



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



In the matter of: )  
)  
) ISCR Case: 15-02051  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

April 28, 2016

---

**Decision**

---

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on four debts in the total amount of \$59,871. One debt was listed twice on the SOR. His delinquent debts were caused by financial difficulties that resulted from his divorce. Over the past two years, he has resolved the two duplicate delinquent accounts. He is making payments on the remaining two accounts. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 25, 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.

Applicant answered the SOR on October 29, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned me on January 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2016, scheduling the hearing for March 1, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AE) A through D, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on March 7, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits marked AE E through AE G. Department Counsel had no objections to AE E through AE G, and they were admitted. The record then closed.

### **Findings of Fact**

Applicant is 60 years old. He is a naturalized citizen of the United States. He has been employed with a Government contractor for 16 years. He has held a security clearance for 10 or 11 years. He married his wife in 1996 and they divorced in 2005. (GE 1; Tr. 27-28.)

The SOR alleged Applicant owes approximately \$59,871 on four delinquent financial obligations. In his Answer, Applicant denied SOR ¶ 1.a, as it is a duplicate of SOR ¶ 1.c. He admitted all of the other SOR allegations (¶¶ 1.b, and 1.d.), with clarifications. His debts are documented in the record credit reports dated May 24, 2014; December 1, 2014; December 8, 2015; and February 28, 2016. (GE 2; GE 3; GE 4; GE 5.) After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant was alleged in SOR ¶¶ 1.a and 1.c to be indebted on a delinquent credit card in the amount of \$23,266. He only owes one \$23,266 debt to this creditor, as documented in the credit reports. Applicant presented a settlement agreement with this creditor, dated March 1, 2016, that agreed to settle this debt for \$6,981, payable in one payment of \$4,600, and three monthly payments of \$793.66. Applicant presented a copy of his cancelled check showing he made the \$4,600 payment on March 28, 2016. He testified that he intends to continue making payments on this debt. This debt is being resolved. (AE E; Tr. 32, 36-37, 43-46.)

Applicant was alleged in SOR ¶ 1.b to be indebted to a bank for a delinquent credit card account in the amount of \$4,949. Applicant testified that he had two accounts with this creditor. He negotiated a settlement with the creditor, whereby he would pay \$7,500, and his remaining debt would be cancelled. (AE C.) He presented a cashier's check showing he paid the \$7,500 to the attorney for this creditor on January 10, 2014. (AE C at 2.) In 2014, the company issued him a 1099-C cancelling the remaining debt on both of his accounts held by this creditor. (AE F.) He included the 1099-C in his U.S. individual income tax return for 2014. (AE F at 2.) This debt is resolved. (Tr. 33.)

Applicant was alleged in SOR ¶ 1.d to be indebted on a delinquent credit card in the amount \$7,390. Applicant presented a letter dated November 3, 2015, from a collection agent for this creditor that shows this account was “considered ‘paid-in-full’ 11/3/2015.” (AE D.) This debt is resolved. (Tr. 33-34.)

Applicant attributes his delinquencies to his divorce, outlined above. He was required to pay his ex-wife half of his assets upon their divorce, which caused him significant financial strain. While he was recovering from his divorce, the economy declined. His home value plummeted and his overtime hours at work were eliminated. (Tr. 21-24.) He has worked since then to resolve his creditors, one by one. He is currently resolving his final delinquency. (Tr. 24.) There are no delinquent debts on his current credit report. (GE 5.) He testified that he has enough money left over at the end of the month to make payments on his remaining debt until it is fully resolved, without getting further into debt. He is committed to resolving his financial obligations. (Tr. 40-41.)

Two of Applicant’s co-workers wrote letters on Applicant’s behalf that characterize Applicant as “demonstrate[ing] a strong work ethic,” and as “extremely reliable.” Applicant is considered to be a tremendous asset to those that work with him. (AE A; AE G.) Additionally, Applicant’s work performance appraisals reflect that Applicant does an excellent job in his assigned duties. (AE A.)

### **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 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.

Applicant accumulated three debts in the total amount of \$35,605, as one of the SOR debts was listed twice. These debts establish both a history of delinquencies and an inability or unwillingness to satisfy his obligations. The evidence raises security concerns under the above conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. I find the following three provide mitigation:

(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; and

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

Applicant's debts were caused by his 2005 divorce and enhanced by the downturn in the economy in 2007. However, he has acted responsibly by addressing all of his delinquencies over time. Two debts are fully resolved and he is making payments on the third debt. He has shown a recent track record of making consistent payments. He can be trusted to continue to make his monthly payments on his remaining delinquency. His finances are under control and he has made a good-faith effort to repay his creditors. Applicant's indebtedness does not cast doubt on his current reliability, trustworthiness, or good judgment. The security concerns with respect to his financial delinquencies are mitigated. The above 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

