



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



In the matter of:

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) ISCR Case No. 15-04413  
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Applicant for Security Clearance

**Appearances**

For Government: Andre Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

03/27/2017

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant has a history of financial problems and delinquent debts, dating back to at least 2007 when he filed a bankruptcy, and continuing into the present. He failed to mitigate the financial security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 25, 2013, Applicant submitted a security clearance application (SF 86) for re-investigation. On May 19, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR), 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

On August 19, 2016, Applicant answered the SOR (Answer), and requested a hearing. On November 18, 2016, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On November 16, 2016, DOHA issued a Notice of Hearing, setting the hearing for December 8, 2016. At said hearing, Department Counsel offered Exhibits (GE) 1 through 8, which were admitted into evidence without objections. Applicant testified. He offered no exhibits. DOHA received the hearing transcript (Tr.) on December 19, 2016.

### **Procedural Rulings**

At the commencement of the hearing, Department Counsel moved to withdraw the allegation contained in SOR ¶ 1.g. Applicant did not object. Said motion was granted. (Tr. 8.)

### **Findings of Fact**

Applicant admitted the allegations contained in SOR ¶¶ 1.a, 1.b, 1.f, 1.i, 1.j, and 1.w. He denied all other SOR allegations, on the basis that he was unfamiliar with the debts or creditors. (Answer; GE 8.) His admissions are accepted as factual findings.

Applicant is 45 years old and divorced since 2014. He and his former wife have two children, ages 22 and 14. His younger child lives with him. In 1991, he graduated from high school, and later completed a trade school. He began working for his current employer in 1997. He said his performance evaluations have been good. His supervisor is aware of the financial issues underlying this investigation. (Tr. 18-20.)

Applicant has a history of financial problems. In September 2007, he filed Chapter 13 Bankruptcy. It was dismissed in August 2011 because Applicant had defaulted on his payments, twice, once in November 2008 and again in July 2011. At the time of the dismissal, Applicant had paid \$28,292 into the payment plan.<sup>1</sup> He testified that he was uncertain why the case was dismissed because he had been making regular payments through automatic deductions from his paycheck. He attributed some of his current delinquent debts to his previous marriage, divorce, and medical bills for himself and former wife. He has tried contacting some creditors, but had difficulty obtaining information about the debts because he did not want to disclose his Social Security number. (Tr. 21-23, 27-28.)

Based on credit bureau reports (CBR) from March 2014, March 2015, and April 2016, the SOR alleged 20 delinquent debts, totaling about \$28,800, and the 2007 bankruptcy. It also alleged that Applicant received a reprimand from his employer for misusing a corporate credit card. The debts were reported as delinquent between 2009 and 2015. (GE 2, 3, 4.) Applicant has not paid or resolved any of the alleged debts. (Tr. 22.)

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<sup>1</sup> The total amount included in the Chapter 13 bankruptcy is not listed in the bankruptcy exhibits.

In April 2013, Applicant received a written reprimand from his employer because he used a corporate credit card to pay his cell phone bill. Applicant explained that he used his phone for work purposes while traveling for his employer, and he thought the employer should pay the bill. In addition to receiving a reprimand, he was suspended for three days without pay, and he was required to pay the \$1,103 delinquent balance owed on the credit card. This is the only time Applicant received a reprimand related to the misuse of the corporate credit card. (Tr. 24-25, 36-37.)

Applicant earns around \$70,000 annually. (Tr. 26.) He said he owes about \$10,000 in unpaid federal taxes. He has been on a payment plan for the past five years. He pays \$100 each month. He did not present a budget, and has not participated in financial or credit counseling. He does not have a clear understanding of his financial situation. (Tr. 39-41.)

### **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 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. According to 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 EO 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>2</sup>

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

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

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Beginning in mid-2007 when he filed Chapter 13 bankruptcy, Applicant has accumulated delinquent debts that he has been unable or unwilling to resolve over the years. In 2013, he wrongly charged a personal debt to his corporate card. The evidence raises the above security concerns, 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 problems:

(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 delinquent debt problems date back to before 2007 when he filed Chapter 13 bankruptcy. Since then he has accumulated additional delinquent debts, which remain unaddressed. His reliability and trustworthiness in managing his financial obligations cast doubt on his judgment and make it likely his financial problems will recur in the future. AG ¶ 20(a) does not provide mitigation.

Some of Applicant's financial problems are attributable to his previous marriage, divorce, and medical issues. Those may have been circumstances beyond his control. However, he provided no evidence that he acted responsibly in managing debts while

they were accumulating or paying them. AG ¶ 20(b) has minimal application. Applicant did not offer evidence that he received credit or budgetary counseling, and there are no indications that his finances are under control. Mitigation under AG ¶ 20(c) was not established. He did not provide evidence that he resolved any of the SOR-alleged debts, which would demonstrate a good-faith effort to manage those financial obligations. However, he paid over \$28,000 into a bankruptcy plan, before it was dismissed, which was a good-faith effort to resolve the debts within the bankruptcy, and mitigated SOR ¶ 1.f. Applicant's employer suspended him for three days for misusing a corporate credit card and required him to pay its outstanding balance. The evidence does not establish mitigation under AG ¶ 20(d). He denied several allegations, but did not provide evidence that he successfully disputed any of those allegations. AG ¶ 20(e) does 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.

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 is a mature, 45-year-old employee of a defense contractor, for whom he has successfully worked for 19 years. He has held a security clearance for many years. While those are positive factors, his history of financial problems outweighs those facts. He has not provided evidence that he has resolved any of the delinquent debts alleged in the SOR. He does not work with a written budget nor has he sought financial counseling or assistance. He has not established a track record of financial reliability and responsibility. The likelihood that similar problems will continue is significant. Applicant did not meet his burden of persuasion to mitigate the security concerns arising from his 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
Subparagraphs 1.a through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Withdrawn
Subparagraphs 1.h through 1.w:	Against Applicant

### **Conclusion**

In light of all circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM  
Administrative Judge