



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07153

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**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel

For Applicant: *Pro se*

October 12, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is indebted to 15 creditors in the approximate amount of \$27,443. He previously discharged debt through a March 1995 Chapter 7 bankruptcy. He failed to produce documentation to show he resolved any of his delinquencies. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On June 5, 2015, Applicant submitted a security clearance application (e-QIP). (Item 4.) On June 6, 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 (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 for Determining Eligibility for Access to Classified Information* effective September 1, 2006.

Applicant answered the SOR on June 29, 2016. (Item 2.) He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On October 17, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was received by Applicant on November 21, 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 respond to the FORM. DOHA assigned the case to me on October 1, 2017. Items 1 through 9 are admitted into evidence.

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*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions 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 by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Findings of Fact**

Applicant is 58 years old and married. He has two adult daughters and a stepdaughter. He served on active duty in the Army from August 1977 to September 1983, and received an honorable discharge. He served in the Army Reserves from 1983 until his retirement in 1995. (Item 4.) He has worked for his current employer, a government contractor, since January 2005. (Item 4.)

Applicant was alleged to be indebted to 15 creditors in the approximate amount of \$27,443. Applicant admitted filing Chapter 7 bankruptcy in March 1995, which was discharged in June 1995, as alleged in SOR ¶ 1.a. (Item 2.) Applicant also admitted to the delinquent debts identified in SOR ¶¶ 1.b through 1.p, with clarifications. (Item 2.) Applicant's debts appear in credit reports dated June 20, 2015; April 4, 2016; and October 14, 2016. (Items 6 through 8.) Applicant attributed his delinquencies to "help[ing] my mother and spouse with their own financial problems." (Item 2.)

Applicant's March 1995 Chapter 7 bankruptcy filing identified \$27,258 in liabilities and \$4,512 in assets. His liabilities were discharged in June 1995, as identified in SOR ¶ 1.a. (Item 5.)

In Applicant's e-QIP, he disclosed two delinquent debts (alleged in SOR ¶¶ 1.l and 1.m) and noted that these accounts became delinquent because he "needed to provide financial support to mother to prevent loss of home." He also indicated that he

was “waiting to payoff current 401K loans so that a new loan can be requested to payoff debts.” (Item 4.)

Applicant’s October 2016 credit report identified the debts identified in SOR ¶¶ 1.b through 1.i, and 1.k through 1.o as unresolved. SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.g are charged off credit card accounts that became delinquent in 2012. SOR ¶¶ 1.f, 1.l, 1.m, 1.n, and 1.o are charged off factoring accounts that became delinquent in 2012. SOR ¶¶ 1.h and 1.i are charged off retail accounts, which have been delinquent since 2012. SOR ¶¶ 1.k and 1.n are charged off individual banking accounts delinquent since 2012. This credit report also identified other unalleged delinquent debts, including an \$11,587 factoring debt owed to a collection agency. (Item 8.)

Applicant’s April 2016 credit report identified SOR ¶ 1.j as a past-due collection account. (Item 7 at 5.) It identified SOR ¶ 1.p as an unresolved factoring debt delinquent since 2011. (Item 7 at 4.)

In his Answer, Applicant stated, “I no longer need to provide financial help to my mother or spouse and I have recently obtained some 401K money that will be used to start payments to reduce my debts.” (Item 2.)

Applicant submitted no evidence of financial counseling, or of budget estimates from which to analyze his current financial situation. No character references were submitted to describe Applicant’s judgment, trustworthiness, integrity, 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 (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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(a), 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “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 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 Executive Order 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 *a/so* EO 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 personnel 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 is indebted to 15 creditors in the approximate amount of \$27,443. He also previously discharged debt through a March 1995 Chapter 7 bankruptcy. He has documented no action to resolve his current delinquencies. The facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence does not establish mitigation under AG ¶ 20(a). Applicant's SOR-alleged financial problems have been ongoing since at least 2012. His history also reflects he discharged approximately \$27,000 in debt through his 1995 bankruptcy. His financial problems are unresolved, and continue to date.

The evidence establishes partial mitigation under AG ¶ 20(b). Applicant's need to provide financial assistance to his wife and mother may be factors beyond his control. However, he did not provide evidence that he acted responsibly under the circumstances with respect to his debt, which is necessary for full mitigation under this condition. He has not documented steps taken to resolve his SOR-listed delinquencies. Mitigation under AG ¶ 20(b) is not fully applicable.

Applicant has not established a history of responsible action with respect to his delinquent debts. There is no discernable evidence of a good-faith effort to repay those debts in the record. The evidence does not establish mitigation under AG ¶ 20(d).

## **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 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 is credited with his honorable military service. However, he is a mature individual who is accountable for the decisions and choices that led to his continued financial difficulties. He failed to demonstrate a basis for finding current good judgment, or permanent behavioral change, concerning his continuing pattern of financial irresponsibility. While he made promises in his Answer to address his delinquencies, he has failed to document any efforts to resolve his SOR-listed debts.

Applicant's unresolved delinquent debts establish continuing potential for pressure, coercion, or duress. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that he did not meet his burden 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.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer Goldstein  
Administrative Judge