



**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. 17-00699

**Appearances**

For Government: Nicole A. Smith, Esquire, Department Counsel  
For Applicant: *Pro se*

June 12, 2018

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**Decision**

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ROSS, Wilford H., Administrative Judge:

On March 30, 2015, Applicant submitted his most recent Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On April 10, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted his Answer to the SOR (Answer) with attachments (Applicant Exhibits A through H) on May 3, 2017, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) On May 24, 2017, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM),

consisting of Items 1 to 5, was provided to Applicant, who received the file on May 26, 2017.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted two packets of additional information in a timely fashion. Department Counsel had no objection to my considering the additional information, and the packets are admitted into evidence as Additional Exhibits 1 and 2. The case was assigned to me on October 1, 2017. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

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>1</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. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

### **Findings of Fact**

Applicant is 37 and single. His niece became his dependent starting in 2011. His mother was Applicant's dependent for the year 2014. (Answer at 1; Applicant Exhibit A.)

#### **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.

Applicant denied in his Answer all the allegations in the SOR, with explanations. He specifically denied the existence of the debt set forth in subparagraph 1.d, stating, "There are no collections on my credit report." (Applicant Exhibit H.) As to the other three allegations, he argued in his Answer that the debts were old and uncollectible under his state's statute of limitations. He also submitted additional information to support his request for national security eligibility.

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<sup>1</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."

The total amount of money Applicant allegedly owes on all SOR-listed debts is approximately \$27,226. The existence and amount of the debts is supported by statements in Applicant's e-QIP; and by credit reports dated January 15, 2015; and January 20, 2017. (Item 3 at Section 26, and Items 4 and 5.)

The status of the debts, based on record evidence including Applicant's admissions, evidence, and explanations, is as follows:

1.a. Applicant denied owing a creditor \$18,066 for a charged-off account. This debt appears in the most current complete credit report in the record, Item 4. In Applicant Exhibit 2, dated July 10, 2017, at page 2, Applicant states, "[This] bank account is currently under investigation to verify if this debt is valid. I should have an answer within 30 days." In addition, the excerpts from a credit report in Applicant Exhibit E shows the existence of this debt. No further information was provided. This debt is not resolved.

1.b. Applicant denied owing a creditor \$6,141 for a charged-off account. Applicant submitted documentation showing that this debt was paid in full on or about June 2017. This debt is resolved. (Applicant Exhibit 2 at 5.)

1.c. Applicant admitted owing a creditor \$2,910 for a charged-off account. Applicant submitted documentation showing that he had fulfilled a payment arrangement he made with the creditor. This debt is resolved. (Applicant Exhibit A at 1-2, 16.)

1.d. Applicant denied owing a creditor \$109 for a charged-off account. He further stated that there was no collection from that company on his credit report. Applicant Exhibit H confirms that statement. This debt does not appear on the Government's most recent credit report, Item 4. Based on the available information, I find that the Government has not proven the existence of this debt as of the time the SOR was issued. This allegation is found for Applicant.

Applicant worked in real estate sales from 1997 to 2012. The financial crisis of 2008 had a serious impact on his financial stability. His state was particularly hard hit. After several years of increasing financial strain, Applicant decided to go into a different career field in 2012. While progressing in his new field as a computer network engineer, Applicant continued to have financial difficulties resolving issues from his time in real estate. Finally, in 2015, he was able to resolve the all the remaining issues from his real estate career and become financially secure again. He submitted documentation showing that his current financial situation is stable. He has successfully established new credit lines, and is able to maintain payments on his monthly indebtedness. (Applicant Exhibits B and D; Additional Exhibit 1.)

## 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 national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies 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(c), 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of 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.

According to Directive ¶ E3.1.14, the Government must 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 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.

Finally, as emphasized in Section 7 of EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 several past-due debts, which he had not resolved. Both of these conditions apply, thereby shifting the burden to Applicant to mitigate the resulting security 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 problems 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;
- (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's debt problems have been in existence for many years. However, there is evidence that they were the result of the financial crisis that hit Applicant's state particularly hard. In addition, Applicant was in real estate, and therefore more susceptible to the problems of that time.

Applicant has been diligently working to resolve his debts for several years and improve his financial standing. This included Applicant going through the rigors of changing his entire career from real estate to computers. He submitted evidence showing that the debts in SOR 1.b, and 1.c, have been paid. Applicant presented sufficient evidence that the debt in SOR 1.d is in dispute. Those three allegations are found for Applicant. In addition, he submitted evidence that his current financial status is stable.

There is some question as to the current status of the debt in SOR 1.a. However, Applicant has shown by his exhibits that he is a diligent person who has worked hard to stabilize his financial affairs. Under the particular circumstances of this case that allegation is also found for Applicant.

The DOHA Appeal Board has said, "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan."<sup>2</sup> It is Applicant's burden to show with sufficient evidence that he has mitigated the security concerns of his financial situation. He has done so, for the reasons set forth in this decision. 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 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

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<sup>2</sup> ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006.))

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 facts and circumstances surrounding this case. Applicant had financial issues in the past. His current conduct shows that he is now financially stable. Overall, the record evidence as described above leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did 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:

FOR APPLICANT

Subparagraphs 1.a through 1.d:

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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge