



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



In the matter of:	)	
	)	
	)	ISCR Case: 14-06998
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel  
For Applicant: *Pro se*

02/29/2016

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant remains indebted to 11 creditors in an approximate amount of \$21,000. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On February 22, 2013, Applicant submitted a security clearance application (SF-86). On May 28, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on June 23, 2015 (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 2, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant on September 14, 2015, and received by him on September 25, 2015. 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. He timely submitted an exhibit that I marked as Applicant Exhibit (AE) A and admitted into the record without objection from Department Counsel. In his response to the FORM (AE A), Applicant objected to the introduction of the Report of Investigations summarizing his personal interview (Item 4), but did not submit any objections to the Government's other Items; hence, Items 1, 2, 3, 5, and 6 are admitted into evidence and Item 4 is not because it was never authenticated per Directive ¶ E.3.1.20. DOHA assigned the case to me on November 9, 2015. In early February 2016, Applicant forwarded another document to Department Counsel pertinent to his resolution of a delinquent debt. I marked that document as AE B and admitted it into evidence without objection.

### **Findings of Fact**

In his Answer Applicant admitted all of the 11 allegations contained in Paragraph 1 of the SOR: (Item 2.) His admissions are incorporated into these findings of fact.

Applicant is 40 years old and unmarried. He served in the Navy Reserve from September 1993 to May 2004, when he received a general discharge under honorable conditions. From June 2004 to June 2007, he attended college full-time and earned an associate's degree. In February 2013 he began his current position with a defense contractor. Prior to this job he had been unemployed for three months. From January 2010 to December 2012, he worked for a private cable company. (Item 3.)

Based on credit bureau reports (CBRs) from March 2013 and October 2014, the SOR alleged 11 delinquent debts, which totaled \$21,214, and included student loans and credit card debts. (Items 5, 6). The debts became delinquent between 2007 and 2013. (Items 5, 6.) In his Answer, Applicant stated that his financial problems began while he was a full-time student between 2004 and 2007, and subsequent to graduating, at which time he was unable to secure steady employment because of the economic recession. He said he did not have sufficient money to manage his debts. (Item 2.) In his response to the FORM, he acknowledged his responsibility to resolve the debts and stated his intention to do so as his finances permitted. (AE A.)

Applicant submitted a document indicating that on June 8, 2015, he received an agreement from the company handling his defaulted student loans. It offered him an opportunity to rehabilitate the \$3,180 balance on his student loans through monthly payments of \$5 for nine months. The first payment was due on June 9, 2015. He did not provide evidence that he made that payment or subsequent payments. (Item 2.) This

debt was alleged in SOR ¶ 1. b. There is insufficient evidence to determine whether it is being resolved.

Applicant submitted an exhibit indicating that he has internet service with the creditor listed in SOR ¶ 1.j (\$299). He stated that the debt was settled and he could not be a current customer if he had a pending debt. The account numbers for the alleged debt and the debt listed on the current invoice are different. (Item 2.) It is not clear that this debt is resolved.

Applicant provided proof that he paid a \$465 debt in June 2015, which he owed to a military exchange. This debt was not alleged in the SOR. He also submitted proof of a February 2016 payment of \$314 for a debt owed to a creditor not listed on the SOR. (AE B.) No other evidence regarding resolution of his debts was presented.

### **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.

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

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>1</sup>

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 delinquent debt. From 2007 to 2013, he accumulated 11 delinquent accounts totaling over \$21,000. That ongoing pattern of delinquent debt and history of inability or unwillingness to pay lawful debts raise security concerns under

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

the above disqualifying conditions, and shift 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 problems:

(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 failed to produce credible evidence that he addressed or is addressing the SOR-alleged accounts. He offered insufficient evidence from which to establish a track record of debt resolution. He provided some evidence that the delinquencies may have been caused by conditions beyond his control; but he failed to submit documentation indicating that he acted responsibly under those circumstances. He presented no evidence of financial counseling. Although he submitted proof that he resolved two debts not alleged in the SOR, there are no clear indications that his financial problems are under control or being resolved in good faith. He did not formally dispute any of the SOR-listed debts. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions.

### **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 adult, who served this country for 11 years. Subsequent to his completion of an associate's degree in 2007, he began accumulating delinquent debts that remain unresolved. While he appears to have paid two non-alleged delinquent debts, he did not provide a solid plan to address the delinquencies alleged in the SOR, including a \$63 delinquent debt. He provided no evidence of financial or budget counseling, or that he is currently managing his finances in a responsible manner. Overall, the record evidence leaves me with doubt as to Applicant's judgment, reliability, and present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial problems.

### **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.k:	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