



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



In the matter of:

ISCR Case No. 16-02328

Applicant for Security Clearance

**Appearances**

For Government: Caroline Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

05/23/2018

**Decision**

WHITE, David M., Administrative Judge:

Applicant incurred some delinquent consumer debt due to unforeseen circumstances. He has since resolved all formerly delinquent accounts and restored his financial solvency. Resulting security concerns were mitigated. Based upon evaluation of the testimony, pleadings and exhibits, national security eligibility is granted.

**History of Case**

On January 26, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 21, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on September 15, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on November 17, 2016. DOHA issued a Notice of Hearing on July 11, 2017, setting the hearing for July 26, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence. Applicant testified, and offered Exhibits (AE) A through E into evidence. All exhibits were admitted without objection. I granted requests by both parties to leave the record open until August 28, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on August 2, 2017. Department Counsel and Applicant timely submitted additional evidence, which I marked GE 8, GE 9, and AE F, and admitted without objection from either party. The record closed as scheduled.

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*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations 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 promulgated 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. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

### **Findings of Fact**

Applicant has been employed by a Federal contractor since June 2009, and applied for the periodic review and renewal of his security clearance in connection with that work. The SOR contained 19 allegations concerning Applicant's formerly delinquent debts, which totaled \$72,052. This sum included a past-due balance of \$15,349 on his residential mortgage loan, and a \$26,264 charged-off second mortgage account related to a former residence that he unsuccessfully tried to retain as an investment rental property. Applicant denied all of the allegations, and explained that his residential mortgage loan had been modified and brought current in late January 2016, and the remaining debts were included for discharge in his June 2016 Chapter 7 bankruptcy filing. (Answer.)

Applicant is 42 years old and married, with an adult stepson and a 17-year-old daughter. He was honorably discharged in January 1999 after a four-year enlistment in the Marine Corps, and again in August 2003 after being recalled to active duty in February 2002 in support of Operation Enduring Freedom. He has successfully held a security clearance since 1995 in connection with his military service and subsequent employment by several defense contractors. (Answer; GE 1; Tr. 7-9, 62-63.)

Due to financial hardships caused by Applicant's 2002 recall to active reserve service at pay grade E-4, but without the normal allowances to which he would be entitled on full active duty due to the 179-day limit on the recall orders, he and his wife filed for Chapter 7 bankruptcy relief in March 2004 and their \$26,972 in unsecured debts were discharged in June 2004. This was a reasonable and responsible resolution of debts they became unable to pay through circumstances beyond their control while Applicant was serving in support of important national security priorities. These matters were not alleged as supporting present security concerns, and were completely unrelated to the more recent financial issues alleged in the SOR. (GE 3; GE 9; Tr. 44-46.)

Applicant began employment with a major defense contractor in August 2003. In March 2005, he purchased a home in the state where he then worked using "80/20" financing with a first and second mortgage from the same lender. He and his family lived there until June 2009, when he moved to another state to accept a job with his current employer. In June 2010, he purchased his current home with a VA-guaranteed first mortgage loan. He successfully managed his former home as an investment/rental property until late 2013 or early 2014, when the responsible renters moved out and two subsequent families occupied the house for brief periods before moving out on short notice. Applicant unsuccessfully attempted to sell the property before exhausting his savings and defaulting on the loans, after making his last payments in June 2014. The lender foreclosed on the home in October 2015, satisfying the \$113,520 balance due on the first mortgage, then charged off the \$26,264 balance due on the second mortgage. In January 2016, after months of negotiation, the lender holding the mortgage on Applicant's current home agreed to a fixed-rate loan modification reducing the interest rate and extending the term of the loan to provide affordable payments. Applicant has made all payments required under the terms of the modified agreement. He also brought his formerly delinquent Homeowner's Association dues account into fully paid and current status. (GE 1; GE 4; AE B; AE C; AE D; Tr. 33-34, 46-53, 56-58.)

From 2006 through 2013, Applicant's work with his current and last employer involved lengthy overseas deployment rotations in support of ongoing U.S. military operations. During those deployments, he earned significant wages as well as large per diem payments for being in a forward deployed status. His pay was significantly reduced during the inter-deployment periods when he returned home. His family's spending patterns were within their earnings, and reasonable under the circumstances. Applicant's scheduled deployment in early 2014 was postponed for a number of months, and the company's deployment compensation scheme was reduced by his employer. He and his wife used their savings to meet expenses, reduced expenditures where possible, and began using credit to pay bills. The simultaneous problems renting their former home compounded these problems, and Applicant's wife sought employment to supplement the family income. She was hired in January 2015, and they worked to repay their creditors until she became ill and needed surgery in June 2015. This caused her to lose her job, and she was unable to resume working until October 2015, at which point they resumed paying down their debts. At the end of September 2015, Applicant also took a reduction in his annual pay in order to accept a salaried

management position with his employer that no longer involved deployments. This helped to stabilize his family's income flow and permit more dependable budget planning. (Answer; GE 1; AE E; Tr. 59-64.)

In May 2016, Applicant consulted an attorney for financial counseling and assistance with debt resolution. After analysis and consultations concerning available options, Applicant and the attorney agreed that filing for Chapter 7 bankruptcy relief was the best course of action. On June 27, 2016, Applicant and his wife completed their final required credit counseling program and their Chapter 7 petition was filed. All of Applicant's outstanding debts, including the charged-off second mortgage balance from his former investment property and all other SOR-listed debts, were listed in the bankruptcy schedules. The bankruptcy court granted Applicant and his wife a discharge of their \$115,968 in unsecured debts under Chapter 7 on October 6, 2016. (Answer; GE 8; AE A; AE F; Tr. 57-61.)

Applicant received periodic pay raises in his original salaried management position, and on February 10, 2017, was promoted into a supervisory management position with a substantial pay raise. He presently earns about the same amount he did while regularly deploying. His bankruptcy schedules and budget documents demonstrate that he and his wife earn sufficient income to meet all ongoing living expenses in a timely manner, without needing to incur post-bankruptcy delinquent debt. Applicant's supervisor wrote that Applicant is an outstanding and trusted employee who is loyal to the United States, and has regularly handled sensitive and classified information in support of deployed U.S. military forces without compromise or concern. (Answer; GE 8; AE E; AE F; Tr. 63-64, 78.)

### **Policies**

When evaluating an applicant's national security eligibility, 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 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. 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. Directive ¶ E3.1.15 says that 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 applying for national security eligibility 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 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, “[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.” 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 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 encountered financial difficulties starting in early 2014, due primarily to an unexpected delay in his scheduled deployment and his inability to find replacement renters for his former residence. He partially dealt with these issues through depletion of his savings and his wife's short-term employment, but could not timely pay all of his debts and compiled excess credit. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security 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.

In 2015 and early 2016, Applicant restructured his employment situation, negotiated a modification of the mortgage on his current home, and obtained financial counseling and legal advice from an attorney to address his past-due debts. Pursuant to the attorney's advice, he successfully discharged his former debts through a Chapter 7 bankruptcy. He has received steady raises and promotions, establishing a solvent and

responsible financial situation with sufficient income to avoid future delinquencies. He demonstrated complete mitigation of financial security concerns under these five mitigating conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 a mature adult, who has demonstrated accountability for his decisions that led to substantial debt he was formerly unable to repay. He has now resolved his formerly delinquent debt. He demonstrated strong character and has devoted most of his adult life to successful support of national security objectives. Applicant provided persuasive evidence of rehabilitation and sufficient income security to ensure solvency in the future. The potential for pressure, exploitation, or duress is minimal. Overall, the evidence has eliminated the formerly legitimate doubt as to Applicant's eligibility and suitability for a security clearance. He successfully met 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 the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.s: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge