



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



In the matter of:

ISCR Case No. 15-05081

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

February 22, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on four consumer debts, in a total exceeding \$42,500. He failed to file his 2012 Federal income tax return. He is delinquent on his Federal income tax obligations for tax years 2009 through 2011. Applicant failed to introduce documentation to show his 2012 Federal income tax return was filed or that any of his delinquencies have been resolved. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 14, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On February 10, 2016, 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 February 24, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 23, 2016, scheduling the hearing for September 20, 2016. The hearing was convened as scheduled. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified, but submitted no exhibits. DOHA received the transcript of the hearing (Tr.) on September 28, 2016.

### **Findings of Fact**

Applicant is 55 years old. He served in the Navy and achieved the rate of senior chief, E8. He retired honorably after 24 years of service. (Tr. 16-17.) He earned two Navy and Marine Corps Achievement Medals during his service. He has worked for a Government contractor in his position since 2003. He testified he has held a security clearance since 1979. He was separated from his wife; but they have reconciled and remain married. He has six adult children. (Tr. 17, 22-24.)

As listed in the SOR, Applicant was alleged to be delinquent on four consumer debts, in a total exceeding \$42,500. The SOR also alleged he failed to file his 2012 Federal income tax return. Additionally, he is alleged to be delinquent on his Federal income tax obligations for tax years 2009 through 2011. Applicant admitted SOR allegations 1.a, 1.b, and 1.c. He failed to admit or deny subparagraphs 1.d through 1.h, and as a result, those subparagraphs are treated as denials. (Tr. 7.) His debts are identified in the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 4.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributes his financial delinquencies to his 2010 separation from his wife and "living above [their] means." (Tr. 17, 25, 43-44.)

Applicant's consumer debts include: a delinquent credit card in the amount of \$16,251 (SOR ¶ 1.a); a delinquent cellular telephone account in the amount of \$1,521 (SOR ¶ 1.b); a delinquent judgment in the amount of \$14,210 (SOR ¶ 1.c); and a delinquent loan in the amount of \$10,525 (SOR ¶ 1.h.) He testified, "I haven't reached out to any of my creditors," referring to the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c. (Tr. 26.) Those accounts are not resolved. He claimed to have paid the loan alleged in SOR ¶ 1.h, but failed to produce any documentation to support his claim. (Tr. 25-35.)

Applicant is indebted to the Federal Government for delinquent taxes in the amounts of: \$3,585.75 for tax year 2011 (SOR ¶ 1.e); \$3,558.91 for tax year 2010 (SOR ¶ 1.f); and \$4,965.54 for tax year 2009 (SOR ¶ 1.g.). He testified that he incurred the delinquent Federal tax debt because his wife failed to have taxes deducted from her pay check. He testified that he failed to file his Federal income tax returns from 2009 to 2011. The Internal Revenue Service filed substitute returns on his behalf. He testified that when he eventually filed his own returns, he was owed refunds and the delinquency was eliminated. He failed to produce documentation to support his claims. (Tr. 38-41.)

Applicant testified that he has filed all of his delinquent tax returns. He indicated that his 2009 through 2015 Federal income tax returns were filed in late June of 2016. He failed to provide documentation to support this claim. (Tr. 19, 36, 42.)

Applicant provided no household budget showing monthly household expenses. He did not provide a copy of his earnings statement. I am unable to assess his current financial status and his ability or willingness to repay his past-due debts, without more information on his debt to income ratio. The record lacks any evidence of credit or financial counseling. (Tr. 67-69.)

### **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 three 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
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of financial indebtedness documented by the credit reports in evidence, which substantiate all of the allegations. He failed to document he resolved any of his delinquencies. Further, he failed to file his 2012 Federal Income tax returns as required by law. The evidence raises security concerns under all 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 delinquent accounts remain unresolved. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed his delinquencies to his separation from his wife and to spending beyond his means. While separation from his wife is a circumstance beyond his control, he should have exercised financial restraint instead of spending beyond his means. Additionally, he failed to establish that he has acted reasonably or responsibly with respect to his debts which have been delinquent for a number of years. He has not demonstrated that he addressed his debts in a timely manner. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of financial counseling. Further, there are no clear indications that his financial problems are being resolved or are under control. Mitigation under AG ¶¶ 20(c) or (d) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. 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. However, Applicant's debts remain largely unresolved. While he was given the opportunity to document the current status of his debts, he failed to produce evidence of any actions on his delinquent accounts. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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.

---

Jennifer I. Goldstein  
Administrative Judge