



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



In the matter of: )  
)  
) ISCR Case No: 17-02017  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esquire, Department Counsel  
For Applicant: *Pro se*

May 1, 2018

**Decision**

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. He provided no evidence documenting resolution of the five debts that became delinquent between 2011 and 2016, and totaled \$32,554. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of Case**

On June 21, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 6, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On August 8, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by him on August 14, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant timely submitted a eight-page response to the FORM (Response), on September 12, 2017, which I marked as Applicant Exhibit (AE) A. Applicant did not object to the Government's Items<sup>1</sup> and the Government did not object to AE A. Items 1 through 5 are admitted into evidence as Government Exhibits (GE) 1 through 5; AE A is admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on December 18, 2017.

### **Findings of Fact**

Applicant is 61 years old and a high school graduate. He earned an associate's degree in 1975. He is married. They have three adult children. He started working for a defense contractor in February 2013. (GE 2; GE 3; AE A.)

On June 17, 2016, Applicant submitted a security clearance application (SCA). In it, he disclosed delinquent debts and attributed them to underemployment and unemployment since 2007. (GE 3.) In 2010, he voluntarily took a 25% pay cut as a result of a business down turn with his employer. However, the company was unable to financially recover, and Applicant was laid off in 2011. He was unemployed until February 2013, although he worked part-time jobs when work was available during that time. (GE 2; GE 3; AE A.)

Based on credit bureau reports (CBR) from August 2016 and May 2017, the SOR alleged five debts that became delinquent between 2011 and 2016, and totaled \$32,554. (GE 4; GE 5.) The status of each debt is as follows:

SOR ¶ 1.a: Applicant was indebted on a \$19,180 debt owed to a credit union. Applicant claimed, "This debt has been charged off and probably taken as a business loss. The company has stopped trying to recover this debt." (AE A.) However, without further documentation, such as an IRS Form 1099-C confirming that the debt was cancelled and subject to taxes, the debt remains unresolved. Applicant has been aware of this debt since at least 2011.

SOR ¶ 1.b: Applicant was indebted on a charged-off account in the approximate amount of \$5,550. Applicant claimed he received an IRS Form 1099-C confirming that the debt was cancelled and subject to taxes. However he failed to provide documentation

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<sup>1</sup> AE A contains a four page addendum to Applicant's personal subject interview contained in GE3, in addition to four pages of explanation regarding Applicant's debts. GE 3 is admitted with the clarifications offered in AE A.

to support his claim. The debt remains unresolved. Applicant has been aware of this debt since at least 2011. (AE A.)

SOR ¶ 1.c: Applicant was indebted on a medical debt in the approximate amount of \$196. Applicant claimed, “I am making payments on this debt.” (AE A.) However, he provided no documentation to support his claim. It has been delinquent since at least 2014. This debt is unresolved. (GE 4; GE 5; AE A.)

SOR ¶ 1.d: Applicant was indebted on a medical debt in the approximate amount of \$66. Applicant claimed, “This [d]ebt has been paid in full.” (AE A.) However, he provided no documentation to support his claim. It has been delinquent since 2013. This debt is unresolved. (GE 4; GE 5; AE A.)

SOR ¶ 1.e: Applicant was indebted to a bank on a collection account in the amount of \$7,562. Applicant claimed, “This debt has been charged off and probably taken as a business loss. The company stopped trying to recover this debt.” (AE A.) However, he provided no documentation to support his claim. It has been delinquent since at least 2016. This debt is unresolved. (GE 4; AE A.)

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines 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. Under Directive ¶ E3.1.15, 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 *a/so* 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.<sup>2</sup>

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 has a history of being unable or unwilling to meet financial obligations, which began in 2011 and continues to date. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. The following are potentially applicable:

- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence does not show that any of the above mitigating conditions fully apply to Applicant. Applicant has a long history of not meeting his financial obligations. While he attributed his debts to his underemployment and unemployment, he has largely ignored his delinquencies since 2011. He did not establish a track record addressing his remaining financial obligations. He was given ample opportunity to document his claims, but failed to do so. It is likely that Applicant will continue to experience financial difficulties. He failed to meet his burden to mitigate the Government's concerns under the foregoing 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 has successfully worked for a defense contractor since 2013. While he attributed his delinquent debts to circumstances that were partially beyond his control, including his unemployment and underemployment, he has not exhibited responsible financial conduct since that time. Applicant's financial irresponsibility has been recent, voluntary, and occurred when he was a mature adult. Rehabilitation was not demonstrated, nor was likelihood that similar delinquencies would not recur. Overall, the evidence creates doubt as to Applicant's judgment, eligibility, 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 Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

**AGAINST APPLICANT**

Subparagraphs 1.a through 1.e:

**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 Applicant access to classified information. National security eligibility for access to classified information is denied.

JENNIFER I. GOLDSTEIN  
Administrative Judge