



**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: 15-05582

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

October 5, 2017

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant incurred more than \$33,700 in delinquent debts, including a tax lien, 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 February 23, 2012, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On March 7, 2016, 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 March 22, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Answer; Item 2.) On April 11, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items,<sup>1</sup> was mailed to Applicant on April 12, 2016, and received by him on April 19, 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 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>2</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. He is married, but was separated for a period of time. Applicant received an associate's degree. He served in the U.S. Air Force from 1998 to 2006, and was honorably discharged. (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.

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<sup>1</sup> Department Counsel submitted eight Items in support of the SOR allegations. Items 3 and 4 are inadmissible. They will not be considered or cited as evidence in this case. They are the summaries of unsworn interviews of Applicant conducted by interviewers from the Office of Personnel Management on May 15, 2012, and January 27, 2015. Applicant did not adopt the summaries as his own statements, or otherwise certify them to be accurate. Under Directive ¶ E3.1.20, these Report of Investigation summaries are inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, they are also cumulative.

<sup>2</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."

In his **Answer**, Applicant admitted SOR allegations 1.a, 1.c, 1.e, 1.h, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, and 1.p without reservation. Those admissions are findings of fact. He denied allegations 1.b, 1.d, 1.f, 1.g, 1.i, 1.q, 1.r, and 1.s. (Item 2.) The debts are documented in one or more of the four credit bureau reports in the record dated January 9, 2012; August 7, 2014; November 8, 2014; and January 21, 2016. (Items 8, 7, 6, and 5.) The status of the debts is as follows:

1.a. Applicant admitted owing a judgment in the amount of \$2,437 to an automobile finance firm. In his Answer Applicant states that he could not pay this judgment due to being unemployed from May 2013 through July 2015. No other information was provided. This debt is not resolved.

1.b. Applicant denied owing \$535 for a judgment to a realty firm. This debt is reflected in the November 8, 2014 credit report. (Government Exhibit 7.) It does not appear on the two most recent credit reports. (Government Exhibits 5 and 6.) Based on the available evidence, I find the Government has not proven that this is a currently existing debt. This allegation is found for Applicant.

1.c. Applicant admitted that he owed the Internal Revenue Service (IRS) at least \$12,418 in unpaid back taxes. A tax lien was filed against Applicant in 2014 concerning this debt. He states in his Answer, "I was on a payment plan with the IRS until I became unemployed and was unable to maintain the payments. The \$12,418 is what is owed from the original balance of approximately \$24,000 (from multiple tax years). I informed the IRS when I lost my job. I am in the process of filing a compromise to settle the debt." No further information was provided. This debt is not resolved.

1.d. Applicant denied owing \$351 for a past-due medical debt. The SOR states that this debt is supported by a credit report dated January 21, 2006. Applicant stated in his Answer that he was not liable for this debt because he was on active duty with the Air Force at that time and any medical care would have been handled by Tricare. The year stated in the SOR of the subject credit report is in error. In actuality, the date of the credit report is January 21, 2016. (Item 5.) This error was not corrected in the FORM. Applicant also stated, "I am unsure what or who these medical debts are for." Applicant relied in good faith on the representation of the Government in denying this allegation because of the date in the SOR. Based on all the circumstances, this allegation is found for Applicant.

1.e. Applicant admitted owing \$440 for a past-due utility bill. He stated in his Answer that he was unable to pay this debt because he was unemployed from May 2013 through July 2015. No further information was provided. This debt is not resolved.

1.f. Applicant denied owing \$110 for a past-due medical debt. The SOR states that this debt is supported by a credit report dated January 21, 2006. Applicant stated in his Answer that he was not liable for this debt because he was on active duty with the Air Force at that time and any medical care would have been handled by Tricare. The year stated in the SOR of the subject credit report is in error. In actuality, the date of the credit

report is January 21, 2016. (Item 5.) This error was not corrected in the FORM. Applicant also stated, "I am unsure what or who these medical debts are for." Applicant relied in good faith on the representation of the Government in denying this allegation because of the date in the SOR. Based on all the circumstances, this allegation is found for Applicant.

1.g Applicant denied owing \$63 for a past-due medical debt. The SOR states that this debt is supported by a credit report dated January 21, 2006. Applicant stated in his Answer that he was not liable for this debt because he was on active duty with the Air Force at that time and any medical care would have been handled by Tricare. The year stated in the SOR of the subject credit report is in error. In actuality, the date of the credit report is January 21, 2016. (Item 5.) This error was not corrected in the FORM. Applicant also stated, "I am unsure what or who these medical debts are for." Applicant relied in good faith on the representation of the Government in denying this allegation because of the date in the SOR. Based on all the circumstances, this allegation is found for Applicant.

1.h. Applicant admitted owing a past-due telephone bill in the amount of \$191 on account number 900824. (Item 5 at 4.) No further information was provided. This debt is not resolved.

1.i. Applicant denied owing a second past-due telephone bill to the same creditor as 1.h in the amount of \$45 on account 900885. The credit report dated January 21, 2016, shows this to be a separate account to the same creditor. (Item 5 at 4.) No further information was provided. This debt is not resolved.

1.j. Applicant admitted owing \$1,907 for a charged-off account. He stated in his Answer that he was unable to pay this debt because he was unemployed from May 2013 through July 2015. No further information was provided. This debt is not resolved.

1.k. Applicant admitted owing a judgment in the amount of \$1,975. In his Answer Applicant stated that this judgment was "due to marital separation." No other information was provided. This debt is not resolved.

1.l. Applicant admitted owing a creditor \$9,124 for the balance due on a vehicle that had been repossessed. In his Answer Applicant stated that this debt was "due to marital separation." No other information was provided. This debt is not resolved.

1.m. Applicant admitted owing \$1,250 in past-due child support. He stated in his Answer that he was unable to pay this debt because he was unemployed from May 2013 through July 2015. He also stated in his Answer, "I was unable to pay the court mandated \$1,250 per month due to unemployment. I have spoken with my case worker to have the order modified so a portion goes towards the arrears amount." No further information was provided. This debt is not resolved.

1.n. Applicant admitted owing \$591 to a bank for a charged-off account. He stated in his Answer, "The debt listed in subparagraph N was due to an out of state move. The

bank account was closed with a zero balance before I moved and I never received any notifications otherwise after moving.” No other information was provided. This debt is not resolved.

1.o. Applicant admitted owing \$1,070 for a past-due account. He stated in his Answer that he was unable to pay this debt because he was unemployed from May 2013 through July 2015. No further information was provided. This debt is not resolved.

1.p. Applicant admitted owing \$1,047 for a past-due account. He stated in his Answer that he was unable to pay this debt because he was unemployed from May 2013 through July 2015. No further information was provided. This debt is not resolved.

1.q. Applicant denied owing a past-due medical bill in the amount of \$100 on account number 548. This debt is found on the credit reports dated August 7, 2014, and November 8, 2014. (Items 6, and 7.) This debt is not found on the most recent credit report. (Item 5.) Based on the available evidence, I find the Government has not proven that this is a currently existing debt. This allegation is found for Applicant.

1.r. Applicant denied owing a past-due medical bill in the amount of \$75 on account number D561562. This debt is found on the credit report dated November 8, 2014. (Item 7.) Based on the available evidence, I find the Government has not proven that this is a currently existing debt. This allegation is found for Applicant.

1.s. Applicant denied owing a past-due medical bill in the amount of \$63 on account number 213092. This is the same debt as that alleged in 1.g. This debt is found on the three most recent credit reports. (Items 5, 6, and 7.) 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. 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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant has been continuously employed since 2015. He has a considerable number of past-due debts that he cannot, or will not, resolve. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes five 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant continues to owe past-due commercial and tax debt in the amount of approximately \$32,500. He offered no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that some of his debt problems were caused by his being unemployed for over two years. However, Applicant provided no information as to how he has been responsibly handling his debt since becoming employed. 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).

Finally, Applicant did not supply any documentation to show that he has entered into a payment arrangement with the IRS, and is in compliance with such an arrangement. AG ¶ 20(g) does not apply.

Applicant did not sufficiently mitigate all of his tax or delinquent debt issues. As stated above, SOR allegations 1.b, 1.d, 1.f, 1.g, 1.q, and 1.r 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 honorably served in the U.S. Air Force for eight years. He went through two years of unemployment between 2013 and 2015. However, he continues to owe more than \$30,000 in bad debts and back taxes, and did not show any plan for resolving that substantial indebtedness. 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant

Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	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