He testified that he used his net monthly remainder to pay bills and basic expenses. He has filed and paid his state and federal income taxes as required. He received state and federal refunds for tax year 2012. He anticipated receiving tax refunds for 2013 and stated he would apply those refunds to his debts.<sup>9</sup>

Besides the SOR debts and the past-due debt that was paid in full, Applicant has not had any other delinquent debts in the past five years. His credit reports reflect that he had 20 open or closed accounts that he paid as agreed.<sup>10</sup>

Applicant's performance appraisals for the past two years reflected that he "far exceeds" expectations, the highest category. Three years ago his performance appraisal reflected he "frequently exceeds" expectations, the second highest category. He was described as a true professional who was head and shoulders above his peers.<sup>11</sup>

A Marine Corps major recommended Applicant for a security clearance. The major has known him for almost four years. The major stated that Applicant embodies the Marine Corps values of honor, courage, and commitment and is without doubt someone he could place his faith in and can stand behind.<sup>12</sup>

Applicant's manager stated that Applicant "has intense loyalty, determination to excel, integrity, high moral standards, enormous potential and all-around professional

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<sup>8</sup> Tr. at 26-27, 36-; GE 2.

<sup>9</sup> Tr. at 27-36; GE 2.

<sup>10</sup> Tr. at 41-43; GE 3, 4.

<sup>11</sup> AE B-D.

<sup>12</sup> AE F.

skills. Applicant was his highest-rated employee. Applicant's pastor stated that Applicant is an asset to the community.<sup>13</sup>

In the military, Applicant was awarded six Good Conduct Medals, a Navy and Marine Corps Commendation Medal, three Navy and Marine Corps Achievement Medals, two Army Achievement Medals, and other military decorations.<sup>14</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 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

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<sup>13</sup> AE G, H.

<sup>14</sup> Tr. at 19-20; AE E.

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.

Applicant accumulated delinquent debts that he did not satisfy over an extended period. This evidence is sufficient to raise the above disqualifying conditions.

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant takes full responsibility for his financial problems. All of his delinquent debts date back to 2007 and 2008. They occurred at a time when his wife was sending money to her relatives overseas. He confronted his wife about making those gifts. She has since obtained a job as a waitress and now sends her relatives money that she earns. Since this change, Applicant has not incurred any new delinquent debts in the past five years.

Applicant paid in full one delinquent debt. He made those payments over the past two years. He testified credibly that he is committed to resolving the remaining debts. He recently contacted one of the remaining creditors who decided to delete the debt from his credit reports. It may take Applicant a substantial period to resolve the remaining debts. However, he demonstrated that he will not disregard these financial obligations, but will act responsibly in resolving them.

While Applicant's financial problems are multiple and ongoing, they occurred under circumstances that are unlikely to recur and that do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies. AG ¶ 20(d) partially applies. AG ¶¶ 20(b) and 20(c) do not apply.

### **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 served over 20 years on active duty in the military and retired in pay grade E-7. He has held a security clearance without incident for about the past 12 years. He is a valued employee who received the highest performance ratings from his supervisor. He was sincere and candid at the hearing. He established that he is a reliable and trustworthy individual. Although he has delinquent debts, he is committed to resolving them.

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 financial considerations security concerns.

### **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.g: 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