



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)  
)

ISCR Case No. 12-06403

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel  
For Applicant: *Pro se*

04/14/2017

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and file exhibits, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

**History of Case**

On April 20, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why the DOD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865 (Exec. Or. 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 for Determining Eligibility for Access to Classified Information* (AGs) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on February 25, 2016, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on May 4, 2016, and submitted post-FORM information within the 30-day period allowed. Applicant's post-FORM submission consisted of documentation of his payoffs of SOR debts ¶¶ 1.g, 1.h, 1.k, and 1.l. Applicant claimed that he disputed SOR debts ¶¶ 1.i and 1.j, which have since been removed from his credit report. And he provided documentation of his entering into a rehabilitation plan with creditor 1.a and tendering a \$194 payment to the creditor in April 2016. Applicant's supplemental submissions were admitted without objection as Items 6-11.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 12 delinquent debts, exceeding \$60,000. Allegedly, the listed delinquent debts remain outstanding.

In his response to the SOR, Applicant admitted most of the listed debts with explanations. He claimed he intended to make monthly payments on the delinquent student loan he obtained to fund his son's college education. He claimed the debts covered by SOR ¶¶ 1.b-1.f and 1.k will be paid off as soon as possible. Applicant denied owing the debts covered by SOR ¶¶ 1.i and 1.j, claiming they are not his debts.

### **Findings of Fact**

Applicant is a 55-year-old model technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married in February 1991 and has one adult child from this marriage, age 21. (Item 3) Applicant earned a diploma in June 1979 from a vocational school. He has never served in the military. (Item 3) Applicant has worked for his current employer since June 1985 as a model technician. (Item 3)

#### **Finances**

Applicant co-signed for his son's student loan in September 2012 in the amount of \$23,348. (Item 5) Sometime in 2014, both Applicant and his son defaulted on the loan. Whether Applicant was aware of his son's default before he received the SOR in April 2015 is unclear. Explanations likely were provided by him in his summary of interview by an agent of the Office of Personnel Management (OPM) However, his OPM summary of interview was not included in the FORM for review.

Applicant and his wife purchased a vehicle in January 2010 and financed it with a \$28,800 car loan. (Items 4 and 5) He defaulted on his loan payments in February 2012, and creditor 1.k repossessed the vehicle with \$24,289 owing on the car loan. (Items 4 and 5)

Credit reports document Applicant's incurring additional delinquent between December 2008 and May 2011 consist of the following: SOR ¶¶ 1.b (\$2,073); 1.c (\$1,373); 1.d (\$620); 1.e (\$103); 1.f (\$69); 1.g (\$5,058); 1.h (\$377); 1.i (\$124); 1.j (\$958); 1.k (\$24,289); and 1.l (\$219). (Items 4 and 5)

Two of the listed debts are disputed by Applicant. (Items 3 and 4):SOR ¶¶ 1.i and 1.j, which allege debts owing of \$69 and \$95, respectively. (Items 3 and 4) Applicant claimed no awareness of these debts. (Items 2 and 6)

Applicant provided no explanations of how he became delinquent with consumer creditors. The circumstances surrounding his incurred debts are lacking in details of how his listed debts became delinquent and why he did not address them before he received the SOR in April 2015. As with his student loan debt, explanations likely were provided to the OPM agent who interviewed him, but are not available in the FORM for review.

Applicant provided documentary evidence of his payments of a number of his debts. Creditors paid off include the following debts: creditor 1.g (\$5,068); creditor 1.h (\$377); creditor 1.k (\$24,289); and creditor 1.l (\$219) All of these debts are confirmed by the respective creditors to have a zero balance.

Additionally, Applicant completed a repayment agreement with his son's student loan lender (creditor 1.a) in June 2015 that calls for monthly payments of \$194. (Item 8). He provided a copy of a \$194 monthly payment made in April 2016 and assured his student loan account has been restored to current status. (Item 8) While Applicant did not provide an account history detailing all of his monthly payments to creditor 1.a under his rehabilitation agreement, he appears to be back in good standing with this creditor. His assurances are accepted.

To date, Applicant has paid off or settled all but three of the listed debts. Only the debts covered by SOR ¶¶ 1.b (\$2,073), 1.c (\$1,373), 1.d (\$620); 1.e (\$103); 1.f (\$69); 1.i (\$124); and 1.j (\$958) have not been paid or settled. Applicant has consistently disputed the creditor 1.i and creditor 1.j debts on grounds the debts are not his debts. (Items 2 and 6) While not corroborated by any updated credit report, his assurances are accepted. Applicant's credit reports in the FORM are of 2012 and 2014 vintage and cannot be fully relied on for evaluating the status of these listed debts.

Applicant did not provide any evidence of financial counseling or budgeting. Nor did he provide any endorsements, performance evaluations, or evidence of community and civic contributions.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a

security concern and may be disqualifying” (disqualifying conditions), if any, and many of the “[c]onditions that could mitigate security concerns.”

These AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant’s security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the

Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is a model technician for a defense contractor who accumulated a number of unexplained delinquent debts. His accumulation of delinquent debts between December 2008 and May 2011 and his failure to address these debts in a timely way warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶19(c) "a history of not meeting financial obligations."

Applicant's pleading admissions of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are fully documented in his latest credit reports and provide ample corroboration of his debts.

Judgment problems persist, too, over Applicant's incurred delinquencies and his failure to demonstrate he acted responsibly before receiving the SOR in April 2015. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only have most of his listed debt delinquencies been ongoing before the issuance of the SOR in 2015, but he failed to address them until after his receipt of the SOR.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Based on the documented materials in the FORM, few extenuating circumstances can be traced to Applicant's historical inability to pay off or otherwise resolve his debts. Explanations of Applicant's being delinquent with his son's student loan and Applicant's other debts quite likely were covered in his OPM interview summary (not included in the FORM for review). Available in part to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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."

Since receiving the SOR, Applicant has taken responsible steps in resolving his delinquent debts covered by ¶¶ 1.a, 1.g-1.h, and 1.k-1.l. Mitigation credit for the debts he has addressed is available to Applicant based on the evidence developed in this record. MC ¶ 20 (d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is applicable to Applicant's situation.

Only Applicant's debts covered by SOR ¶¶ 1.b-1.f and 1.i-1.j are not resolved by either documented payments or a payment plan. These debts total around \$5,000 in the aggregate and represent less than ten percent of the more than \$60,000 in listed debts covered by the SOR. Two of these debts (creditors 1.i and 1.j) have since been removed from Applicant's credit report and are covered by evidence of reasonable disputes initiated by Applicant over his payment responsibilities for these two debts. Based on the evidence presented, Applicant is entitled to the mitigation benefits of MC ¶ 20 (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 evidence of actions to resolve the issue."

Whole-person assessment enables Applicant to surmount the judgment questions raised by his accumulation of delinquent debts and renewed efforts to address his debts after receiving the SOR. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

Whole-person assessments are intended to consider not only the developed adverse information covered in the SOR, but other information as well about the applicant's professional and personal history to reach an overall assessment of security clearance eligibility. While Applicant did not submit any favorable character references, performance evaluations, or evidence of community and civic contributions, he documented considerable efforts in resolving his delinquent debts. Favorable whole-person considerations can be factored into an overall assessment of Applicant's trustworthiness and reliability.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his documented proof of corrective actions he has taken to address his old debts after receiving the SOR in April 2015, overall conditions are for making safe predictive judgments about Applicant's ability to repay his remaining debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.i

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT**

Subparagraphs 1.a through 1.i: For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted

---

Roger C. Wesley  
Administrative Judge

