



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



In the matter of:

ISCR Case No. 17-01479

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

01/12/2018

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant incurred more than \$28,000 in delinquent debt over the past six years, most of which he has been unable or unwilling to repay. He failed to demonstrate a workable plan to resolve his financial issues or progress toward implementing one. Resulting security concerns were not mitigated. Based upon a review of the testimony, pleadings and exhibits, national security eligibility is denied.

**History of Case**

On March 24, 2016, Applicant completed and signed his security clearance application (SCA). On June 2, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DoD Directive 5220.6, *Defense Industrial Personnel Security for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1,

2006 AGs). The SOR set forth security concerns arising under the financial considerations guideline.<sup>1</sup>

Applicant answered the SOR in writing on June 26, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on October 16, 2017. DOHA issued a Notice of Hearing on October 16, 2017, setting the video teleconference (VTC) hearing for October 31, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence, which were admitted without objection. Applicant testified, but offered no documents into evidence during the hearing. I granted Applicant's request to leave the record open until December 1, 2017, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on November 7, 2017. Applicant submitted documentary exhibits on November 29, 2017, which were marked Applicant Exhibits (AE) A and B, and admitted without objection.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions to all of the SOR allegations, (§§ 1.a through 1.f), with explanations provided, I make the following findings of fact: Applicant is 39 years old, currently employed as a guard by a federal DoD contractor on a call-in basis since April 2013. His employer has requested he obtain a DoD security clearance. He is expected to be hired on a full-time basis during the summer of 2018, at which time a current guard plans to retire. Applicant has attended some college courses, but did not earn a degree. He was married from 2003 to 2011, and he was a military dependent during the majority of his marriage. He received alimony from his ex-spouse at approximately \$500 per month for one year after their divorce. He is currently engaged to his fiancée who works full time. He testified that she pays for the majority of their living expenses. (Answer; Tr. 21-24)

Applicant admitted that he owed all six of the delinquent debts alleged in the SOR. These debts ranged from \$133 to \$10,180 and totaled \$28,087. They became delinquent between 2011 and 2016. Their existence is confirmed by the record credit reports. Applicant paid the smallest debt in full for \$133 (alleged in SOR § 1.d). He also paid \$20 toward the largest debt (alleged in SOR § 1.a), and paid \$20 toward a credit-card debt (alleged in SOR § 1.b), in June 2017. He paid \$110 for another credit-card debt (alleged in SOR § 1.c), in July 2017. He paid \$20 toward a credit-card debt that resulted in a judgment (alleged in SOR § 1.e), in June 2017. He was not certain, but he also believed he made a \$20 payment towards a collection account (alleged in SOR § 1.f), in the same time frame. This reduced his total outstanding delinquent debt to \$27,764. Applicant stated that the circumstances beyond his control that led to these debts began after his divorce in 2011, lost jobs, moving, and not holding full-time employment for a long period of time. He testified that he cannot find another part-time job that will not interfere with his on-call status at his current employment. His last full-

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

time employment was in 2015. He earned a total of approximately \$3,000 for tax year 2016. He stated his intention was to repay all of his creditors once he is hired full-time in the summer of 2018. (Answer; GE 2 through 5; Tr. 21, 32-37.)

Applicant provided no budget information from which to predict his future solvency, or his ability to make payments toward his delinquent debts. He did not provide any proof of financial counseling. He did, however, offer evidence (AE A and B) to support findings concerning his professionalism and excellent work ethic from two former co-workers. In addition, Applicant's testimony was forthright and credible.

## **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 Exec. Or. 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* Exec. Or. 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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant incurred six delinquent debts, totaling more than \$28,000, over the past six years. He resolved only the smallest debt, and he has made minimal payments toward the five remaining debts. More than \$27,000 in delinquent debt remains, for which he demonstrated neither progress toward resolution nor a basis for dispute. 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 admitted 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

(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 continues to owe more than \$27,000 to numerous creditors for debts incurred since his divorce in 2011. Applicant resolved the smallest of SOR-alleged debts, and despite one initial payment, demonstrated no effort to address any of the remaining delinquencies. There is no evidence to show he has completed financial counseling. He did not demonstrate a legitimate basis to dispute his responsibility for any of these debts. Accordingly, Applicant failed to establish sufficient mitigation of security concerns arising from his financial irresponsibility under any of these 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 is accountable for his decisions that led to substantial debt he has been unable or unwilling to repay. He continues to owe more than \$27,000 in delinquent debt that he accumulated over the past six years and either could not, or chose not to, repay. Overall, the evidence creates significant doubt as to Applicant's trustworthiness, reliability, and suitability for a security clearance. He failed to meet 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not 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 denied.

Pamela C. Benson  
Administrative Judge