



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



In the matter of:

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) ISCR Case No. 12-06098  
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Applicant for Security Clearance

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: Ryan C. Nerney, Esq.

August 26, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on 12 debts, in a total exceeding \$137,000. Applicant filed Chapter 13 bankruptcy on August 15, 2016. He failed to mitigate the security concerns raised by his unresolved debts. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 19, 2015, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On September 15, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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.

On October 5, 2015, Applicant answered the SOR (Answer), and elected to have the case decided on the written record in lieu of a hearing. However, in an email dated February 24, 2016, Applicant requested a hearing in this matter. The case was assigned to me on March 30, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2016, scheduling the hearing for May 9, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered Exhibits (AE) A through G, which were admitted without objection. Applicant and one witness testified. DOHA received the transcript of the hearing (Tr.) on May 19, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented one additional exhibit, marked AE H.<sup>1</sup> Department Counsel had no objections to AE H, and it was admitted. The record then closed.

### **Findings of Fact**

Applicant is 59 years old. He has been employed by his current employer, a defense contractor, since 2014. He is married and has one minor child. He served in the Navy for 20 years. He successfully held a security clearance for more than 20 years without incident. (GE 1; AE F; Tr. 31-36, 41-43, 65-66.)

As listed in the SOR, Applicant was alleged to be delinquent on 12 debts in a total exceeding \$137,000. Applicant admitted all of the debts alleged in SOR. His debts are identified in the credit reports entered into evidence. (Answer; GE 4; GE 5; GE 6; GE 7.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant's debts consist of: a second mortgage in the amount of \$61,105 (SOR ¶ 1.a); a delinquent vehicle loan in the amount of \$13,319 (SOR ¶ 1.b); a charged off account in the amount of \$3,426 (SOR ¶ 1.c); a delinquent credit card account in the amount of \$3,117 (SOR ¶ 1.d); a delinquent student loan in the amount of \$1,964 (SOR ¶ 1.e); a delinquent credit card account in the amount of \$980 (SOR ¶ 1.f); a delinquent student loan in the amount of \$50 (SOR ¶ 1.g); a delinquent credit card account in the amount of \$834 (SOR ¶ 1.h); a delinquent vehicle loan in the amount of \$11,999 (SOR ¶ 1.i); a delinquent vehicle loan in the amount of \$24,272 (SOR ¶ 1.j); a delinquent loan in the amount of \$15,000 (SOR ¶ 1.k); and a delinquent account in the amount of \$1,161 (SOR ¶ 1.l). Applicant sent dispute letters to all of his SOR-listed creditors, requesting they validate the debts, despite his admissions to the underlying accounts. He testified at hearing that all of these debts remained unresolved. (AE D; Tr. 36-38, 44-57.)

Applicant attributes his debts to unemployment and underemployment. He explained that prior to November 2008, he was making \$117,000 per year. He was making "the most money [he had] ever made in [his] life." (AE F; Tr. 38.) He acquired assets on credit during that period that he could not afford when he was laid-off in

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<sup>1</sup> Applicant marked his post-hearing exhibit AE G. However, I renamed it AE H because there was already an exhibit marked AE G.

November 2008. He was unable to find further employment until approximately 2011, when he took a job with a low-end retail chain as an hourly employee at a significantly reduced rate. He worked in the retail job until 2014, when he was hired by his current employer. His currently salary is substantially less than he was making in 2008, prior to being laid-off. (Tr. 38-43.) Applicant's wife is currently unemployed and has been since November 2015. (Tr. 62-64.)

Applicant testified that he had consulted with an attorney, who recommended he file bankruptcy. Applicant's post-hearing documentation shows he filed Chapter 13 bankruptcy on August 15, 2016. Applicant did not provide a copy of the bankruptcy petition showing what debts were included in his filing, nor did he include a repayment schedule. (AE A; AE H; Tr. 60.)

Applicant testified he lives paycheck to paycheck. (Tr. 75.) He has no 401(k) savings plan. (Tr. 61.) Applicant presented a certificate of financial counseling dated April 16, 2016, which he completed in preparation for filing bankruptcy. (AE B; Tr. 71.)

Applicant's witness testified and submitted a character reference letter on Applicant's behalf. He indicated that Applicant "is a true patriot whose dedication to the United States is absolute." (AE E.) He testified that he has seen Applicant struggle due to the 2008 lay-off, but that Applicant was a good man and true patriot. (Tr. 20- 30.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a lengthy history of financial indebtedness, documented by the credit reports in evidence, which substantiate all of the allegations. He has been unable or unwilling to address his delinquencies. The evidence raises security concerns under both of these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 are ongoing. All of Applicant's 12 delinquent accounts remain unresolved. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant's financial delinquencies are directly attributable to his unemployment from 2008 to 2011, and his under employment from 2011 to 2014. However, he failed to establish that he has acted responsibly by addressing even the smallest of his debts since becoming fully employed in 2014. He has not demonstrated that he addressed his debts in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided evidence of financial counseling in preparation for filing bankruptcy. However, little impact of that counseling has been documented. Further, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under either AG ¶¶ 20(c) or 20(d) has not been established.

Applicant has not provided evidence of any formal dispute concerning any SOR-listed debt, or a basis for one. He admitted all of the underlying debts. Mitigation under AG ¶ 20(e) has not been established.

## **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 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 honorably in the Navy for 20 years and is respected by those that know him. He experienced financial difficulties as a result of a lay-off. He took a significant pay cut and worked at a position in retail at a significantly reduced pay rate. However, since achieving full-time employment in 2014, Applicant's financial problems continue, and his delinquent debts remain unresolved. He is a mature adult. While he was given the opportunity to document the status of his debts and bankruptcy, he produced little evidence of any actions on his 12 delinquent accounts. The bankruptcy filing fails to provide a list of the included debts or the payment plan. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

## **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:

**AGAINST APPLICANT**

Subparagraphs 1.a through 1.i:

**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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Jennifer I. Goldstein  
Administrative Judge