



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06303
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

January 13, 2016

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 36-year-old employee of a defense contractor. Applicant was alleged to be delinquent on four debts in the total amount of \$89,314. While he documented that he is making payments on his delinquent child support obligation, he has a history of financial indebtedness demonstrated by the three remaining unresolved debts. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 27, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On May 15, 2015, the Department of Defense issued a Statement of Reasons (SOR) to Applicant 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 September 1, 2006.

On June 12, 2015, Applicant answered the SOR (Answer), and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 31, 2015, and then transferred to me on September 8, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 5, 2015, scheduling the hearing for October 29, 2015. The hearing was convened as scheduled via video teleconference with my location in Woodland Hills, California and Applicant's overseas duty location. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of additional documents. On October 29, 2015, Applicant presented AE A. Department Counsel had no objection to AE A and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on November 6, 2015.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He served on active duty in the Army for 5 years from 1998 to 2003. He has worked for various government contractors since 2009, although he was unemployed from December 2012 through March 2013. He was divorced from his first wife in early 2007. He has two minor sons with his first wife. He married his second wife in 2007 and has a step-child through that marriage. (GE 1; Tr. 18-22.)

As listed in the SOR, Applicant was alleged to be delinquent on four debts in the total amount of \$89,314. Applicant denied the debts alleged in SOR ¶¶ 1.a and 1.c, but admitted the other two delinquent debts in SOR ¶¶ 1.b and 1.d. His debts are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4; GE 5.)

Applicant attributed his debts to his unemployment and his costly child support payments. He was unemployed from December 2012 through March 2013. As a result, he became delinquent on his child support payments. He testified that he was current on his child support obligations until his unemployment in 2012. When he resumed paying his child support obligations, the amount he owed had increased. He could no longer afford to make his car payments and pay his child support. His vehicles were repossessed. (Tr. 16-18, 25-36.)

Applicant disputed that he owes \$59,254 to state 2's attorney general for delinquent child support payments, as stated in SOR ¶ 1.a. He claimed that state 2 miscalculated the amount of child support delinquent at the time his first wife moved into that state from state 1. He believed state 2 failed to give him credit for amounts paid through state 1 from the time of their divorce in 2007 through December 2012. He provided records from state 1 that shows child support payments from 2011 through 2012. He testified that he requested state 2's attorney general to revise his delinquency. In his post hearing documentation, he provided a print out from the State 2 that showed as of October 2, 2015, his account was in collections with a balance of \$60,548.99. That statement reflected that he owed \$1,275.71 per month, but that from January 2013

through August 2013, he only remitted \$377 on this debt. Documentation from State 2 shows he has made regular payments on this debt since September 2013. He is resolving this debt. (AE A; GE 1; GE 2; GE 4; GE 5; Tr. 25-39.)

Applicant is indebted to one creditor on two repossessed automobiles as stated in SOR ¶¶ 1.b and 1.d, in the respective amounts of \$4,661 and \$24,950. He was unable to afford these vehicles as a result of his unemployment in 2012 and increased child support payment obligations. They were repossessed in approximately 2013. Applicant has not contacted this creditor to arrange to pay the remaining delinquency or otherwise resolve these debts. These accounts remain unresolved. (GE 5; Tr. 25, 31, 40.)

Applicant is indebted to a cellular telephone network provider in the amount of \$449, as stated in SOR ¶ 1.c. Applicant testified that this account belonged to his wife and he thought the account was closed. He has not contacted this creditor or repaid this debt. It is not resolved. (GE 5; Tr. 18, 40.)

Applicant's July 2015 credit report reflects two additional delinquent accounts. The first is a delinquent utility debt totaling \$165. The second is a cable bill in the amount of \$273. Applicant testified that he was not aware of these delinquencies and has not contacted either of these creditors. (GE 5; Tr. 46-47.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply 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 "[a]ny doubt concerning personnel being considered for access to classified information 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.

Under 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.” The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse decisions shall be “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**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial indebtedness demonstrated by the credit reports in evidence that substantiate all of the allegations. He has been unable to address three of his four delinquencies because he does not have the funds to do so. The evidence raises all of the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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 financial problems are ongoing. He has three unresolved delinquent accounts, as identified on the SOR. Additionally, he has incurred two new delinquencies. He has not demonstrated that future financial problems are unlikely. AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on his unemployment and child support costs. However, he failed to act responsibly to address his debts in a timely manner. AG ¶ 20(b) has not been fully established.

Applicant failed to produce documentation to show he received counseling for his financial problems. There are no clear indications that his financial problems are being resolved or are under control. Applicant is resolving one of his debts, however, three other SOR-listed debts remain unaddressed. AG ¶ 20(c) has not been fully established.

Applicant claimed that he is disputing the total amount he owes for child support. He provided documentation that shows a history of child support payments. He acknowledges, however, that he has been delinquent in his payments on that account. He is only disputing the amount of the total debt. He did not dispute any of his other SOR-listed debts. AG ¶ 20(e) has not been fully established.

## 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(a):

- (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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant honorably served in the Army for five years. However, he lacks the resources to address his debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns. I conclude the whole-person concept against Applicant.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge