



**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: 15-06587

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel

For Applicant: *Pro se*

October 18, 2017

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant has filed three Chapter 7 bankruptcies between 1996 and 2016. The most recent was filed in February 2016, and there is no evidence it has been discharged. Applicant also had almost \$10,000 in delinquent debt, which he did not show had been paid or 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, national security eligibility for access to classified information is denied.

**Statement of Case**

On December 22, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 5.) On March 25, 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 April 9, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). (Item 4.) On June 29, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing fourteen Items,<sup>1</sup> was mailed to Applicant on June 29, 2016, and received by him on July 12, 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. Items 1 through 5, and 7 through 14 are admitted into the record.

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 47, a college graduate, and married with three grown children. He retired from the US Navy in March 2008, after a 20-year career. He has worked for a federal contractor since 2010. (Item 5.)

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<sup>1</sup> Department Counsel submitted fourteen Items in support of the SOR allegations. Item 6 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 31, 2015. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, Report of Investigation summaries are inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is 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."

## **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.

In his Answer, Applicant admitted all the allegations in the SOR, with explanations, except for allegations 1.d and 1.p. The admitted allegations are found to be true. Applicant denied allegation 1.d, with an explanation. He did not either admit or deny allegation 1.p, which I view as a denial. The allegations in the SOR will be considered out of order for ease of discussion:

1.c. Applicant has filed for Chapter 7 bankruptcy three times. The first time was in March 1996. He received a discharge in June 1996. According to Applicant this bankruptcy was filed because of financial hardship brought about by paying increased child support. In a sworn statement dated August 9, 2004, Applicant said, "I claimed about \$10,000 on the bankruptcy and included all open accounts. The accounts were mostly credit cards and smaller debts." (Item 4, and Item 9 at 2.) No additional documentation concerning this bankruptcy was presented.

1.b. The second time Applicant filed for Chapter 7 bankruptcy protection was in May 2004. Applicant stated that the reason behind this filing was due to the financial costs of child support, including legal fees. In his sworn statement Applicant said, "I claimed about \$15000 to \$20000 and the paperwork included all our open accounts." Bankruptcy records show that Applicant actually discharged approximately \$92,000 of unsecured debt on this occasion. He received a discharge in August 2004. (Item 4, Item 8, and Item 9 at 2-3.)

1.p. Based on his financial situation, including the 2004 bankruptcy, Applicant received a "Conditional Security Determination" letter from the Department of the Navy Central Adjudication Facility (DON CAF)<sup>3</sup> on June 8, 2005. (Item 10.) Applicant was granted a Secret security clearance at that time, but was warned that he had to, "Maintain a stable and solvent financial status, ensuring payments to all creditors are accomplished in a regular and timely manner." He was further told that failure to do so would be a cause for immediate reconsideration.

1.o. Applicant admitted that he had received a tax lien from his state taxing authority concerning back taxes. The lien was in the approximate amount of \$873. Applicant stated in his Answer that this debt has been paid in full, but provided no documentation to support that statement. This debt is not resolved.

1.a. Applicant admitted that he had filed for Chapter 7 bankruptcy protection in February 2016. Applicant indicated in the petition that he had taken the credit counseling

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<sup>3</sup> The DON CAF became part of the DoD CAF on January 27, 2013.

required by bankruptcy law. In the petition Applicant admitted having between \$100,001 to \$500,000 in liabilities. The FORM does not contain a copy of the bankruptcy schedules that contain a listing of the debts Applicant wishes to discharge in bankruptcy, or a copy of any discharge. Applicant did not respond to the FORM with either one of these documents. (Item 7.)

Applicant stated in his Answer that this bankruptcy was due to work-related issues including: his having to take a job in 2010 that paid half of what he had been making; his wife being out of work in 2012 for six months; and his wife having a medical issue in 2014 that kept her out of work for over a year. He stated that they had a debt management plan that fell through, but a copy of the plan was not provided.

1.d. Applicant denied that he had a judgment filed against him in 2013 in the amount of \$622. He stated in his Answer, "I was never served with court papers or notified in any way of the court hearing." Support for this debt was found in 2015 and 2016 credit reports. (Items 13 and 14.)

Applicant further stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt because he had been advised that the judgment would not be reversed. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.e. Applicant admitted owing a medical creditor \$36 for a past-due debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.f. Applicant admitted owing a medical creditor \$128 for a past-due debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.g Applicant admitted owing a creditor \$1,125 for a charged-off debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.h. Applicant admitted owing a creditor \$457 for a charged-off debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.i. Applicant admitted owing a creditor \$450 for a charged-off debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured

debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.j. Applicant admitted owing a creditor \$778 for a past-due debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.k. Applicant admitted owing a creditor \$1,649 for a past-due debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.l. Applicant admitted owing a creditor \$722 for a past-due debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.m. Applicant admitted owing a creditor \$1,160 for a past-due debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

1.n. Applicant admitted owing a bank \$1,745 for a past-due debt. Applicant stated in his Answer that he had listed this debt in his 2016 bankruptcy as an unsecured debt. No documentation was submitted supporting that statement, or that the debt has been discharged. This debt is not resolved.

Applicant 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**

### **Paragraph 1 (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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has been continuously employed by a federal contractor since 2010. He has a considerable number of past-due debts, and has filed for bankruptcy three times. Applicant submitted no evidence that the debts in the SOR are included in his most recent bankruptcy or were otherwise paid or resolved. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

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

Applicant filed for Chapter 7 bankruptcy protection in February 2016, the third time he had done so. The bankruptcy schedules were not provided by Applicant, even though he had been informed in the FORM of his ability to supplement the record. There is

insufficient evidence to determine that the circumstances are unlikely to recur. Mitigation was not established under AG ¶ 20(a).

Applicant claimed that his most recent problems were due to work-related drops in income, and his wife's injury. However, Applicant provided no documentation to support his statements about a drop in income, or how he attempted to responsibly manage the problem before filing for bankruptcy. Mitigation is not established under AG ¶ 20(b).

Applicant indicated that he received the credit counseling required by bankruptcy law. However, the record does not show clear indications that Applicant's financial problems are under control. Accordingly, Applicant failed to establish complete mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Bankruptcy is an accepted way to resolve debts. However, in this case, Applicant failed to provide sufficient supporting evidence to find that his use of bankruptcy in 2016 was appropriate under the circumstances. None of the mitigating conditions apply to his case. 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 did not show that his most recent bankruptcy had been discharged, or that the alleged past-due debts in the SOR had been resolved. He was granted clearance eligibility in 2005 on condition that he maintain a stable and solvent financial status, ensuring that payments to all creditors were timely made. He failed to comply with this requirement. There is insufficient support for a

finding of national security eligibility. 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
Subparagraphs 1.a through 1.p:	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