



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



In the matter of:

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) ISCR Case No. 15-07773  
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Applicant for Security Clearance

**Appearances**

For Government: Andrew H. Henderson, Esquire, Department Counsel

For Applicant: *Pro se*<sup>1</sup>

03/01/2017

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant has a lengthy history of significant 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 January 23, 2015. On March 12, 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*

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<sup>1</sup> Applicant was originally represented by Sean M. Bigley, Esquire, who prepared Applicant's response to the Statement of Reasons. On June 15, 2016, Mr. Bigley submitted a letter advising that he and his firm had withdrawn from representing Applicant, who had decided to proceed *pro se* during his hearing. Applicant confirmed that information on the record. (Tr. 6-7.)

*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 April 21, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 1, 2016. The case was assigned to me on June 13, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 29, 2016, setting the hearing date for August 15, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A and B,<sup>2</sup> which were admitted without objection, and testified on his own behalf. Five friends and coworkers of Applicant also testified. I granted Applicant's request to leave the record open until August 29, 2016, to permit him to submit additional evidence. On August 26, 2016, he submitted AE C, to which Department Counsel had no objection. AE C was admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on August 24, 2016.

### **Findings of Fact**

Applicant is a 50-year-old employee of a defense contractor, where he has worked since June 2004. He is a high school graduate, and has completed some college courses without earning a degree. He served honorably on active duty in the U.S. Navy from July 1984 to December 1993, and held a security clearance without incident during most of his enlistment. He was granted a security clearance again in 2006, in connection with his current employment. He is married, with four adult children who are self-supporting and living on their own. (GE 1; Tr. 9-10, 81-82.)

The SOR alleges 18 delinquent debts owed by Applicant, ranging from \$26 to \$11,620, and totaling \$21,590. The oldest of these delinquencies were three debts owed for cash advances at a casino that were placed for collection in 2008, with the rest of the debts and judgments going into default since then. (GE 4; GE 5; GE 6; Tr. 61-62.) In his Answer, prepared by his attorney, Applicant formally denied all SOR allegations, "upon a lack of information and belief," with comments that he was currently researching those debts and intended to either pay or dispute them as applicable. (Answer.) During the hearing, Applicant admitted that all of the delinquent debts alleged in the SOR were valid debts that he was responsible for and intended to repay. (Tr. 28.) Applicant's admissions, and accompanying explanations, are incorporated in the following findings.

All of the SOR-listed delinquent debts are reported on the record credit bureau reports (CBR) dated February 20, 2015; December 3, 2015; and/or June 1, 2016. (GE 4; GE 5; GE 6.) Numerous involuntary wage garnishment actions initiated against Applicant

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<sup>2</sup> The hearing transcript's exhibit list erroneously identified several of the exhibits attached to Applicant's Answer, which were discussed on pages 26-27, as additional Applicant Exhibits. Those documents appear in their original location as attachments to Applicant's answer. Only AE A and AE B were admitted during the hearing.

from 2010 through 2016 were reported through the JPAS system, and are reflected on the evidence he submitted. It appears that the judgment debt alleged in SOR ¶ 1.b has been fully satisfied through garnishment of his wages. From January 2012 through July 2016, Applicant's pay records indicate that his employer deducted a total of \$27,596 from his wages pursuant to court-ordered garnishments. These funds were applied toward the judgment debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.i, 1.j, and two recent garnishment accounts that were not on the SOR. Other than these involuntary wage garnishments, Applicant offered no evidence of any repayment progress on any SOR-listed debt. (GE 2; GE 6; AE A; AE C; Tr. 55-62, 70-72.)

Applicant's most recent CBR, and his testimony during the hearing, revealed that he had recently fallen about \$3,300 in arrears on his home mortgage payments. He said that he was trying to work with the lender to negotiate a plan to bring that loan current. His former attorney submitted a personal financial statement with the Answer that reflected a \$626 monthly remainder after paying some debt liabilities and his monthly living expenses. Applicant testified that this statement did not reflect his wage garnishments, which resulted in an actual monthly deficit of about \$600 and contributed to his mortgage and other recent debt problems. (Answer; GE 6; Tr. 64-67.)

Applicant took a computer-based instruction course for adults titled, "Financial Recovery," provided by the FDIC, on April 10, 2016. As noted above, he exhibited no progress toward voluntarily resolving his delinquent debts from that date until the record closed. In his Answer, his attorney asserted that Applicant's wife became addicted to gambling and had psychological and medical problems which contributed heavily to Applicant's financial issues. Insufficient documentary evidence was presented to corroborate these assertions, and the attorney stated that Applicant's solution after discovering his wife's gambling problem in July 2011 was to regularly accompany her to the casino. (Answer.)

Applicant's 2015 performance evaluation reported that he achieved or substantially achieved his commitments with a composite score of 3.3, and rated a perfect 5.0 for behaviors. He received a company Spot Award in 2007. He provided testimony and letters from supervisors, colleagues, and friends with whom he has worked for many years, concerning his excellent character, trustworthiness, and work performance. (Answer; Tr. 30-46.)

### **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>3</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 history of not meeting his financial obligations, which began in or before 2008 and continues to date. He admits having insufficient income to pay his delinquent debts, and a monthly deficit of more than \$600 that prevents meeting 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

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

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 \$100. His budget does not provide sufficient funds to meet his regular monthly expenses. The evidence does not establish mitigation under AG ¶ 20(a). There is insufficient evidence that the financial problems are primarily attributable to circumstances beyond his control, or that he has acted responsibly concerning his financial obligations, which would be necessary to establish mitigation under AG ¶ 20(b).

Applicant recently participated in one online financial counseling course, but his subsequent inaction demonstrated that his financial problems are not under control. His only payments toward his delinquent debts resulted from involuntary wage garnishment actions in favor of judgment creditors. The debt alleged in SOR ¶ 1.b appears to have been satisfied through garnishment, but its origin and involuntary method of repayment remain parts of his financial history that support continuing security concerns. Overall, the evidence does not establish mitigation under AG ¶¶ 20(c) or (d). He did not provide any reasonable basis to dispute the legitimacy of the SOR-alleged debts, or document a basis for any such dispute, so no mitigation was established under AG ¶ 20(e).

### **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 loyal service to the United States. He is highly regarded by supervisors and colleagues. 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.r:              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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge