



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 15-00153 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

03/25/2016

**Decision**

WHITE, David M., Administrative Judge:

Applicant incurred more than \$27,000 in delinquent debt over the past five years despite continuous employment. He demonstrated neither sufficient explanation for these debts, nor changes to avoid recurring financial problems. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on June 16, 2014.<sup>1</sup> On August 15, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February

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<sup>1</sup>Item 3.

<sup>2</sup>Item 1.

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on October 23, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on December 23, 2015. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was received by Applicant on January 5, 2016, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no additional material in response to the FORM during the time provided, did not object to its consideration, and did not request additional time to respond. I received the case assignment on March 1, 2016.

### **Findings of Fact**

Applicant is 31 years old. He started work as an IT service desk analyst for a defense contractor in June 2012, upon his honorable discharge after ten years of enlisted service in the Navy. He earned an associate's degree from an on-line university in June 2010. He has held a Top Secret security clearance since March 2003. He has never married and has no children.<sup>5</sup>

In his response to the SOR, Applicant formally denied each allegation, citing entries that he claimed were on an August 24, 2015 Experian credit report that he failed to provide a copy of, and asserting failure by some of his creditors to validate claims under the "Fair Debt Collection Protection Act" [sic], also without any corroborating documentation.<sup>6</sup> The allegations concern 11 past-due and collection accounts totaling \$27,020. Their outstanding delinquent balances are confirmed in the record full data credit report dated June 24, 2014, which shows that they were opened starting in 2004, and have become delinquent since 2011.<sup>7</sup>

Applicant provided no documentation to support his claims that his SOR-listed debts were either resolved or erroneously reported on his credit report, either in

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<sup>3</sup>Item 2.

<sup>4</sup>Department Counsel submitted five Items in support of the SOR allegations. Item 5 is the summary of an interview from the OPM Report of Investigation. It was neither attested to nor adopted by Applicant and no witness authenticated the document. Accordingly, it is inadmissible per Directive ¶ E3.1.20 and will not be considered in determining Applicant's eligibility for a security clearance.

<sup>5</sup>Item 3.

<sup>6</sup>Item 2. The correct name of the law he attempted to cite is the Fair Debt Collection Practices Act.

<sup>7</sup>Items 2 and 4.

response to the SOR or in response to the FORM where this deficiency was addressed and brought to his attention. He provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling, of savings or retirement investments, or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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 under 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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's June 24, 2014 credit report establishes all eleven delinquent debts alleged in the SOR, totaling more than \$27,000. These delinquencies arose despite his continuous employment on active duty for the ten years preceding June 2012, when Applicant began his current employment. His pattern and history of inability or unwillingness to pay these substantial lawful debts raise security concerns under DCs 19(a) and (c), 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 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 incurred substantial delinquent debts over the past five years. He did not demonstrate that delinquent indebtedness is unlikely to recur, or that his financial situation is under control. Applicant demonstrated neither the ability, nor any effort, to investigate or resolve any of the alleged delinquencies. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions. Department Counsel pointed out the absence of such updated information in the FORM. Although Applicant was afforded the opportunity to address those concerns by filing additional information, he chose not to do so.

### **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 pertinent facts and circumstances surrounding this case. Applicant is an accountable

