



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case: 12-11573

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

October 12, 2017

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant owes approximately \$11,700 in delinquent debts and an unpaid judgment, which he has not repaid or otherwise resolved. Applicant did not show that his financial difficulties are under control. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On May 15, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On September 21, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD 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*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on February 1, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On February 24, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant, and received by him on March 3, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit additional information in response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period he was afforded. The case was assigned to me on January 26, 2017. Items 1 through 8 are admitted into the record.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility, and eligibility to hold a security clearance. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

### **Findings of Fact**

Applicant is 43 years old and divorced. Applicant has one child. He has worked for a Federal contractor since March 2012. Before obtaining this employment he was unemployed from November 2011 through March 2012. (Item 3.)

#### **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.

In his Answer, Applicant admitted SOR allegations 1.b, 1.c, 1.d, 1.e, 1.g, 1.j, and 1.k, without reservation. Those admissions are findings of fact. He denied allegations 1.a,

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

1.f, 1.h, and 1.i. (Item 2.) The debts are documented in at least one of the credit bureau reports in the record dated May 25, 2012; November 26, 2014; and February 22, 2016. (Items 6, 5, and 4.) SOR allegation 1.a is confirmed by an admission in Applicant's e-QIP. (Item 3 at Section 26.) In addition, Department Counsel submitted court records concerning two judgments against Applicant (SOR allegations 1.a and 1.h.) (Items 7 and 8.)

The status of the debts is as follows:

1.a. Applicant denied owing \$8,024 for an unpaid judgment to a credit union (CU). In his e-QIP Applicant admitted the existence of a debt to this creditor for an automobile that was repossessed in 2011, and that he still owed approximately \$14,000. Applicant stated that the reason he was unable to pay this debt was because, "I lost my job." (Item 3 at Section 26.) The most recent credit report in the record, and court records, indicate that this judgment was satisfied in April 2015. (Items 4 and 7.) This debt has been resolved.

1.b. Applicant admitted owing \$2,031 to a creditor for a past-due debt. No other information was provided. This debt is not resolved.

1.c. Applicant admitted owing \$1,468 to a creditor for a past-due debt. No other information was provided. This debt is not resolved.

1.d. Applicant admitted owing \$482 to a creditor for a past-due medical debt. No other information was provided. This debt is not resolved.

1.e. Applicant admitted owing \$347 to a creditor for a past-due debt. No other information was provided. This debt is not resolved.

1.f. Applicant denied owing \$300 to CU for a past-due debt. The most current credit report in the record (Item 4) shows that all accounts with CU are either current, satisfied judgments, or paid charge-offs. I find that this debt has been resolved.

1.g. Applicant admitted owing \$158 to a creditor for a past-due debt. No other information was provided. This debt is not resolved.

1.h. Applicant denied owing a judgment to a financial company in the amount of \$6,279. The most recent credit report in the record, and court records, show that this judgment has not been paid. (Items 4 and 8.) The debt is not resolved.

1.i. Applicant denied owing \$3,064 to CU for a past-due debt. The most recent credit report in the record (Item 4) shows that all accounts with CU are either current, satisfied judgments, or paid charge-offs. I find that this debt has been resolved.

1.j. Applicant admitted owing \$171 to a cable company for a past-due debt. No further information was provided. This debt is not resolved.

1.k. Applicant admitted owing \$812 to a cable company for a past-due debt. No further information was provided. This debt is not resolved.

Applicant did not submit any documentation that he has participated in credit counseling or budget education. Applicant did not submit any information concerning his current income, expenses, or ability to pay his past-due debts and be financially secure going forward. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 national security eligibility. 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 or sensitive 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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

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

Applicant has been employed since 2012. He has a considerable number of past-due debts that he has not resolved, including a judgment. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant continues to owe past-due commercial debt to various creditors in the amount of approximately \$11,700, including a judgment. Applicant elected not to provide any evidence that his situation has improved. Therefore, there is no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that his financial problems were due, in part, to his being unemployed for approximately five months in 2011 and 2012. He also stated in Item 3 at Section 26 that he was going to file bankruptcy, but submitted no evidence that he has done so. Mitigation is not established AG ¶ 20(b).

No evidence of financial counseling from a legitimate and credible source or budget information establishing solvency going forward was provided. Further, there are no clear indications that Applicant's financial problems are under control. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Applicant did not sufficiently mitigate all of his delinquent debt issues. As stated above, SOR allegations 1.a, 1.f, and 1.i are found for Applicant. With those exceptions, Guideline F is found against Applicant.

## 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(d):

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant continues to owe more than \$11,000 in bad debts, and did not show any plan for resolving that substantial indebtedness or otherwise showing that such issues will not recur in the future. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

## 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

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross  
Administrative Judge