



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



In the matter of:

ISCR Case No. 15-05986

Applicant for Security Clearance

**Appearances**

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: *Pro se*

03/31/2017

**Decision**

WHITE, David M., Administrative Judge:

Applicant has a lengthy history of delinquent debt that he continues to be unable or unwilling to resolve. Resulting security concerns were not mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on March 27, 2014, for a periodic reinvestigation. On April 6, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on June 30, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 12, 2016. The case was assigned to me on August 29, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 17, 2016, setting the hearing date for December 6, 2016. I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered no documentary evidence, and testified on his own behalf. I granted Applicant's request to leave the record open until December 20, 2016, to permit him to submit documentary evidence. On December 9, 2016, he submitted Exhibit (AE) A, to which Department Counsel had no objection. AE A was admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on December 16, 2016.

### **Findings of Fact**

Applicant is a 44-year-old employee of a defense contractor, where he has worked since May 2003; except during a 13-month lay-off period when he worked for another defense contractor at a reduced hourly wage. He has held a security clearance without incident since 2004 in connection with this employment. He is a high school graduate. He served honorably on active duty in the U.S. Navy from August 1992 to October 1996. He has been married and divorced three times, and has two teenage children who live with him. (GE 1; Tr. 6-8, 27-30.)

In his Answer, Applicant admitted the ten allegations in SOR ¶¶ 1.b through 1.d, 1.f through 1.h, and 1.j through 1.m, involving delinquent debts totaling \$18,579. He denied the allegations in SOR ¶¶ 1.a, 1.e, and 1.i. Applicant's admissions are incorporated in the following findings.

All of the SOR-listed delinquent debts are reported on the record credit bureau reports (CBR) dated February 3, 2009; April 9, 2014; June 29, 2015; and/or August 12, 2016. (GE 3; GE 4; GE 5; GE 6.) As noted above, he admitted the validity of ten delinquent consumer debts, some dating back more than five years, which total \$18,579. Despite this admission, my review of the credit reports convinces me that the two \$2,406 debts alleged in SOR ¶¶ 1.c (to "AHM"), and 1.m (to "AMER HONDA") are duplicate listings of the same debt by two different credit bureaus. Accordingly, the admissions only concern nine debts totaling \$16,173. (See GE 4 at 3 and 9.) Applicant testified that he has not taken action to resolve these debts because he had no funds available to do so. He said that he intends to file for bankruptcy, but could not afford the cost of retaining an attorney or filing the action in court. (Tr. 37-49, 52, 55-56.)

In January 2015, the state in which Applicant formerly lived and worked filed a tax lien against him in the amount of \$7,459 (SOR ¶ 1.j). Applicant testified that he owed these delinquent taxes for 2012 and 2013. He said that he made voluntary payments of \$250 per month to the state until September 2016, when the check he sent was returned for insufficient funds. As a result, the state began garnishing \$300 per month from his

wages in November 2016. Applicant submitted a recent payroll form documenting the legally-ordered after-tax deduction of \$150 from his biweekly wages. He provided no evidence concerning the current outstanding balance on this debt. (GE 5; AE A; Tr. 44-46.)

SOR ¶ 1.a concerns a \$7,308 debt for a car loan Applicant opened in January 2006 to buy a car for a woman to whom he was engaged at the time. He titled and registered the car in his name, but let her take the car when they broke up. She made the loan payments until the car was stolen at a time when the car was insured in her name. He denied this debt because he claimed that she told him that her insurance had paid the car off. He has not contacted the insurance company or the creditor to dispute the debt or otherwise attempt to resolve it, and offered no documentary evidence to support his explanation. The debt remains on his credit reports as a charged-off collection account. (Answer; GE 4 through GE 6; Tr. 20-21, 33-39.)

SOR ¶¶ 1.e and 1.i allege delinquent medical debts that Applicant denied because he said he had medical insurance. The former involves an \$800 debt that first became delinquent on August 21, 2012. The second is a \$75 debt that first became delinquent on July 23, 2014. Applicant testified that both debts involved the same hospital, but were not for any services he or his children had received. He said he had spoken to someone at the hospital to dispute the debts, but was told they were in his name and he owed them. He has done nothing to formally dispute, pay, or otherwise resolve them. (GE 6; Tr. 21, 40-42.)

Applicant testified that he could barely afford to meet his current month-to-month living expenses, and had no funds available to address his delinquent debts through repayment or bankruptcy proceedings. He offered no evidence of financial counseling.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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.

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>1</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; and
- (c) a history of not meeting financial obligations.

Applicant has a lengthy history of not meeting his financial obligations, which continues to date. He admits having insufficient income to pay his delinquent debts, which exceed \$24,000. His monthly income is barely sufficient to meet ongoing obligations. The evidence raises both of the above 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 delinquencies are ongoing, and he made no effective effort to voluntarily address any of his SOR-listed debts, including three that involved less than \$120. His budget barely provides sufficient funds to meet his regular monthly expenses.

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

The evidence does not establish mitigation under AG ¶ 20(a). There is insufficient evidence that the financial problems are primarily attributable to circumstances beyond Applicant's control, or that he has acted responsibly concerning his financial obligations, which would be necessary to establish mitigation under AG ¶ 20(b).

Applicant participated in no financial counseling, and his inaction toward his admitted delinquent debts demonstrated that his financial problems are not under control. His only current payment toward those debts is an involuntary wage garnishment action for delinquent state taxes. Overall, the evidence does not establish mitigation under AG ¶¶ 20(c) or (d). He did not provide any substantiated basis to dispute the legitimacy of the SOR-alleged debts, so no mitigation was established under AG ¶ 20(e). However, Government evidence established that the debts alleged in SOR ¶¶ 1.c and 1.m are the same account.

### **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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, with a consistent professional history of service in the defense industry. However, he has a lengthy history of financial irresponsibility and all record evidence indicates that his situation is more likely to deteriorate than to improve. His actions have neither eliminated the potential for pressure, coercion, or duress, nor made the continuation or recurrence of security concerns unlikely. Overall, the record evidence creates significant doubt as to Applicant's present eligibility and suitability for a security clearance.

### **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.l:

Against Applicant

Subparagraph 1.m:

For Applicant (Duplicate of 1.c)

### **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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge