



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



In the matter of: )  
)  
) ISCR Case: 15-01034  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Scott Neinas, Esq.

October 7, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on six debts in the total amount of \$55,724. He has resolved all of his delinquencies. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 9, 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.

Applicant answered the SOR on November 11, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on June 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on June 15, 2016, scheduling the hearing for July 12, 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 AE Q, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on July 20, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits marked AE R and AE S.<sup>1</sup> Department Counsel had no objections to AE R or AE S, and they were admitted. The record then closed.

### **Findings of Fact**

Applicant is 59 years old and single. He has worked as a mechanic for a Government contractor for the past 22 years. He has held a security clearance in connection with his work since 1980. (Tr. 22-25, 49.)

The SOR alleged Applicant owes approximately \$75,049 on seven delinquent financial obligations. One debt, SOR ¶ 1.a, was duplicated in SOR ¶ 1.f, and this debt will only be discussed once. In his Answer, Applicant denied all of the SOR allegations. His debts are documented in the record credit reports dated May 23, 2012; January 22, 2015; February 2, 2016; and July 11, 2016. (GE 2; GE 3; GE 4; GE 7.) After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant attributed his financial difficulties to the high cost of extensive dental work he required from 2005 to 2010. He documented that he spent over \$50,000 for his dental work during this time period. He financed much of the dental work, and was unable to afford the resulting loans and credit card bills. (AE B; Tr. 42-45, 57.)

In May 2010 Applicant sought help managing his debt from a debt management company (DMC). He was current with his payments at that time. He entered into a service agreement to pay the DMC approximately \$666 per month for three years, which would be directly withdrawn from his bank account and used to resolve these debts. He provided copies of bank statements showing he successfully made all of his payments. The DMC negotiated with four of his creditors and settled those debts in full. A letter from the DMC, dated March 30, 2016, congratulated Applicant on completing the repayment program and noted the four listed debts were settled. The settled accounts are noted below. (AE I; AE J; AE Q; AE R; AE S; Tr. 27, 37-42, 57-59, 67-69.)

Applicant was alleged in SOR ¶ 1.a to be indebted on a credit card debt in the amount of \$19,325. This was established to be the same debt as that identified in SOR ¶ 1.f for \$25,623.<sup>2</sup> It was settled by the DMC for a payment of \$22,600 in February 2013. This debt is resolved. (GE 2; GE 4; AE A; AE R; Tr. 26, 35-36, 51, 55-57, 65-66.)

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<sup>1</sup> Applicant's post-hearing exhibits were marked by Applicant as AE Q and AE R. They were renamed to avoid having two exhibits named AE Q.

<sup>2</sup> Both debts were listed with the same creditor name and account number, but appear on two different credit reports. (GE 3; GE 4; GE 7.) The larger amount, \$25,623, is used herein as the amount owed in any calculations of Applicant's total debt, but this debt will not be counted twice.

Applicant was alleged in SOR ¶ 1.b to be indebted on a delinquent debt consolidation loan in the amount of \$15,209. It was settled by the DMC for \$13,760 in November 2011. This debt is resolved. (GE 2; AE A; AE R; Tr. 27, 31, 51.)

Applicant was alleged in SOR ¶ 1.c to be indebted on a loan in the amount of \$3,415. It was settled by the DMC for \$3,526 in August 2014. Applicant's July 2016 credit report reflects this debt as a paid collection account. This debt is resolved. (GE 2; GE 7; AE A; AE R; Tr. 31, 51.)

Applicant was alleged in SOR ¶ 1.d to be indebted on a medical debt in the amount of \$3,402. Applicant incurred this debt between 2005 and 2010, as a result of dental work. Applicant's January 2015 credit report reflects this debt as a "paid collection." This debt is resolved. (GE 3; Tr. 33-34, 51.)

Applicant was alleged in SOR ¶ 1.e to be indebted on a collection account in the amount of \$3,700. Applicant sent this creditor a certified letter, dated May 2, 2016, disputing this debt. Applicant's 2012 credit report reflects that this debt was originally incurred with a creditor by another name. That original creditor was repaid \$2,018 through the DMC in March 2013, to resolve this debt. It is resolved. (GE 5; GE 7; AE E; AE R; Tr. 34-35, 70-71.)

Applicant was alleged in SOR ¶ 1.g to be indebted on a credit card debt in the amount of \$4,375. Applicant's January 2015 credit report reflects this debt as a "paid collection." This debt is resolved. (GE 3.)

Applicant participated in two on-line credit counseling courses in May 2016. He presented a certificate of counseling as evidence he completed the financial courses. He testified that he will utilize some of the lessons he learned in the course, including saving money by packing lunches and eating dinners at home. His personal financial statement indicates he has \$1,775 left monthly after he pays his bills. (AE C; AE D; Tr. 46-47.)

Applicant presented four letters of recommendation from coworkers and friends. They indicate that Applicant is hardworking and honest. Applicant has received a number of awards, certificates, and letters of commendation for his excellent job performance. (AE N; AE O.)

### **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, 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, 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. According to AG ¶¶ 2(a) and 2(c), 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 that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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.

## **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 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.

By 2010 Applicant had accumulated six debts in the total approximate amount of \$55,724. He was unable to manage this large amount of debt. His debts establish both a history of delinquencies and an inability or unwillingness to satisfy his obligations at that time. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Four 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 addressed all of his delinquent debts in a responsible manner. He incurred the debts as a result of costly dental procedures, which was a circumstance beyond his control. When he realized that his debts extended beyond his financial means, he contacted the DMC and immediately began to resolve the debts through their assistance. All six debts are fully resolved and have been resolved since at least 2014, well before the DoD CAF issued the SOR in October 2015. His finances are under control and his previously delinquent debts are repaid. Applicant's former

indebtedness does not cast doubt on his current reliability, trustworthiness, or good judgment. Future financial delinquencies are unlikely. The security concerns with respect to his financial delinquencies are mitigated under the above conditions.

### **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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant served his employer, a Government contractor, for more than 22 years. He has held a security clearance, without violation, for over 36 years. He acted responsibly by resolving all of his debts as promptly as circumstances allowed. His friends and coworkers speak highly of him, and his work performance has merited several certificates and awards. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met 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: FOR APPLICANT

Subparagraphs 1.a through 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.

Jennifer I. Goldstein  
Administrative Judge