



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06353
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

01/12/2016  
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**Decision**  
\_\_\_\_\_

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems starting prior to 2010. He incurred a significant amount of delinquent debts that have not been documented as being paid or resolved. Financial security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

In March 2013 Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) for reinvestigation. On January 15, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On April 16, 2015, Applicant answered the SOR (Answer), and requested a hearing. On August 17, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On September 8, 2015, DOHA issued a Notice of Video Teleconference Hearing, setting the case for September 24, 2015. At the hearing Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified and offered Applicant Exhibits (AE) A through D into evidence. All exhibits were admitted. DOHA received the hearing transcript (Tr.) on October 2, 2015. The record remained open until October 19, 2015, to give Applicant an opportunity to submit more evidence pertinent to his delinquent debts. Applicant submitted additional information, which I marked as AE E through J, and admitted without objection.

### **Findings of Fact**

Applicant admitted the allegations contained in SOR ¶¶ 1.a, 1.b, 1.f, 1.h, and 1.r. He denied the remaining 24 allegations. His admissions are accepted as factual findings.

Applicant is 41 years old and married for 13 years. He has three children, ages 12, 10, and 8. He served in the Army from 1992 to 2000 and received an honorable discharge. His rank was E-4. (AE B.) After leaving the Army, he earned a bachelor's degree in engineering. He finished a master's degree in 2008. Applicant began his current position with a defense contractor in 2005. Prior to that, he worked for a private company from 1999 to 2005. He has held a Secret security clearance for ten years. (Tr. 6.)

Applicant attributed his financial problems to a failed real estate business that he started with a partner after he left the Army. He and his partner purchased a house that they renovated and hoped to sell. At some point they terminated their relationship and Applicant paid the partner \$15,000 for his interest in the business. When the house did not sell, Applicant rented it. In 2003 he purchased a second property, and in 2004 a third property. He anticipated renovating and selling both properties, but instead rented them, resulting in numerous tenant problems and unpaid rent. Eventually the lenders foreclosed on the two properties in 2010, and subsequently on the third property. (Tr. 20-23.) He has another rental property that is rented. (Tr. 58.)

In March 2013 Applicant discussed with a government investigator various delinquent debts, including his student loans, unpaid credit cards, unpaid medical bills, and mortgage bills related to the rental properties. He told the investigator that he did not understand why two judgments, one for \$1,529 and one for \$11,227, appeared on his March 2013 credit report because he had paid them. (GE 2.)

In November 2014 Applicant filed a Chapter 13 bankruptcy, which included mortgage arrearages of about \$216,000 on two loans, and about \$1,000 for unpaid taxes. (Tr. 54; AE C.) He made his first monthly payment of \$425 to the bankruptcy

trustee in December 2014 and has made nine payments since then. (Tr. 53.) He denied certain SOR allegations because he said many of the debts were either resolved by garnishments or are included in the Chapter 13 bankruptcy. (Tr. 31.) Applicant stated that he has paid about \$23,000 in garnishments for judgments. (AE A.) He said that he was awarded \$12,450 in judgments against former tenants, which he has not collected. (AE A.)

Applicant's current annual salary is \$98,000 and his wife's annual salary is between \$20,000 and \$25,000. He borrowed \$35,000 from his 401(k) to help pay debts. He has made monthly payments on that loan, reducing the amount owed to \$28,000. After paying expenses, he has about \$500 remaining at the end of the month plus his wife's income. (Tr. 19-20; AE A.) He took an on-line credit counseling course as a requirement for filing bankruptcy. (Tr. 62.)

Based on credit bureau reports (CBR) from March 2013, July 2013, and May 2014, the SOR alleged 29 delinquent debts, including three judgments, medical debts, utility bills, and unpaid mortgage amounts. They totaled \$302,435. (GE 3, 4, 5.) Applicant presented proof that he paid the \$908 debt alleged in SOR ¶ 1.t. (GE 3 at 5.) The \$238 debt alleged in SOR ¶ 1.m is included in his bankruptcy. (AE C.) He thinks the \$6,957 debt alleged in SOR ¶ 1.c is included in the bankruptcy. He said it may be a duplicate of another SOR-listed debt, but was not certain. (Tr. 35-36; AE D.)

Although Applicant contended that many of the remaining 26 debts may either be included in his Chapter 13 bankruptcy or paid through garnishments, he did not submit proof of their status or resolution. He said his student loans are deferred but did not submit proof of deferment. He did not have a solid grasp of the status of his debts. He asserted that if his creditors did not file a claim after receiving notice of his bankruptcy filing, he was no longer liable for the debts. (Tr. 26.)

Applicant submitted three letters of recommendation from colleagues. All authors attest to his trustworthiness and competency. (AE E, F, G.) He submitted his performance evaluations for 2012, 2013, and 2014. He has consistently received "Met Expectation" ratings in most areas, and in 2014 he received "Exceeds Expectations" in some areas. (AE H, I, J.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, 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 eligibility for access to classified information.

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. According to AG ¶¶ 2(a) and 2(c), 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[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.”

A person applying for access to classified information 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 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.

## **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 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.

Beginning in about 2010, Applicant started accumulating numerous delinquent debts that he has been unable or unwilling to resolve. The evidence is sufficient to raise both disqualifications, 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 delinquent debts:

- (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 have been ongoing since 2010 and some continue into the present. Hence, AG ¶ 20(a) does not provide mitigation. Applicant attributed his financial delinquencies to his real estate venture, which began to fail prior to the foreclosures on properties he owned in 2010. Some of the underlying problems related to a partnership termination and probably the collapse of the real estate market. Those

were circumstances beyond his control. However, he provided insufficient evidence that he acted responsibly while the debts were accumulating; hence, AG ¶ 20(b) has limited application. He received credit counseling through the bankruptcy process, but there are no clear indications that his finances are under control. Partial mitigation under AG ¶ 20(c) was established. He filed a Chapter 13 bankruptcy in November 2014, demonstrating a good-faith effort to resolve debts. However, it is not clear from his documents or testimony which SOR-listed debts are paid or included in said bankruptcy, with the exception of the debts in SOR ¶¶ 1.c, 1.m, and 1.t. He established mitigation under AG ¶ 20(d) as to those debts. He did not provide documentation pertinent to the successful dispute of any debts. AG ¶ 20(e) does not apply.

### **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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature, intelligent 41-year-old employee of a defense contractor. He is a former soldier and current employee of a defense contractor. He has held a security clearance for ten years. His colleagues attest to his trustworthiness and competency.

Although those are positive factors, Applicant's history of financial problems, which seemingly started in 2010 with two foreclosures, is concerning. Since 2010 his salary has been garnished to pay judgments. In November 2014 he filed a Chapter 13 bankruptcy as a method for responsibly resolving his debts. During his testimony he could not adequately identify or discuss the status of the SOR-listed debts. He asserted some were duplicates, some were paid, and some were included in the bankruptcy. Although given time post-hearing to clarify and provide proof of the status of the numerous debts, he failed to do so, including the two judgments he discussed with an

investigator in March 2013 and stated were satisfied. Until he establishes a track record of financial reliability, the evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance. Applicant did not meet his burden to mitigate the security concerns arising from his 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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d through 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n through 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraphs 1.u through 1.cc:	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.

SHARI DAM  
Administrative Judge