



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



In the matter of:	)	
	)	
	)	ISCR Case: 15-00793
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Strzelczyk, Esquire, Department Counsel  
For Applicant: *Pro se*

April 1, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant accumulated six delinquent debts totaling \$24,874 between 2011 and 2012. He resolved all six debts. Additionally, he was charged with felony evading arrest with vehicle in 2011. He was found guilty and placed on probation for four years. His probation terminated early in October 2015. The resulting security concerns arising from his financial indebtedness and criminal conduct were mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

**Statement of Case**

On November 3, 2011, Applicant submitted an e-QIP. On August 21, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines J (Criminal Conduct) and 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

On September 11, 2015, Applicant answered the SOR and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On November 3, 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. He received the FORM on November 9, 2015, and was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He provided ten pages of additional information (Reply). Department Counsel had no objection to Applicant's Reply, and it was admitted into the record. DOHA assigned the case to me on January 5, 2016.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the allegation contained in subparagraph 1.a. He denied subparagraphs 2.a through 2.f. (Item 4.)

Applicant is 32 years old and has been employed by a government contractor since 2003. He has never married and has no children. (Item 2.)

Under the Criminal Conduct guideline, the Government alleged that Applicant is ineligible for a clearance because his record of criminal activity created doubt about his judgment, reliability, and trustworthiness. The SOR identified that on or about October 7, 2011, Applicant was charged with felony evading arrest with vehicle, after he fled a traffic stop because he knew he lacked insurance and proper registration for his vehicle. He regretted this decision instantly and apologized to the police officer. He pled guilty and was ordered by the court to pay \$1,000 in fines, pay \$285 in court costs, perform 160 hours of community service, serve 30 days in jail, pay \$50 to crime stoppers, and be placed on probation for four years. On October 1, 2015, the district court discharged Applicant from probation because "the ends of justice have been served." (Item 3; Item 4; Reply.)

In his Reply, Applicant expressed great remorse for his criminal conduct. He stated:

There hasn't been anyone harsher on what I did than myself. These past four years I have worked on regaining trust from my coworkers, and management. I continue to strive to be the leader they ask me to be. I appreciate the time I have worked here and continue to work hard. I take the issue of national security very serious. Taking control of my credit, and finishing my probation were steps to show that I don't take it lightly.

Under the Financial Considerations guideline, the Government alleged that Applicant is ineligible for a clearance because he made decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR identified financial concerns arising from six delinquent debts totaling \$24,874. Applicant documented that he resolved the charged-off debt identified in subparagraph 2.a; the \$8,874 debt identified in subparagraph 2.b; the \$7,343 educational loan debt identified in subparagraph 2.d; the \$5,335 educational loan debt identified in subparagraph 2.e; and the \$3,026 debt identified in subparagraph 2.f. He credibly claimed that he resolved the \$296 debt identified in subparagraphs 2.c, although he was unable to obtain a copy of the statement from the creditor due to the policies of that company. The debt in 2.c no longer appears on his most recent credit report. Further, Applicant's August 2015 credit report reflects that he is current on all of his accounts. (Item 1; Item 2; Item 5; Item 6; Reply.)

Applicant presented a letter of recommendation from a coworker that describes Applicant as a responsible person, who displays good character and ethical behavior. The coworker acknowledged Applicant's credit issues and poor conduct in the past, but indicated Applicant has been rehabilitated. (Reply.)

### **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 J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes three conditions that could generate a security concern and may be disqualifying in this case. The conditions potentially raised by the evidence are AG ¶ 31:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) the individual is currently on parole or probation.

Applicant was found guilty of felony evading arrest with a vehicle in 2011. He admitted he fled during a traffic stop because he lacked insurance and registration for the vehicle he was operating. Security concerns under AG ¶¶ 31(a) and 31(c) are raised by the record.

As part of his sentence for said felony, Applicant was placed on probation for four years. However, his probation was terminated by the court in October 2015. AG ¶ 31(d) no longer is disqualifying.

AG ¶ 32 provides two conditions that could mitigate criminal conduct security concerns. These are:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Nearly five years have passed since Applicant was arrested. During those years, he successfully completed probation and all other court-ordered terms of his sentence. He has recognized the wrongfulness of his past unlawful conduct and has regained the trust of his coworkers and management. He continues to strive to be a leader in his organization. His colleague, who is aware of his criminal conduct, praises Applicant for his rehabilitation. Applicant now has a reputation for good character and trustworthiness. Applicant's criminal behavior is unlikely to be repeated. He has demonstrated sufficient evidence of maturity and rehabilitation to mitigate the security concerns raised by his single incident of criminal conduct. The above mitigating conditions apply.

#### **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.

Applicant accumulated six delinquent debts totaling \$24,874 between 2011 and 2012. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial issues:

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

Applicant documented that he resolved five of his six delinquent debts identified on the SOR, totaling over \$24,000. He credibly averred that he paid the sixth debt of \$296. Although he was unable to produce documentation to prove that he paid the debt, it no longer appears on his credit report. While debts sometimes are deleted from credit reports due to a statute of limitations, I find Applicant's claim that this debt is paid to be credible based on a review of his recent history of resolving larger delinquent accounts. Applicant has acted in good faith with respect to all of his debts. His financial problems are under control, as evidenced by a recent credit report that shows no delinquencies. Applicant's past financial problems do not cast doubt on his current reliability, trustworthiness, or good judgment. The above mitigating conditions 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. Overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He was young when he committed the felony evading arrest with vehicle. Five years have passed since then and Applicant successfully completed all of the court-ordered terms, demonstrating his maturity. He is now a valued employee. He has resolved all of his delinquent accounts and his credit report reflects no new delinquencies. He has offered sufficient evidence of rehabilitation and met his burden to mitigate the security concerns arising under the guidelines for criminal conduct and 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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a through 2.f:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein  
Administrative Judge