



**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 No. 16-03635

**Appearances**

For Government:

Aubrey De Angelis, Esquire, Department Counsel

For Applicant:

*Pro se*

Jon L. Pierro, Personal Representative<sup>1</sup>

September 11, 2018

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant has resolved all of his once past-due debts. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on August 7, 2015. (Government Exhibit 1.) On January 20, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a

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<sup>1</sup> Applicant represented himself at the September 7, 2017 hearing for the sole purpose of requesting a continuance. The Personal Representative appeared at the November 1, 2017 hearing.

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.<sup>2</sup>

Applicant answered the SOR in writing (Answer) on February 6, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 2, 2017. The case was assigned to me on May 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 5, 2017. I convened the hearing as scheduled on September 7, 2017. Appellant appeared on that date for the sole purpose of requesting a continuance. The continuance was granted and the case reset for November 1, 2017. The transcript (Tr.) of the first hearing was received on September 15, 2017.

The hearing was reconvened on November 1, 2017. The Government offered Government Exhibits 1 through 15, which were admitted without objection. Applicant offered Applicant Exhibits A through H, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open to permit him to submit additional evidence. DOHA received the transcript of this hearing on November 9, 2017.<sup>3</sup> Applicant submitted Applicant Exhibit I in a timely manner. Department Counsel had no objection and the exhibit was admitted into evidence. The record then closed.

### **Findings of Fact**

Applicant is 40 years old and employed by a defense contractor. He is married, and has three children. Applicant is seeking to retain a security clearance in connection with his employment.

#### **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.

The SOR alleged, and Applicant admitted, that he owed approximately \$60,655 in past-due indebtedness to various creditors. He also received a discharge from a Chapter

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<sup>2</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

<sup>3</sup> All citations in this decision will be to the November 1, 2017 transcript.

7 bankruptcy in 2014. Support for the existence and amount of the debts is supported by admissions of the Applicant, and credit reports submitted by the Government dated April 8, 2014; August 15, 2015; November 2, 2016; March 2, 2017; April 29, 2017; June 3, 2017; and November 1, 2017. (Government Exhibits 1, 2, 3, 4, 5, 6, 7, 12, 13, and 15.) Applicant submitted a credit report dated October 28, 2017. (Applicant Exhibit H.)

The current status of the debts is as follows:

1.a. Applicant admitted that he owed approximately \$44,602 in past-due student loans. Applicant successfully placed these loans into deferment status in 2016, with repayment to begin in 2018. He has the financial ability to pay these loans when they come due. This debt is being resolved. (Applicant Exhibit E; Tr. 17-21.)

1.b. Applicant admitted owing \$14,562 for a balance due on a repossessed automobile. Applicant has made a payment arrangement with the collection agent, and had begun payments when the record closed. This debt is being resolved. (Applicant Exhibits D and I; Tr. 21-23.)

1.c. Applicant admitted that he owed \$553 for a past-due debt. Applicant disputed this debt, stating that he paid it. Credit reports supplied by the Government and Applicant confirm that this debt has been disputed. (Government Exhibit 15 at 2; Applicant Exhibit H at 5; Tr. 23-24.)

1.d. Applicant admitted owing \$315 for a past-due pay day loan. Applicant disputed this debt, stating that he paid it. Credit reports supplied by the Government confirm that this debt has been disputed. (Government Exhibit 13, 14, and 15 at 2; Tr. 26-28.)

1.e. Applicant admitted owing an insurance company a past-due debt in the amount of \$312. Applicant disputed this debt, stating that he paid it. Credit reports supplied by the Government confirm that this debt has been disputed. (Government Exhibits 13, 14, and 15 at 1; Tr. 31-32.)

1.f. Applicant admitted owing back child support in the amount of \$311. This arrearage occurred because of a period of unemployment. He has since paid this arrearage in full, and is now current, as confirmed by credit report reports supplied by the Government and Applicant. This debt is resolved. (Government Exhibit 15 at 3; Applicant Exhibit H at 4-5; Tr. 29-31.)

1.g. Applicant admitted that he filed for Chapter 13 bankruptcy in December 2012. He voluntarily converted the case to a Chapter 7 bankruptcy in October 2013 because he could not make the plan payments. He received a discharge on January 7, 2014. (Government Exhibits 8, 9, 10, and 14; Tr. 31.)

Applicant's current financial situation is stable. His wife is employed, his work situation has improved, and they are able to pay their current indebtedness with no trouble. Applicant has changed his financial habits, including not incurring fees for non-sufficient funds. In 2014 and 2015 he incurred over \$5,000 in such fees. In addition, Applicant's work is stable. He had periods of unemployment in 2010, 2011, 2014, and 2015. Applicant understands the importance of resolving his past-due debts and remaining fiscally secure into the future. (Tr. 32-37, 41-44.)

## **Mitigation**

Applicant provided two letters of recommendation from people who know him in the defense industry. The chief operations officer of Applicant's current employer states, "[Applicant] is a rising star with unlimited potential." A Marine officer who worked with Applicant for a year states, "I have nothing but the utmost confidence and trust in [Applicant]." (Applicant Exhibits B and C.)

Applicant served in the Navy from 1998 to 2005. He received an Honorable Discharge at the end of his military service. (Government Exhibit 1 at Section 15.)

## **Policies**

When evaluating an applicant's suitability for 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, "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 had approximately \$60,000 in past-due debts that he had not paid or resolved as of the time the SOR was issued. 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;
- (d) the individual initiated and is adhering to 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 has paid or otherwise resolved the debts in the SOR. The vast majority of the debt involves his student loans. They were placed in deferment before the hearing, and he evinced a credible intent and ability to pay them off. The other major debt was for a repossessed automobile. He made a payment arrangement for that debt. He is current on his child support. He is actively disputing three other debts, which total about \$1,100. His current financial status is stable, and he evinces a credible intent and ability to maintain that stability into the future. Applicant has made substantial lifestyle changes that will assist him in staying on a proper financial footing. He has fully mitigated all the allegations in the SOR. Paragraph 1 is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a 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.

Under 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 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 has mitigated the concerns regarding his financial situation. Overall, the record evidence does not create substantial doubt as to Applicant's present eligibility and suitability for national security eligibility, and 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:

FOR APPLICANT

Subparagraphs 1.a through 1.g:

For Applicant

### **Conclusion**

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

WILFORD H. ROSS  
Administrative Judge