



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



In the matter of: )  
)  
) ISCR Case: 15-02318  
)  
Applicant for Security Clearance )

**Appearances**

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

May 5, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on two debts in the total amount of \$32,371. He has fully resolved one delinquency, and has documented he is making payments under a written agreement on the other delinquency. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 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 November 13, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned me on February 1,

2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 2, 2016, scheduling the hearing for March 3, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, 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 10, 2016. The record was left open for Applicant to submit additional exhibits. Applicant presented additional exhibits on March 30, 2016 and April 28, 2016, marked AE E and AE F. Department Counsel had no objections to AE E and AE F, and they were admitted. The record then closed.

### **Findings of Fact**

Applicant is 52 years old. He served in the Navy for 30 years and achieved the rank of chief warrant officer 4. He successfully held a security clearance while in the Navy, without incident. He currently works for a government contractor. He has been married for 28 years and has three children. (GE 1; Tr. 16-17, 34, 40-41.)

The SOR alleged Applicant was delinquent on two debts in the total amount of \$32,371. In his Answer, Applicant admitted both debts. His debts are documented in the record credit report dated May 8, 2014. (GE 3.) After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact:

Applicant was indebted to a bank on a charged-off credit card in the amount of \$3,722, as alleged in SOR ¶ 1.a. This debt had been delinquent since May 2008. Applicant resolved this debt in full as evidenced by a letter from this creditor. (AE E.)

Applicant was indebted to a bank on a charged-off credit card in the amount of \$28,649, as alleged in SOR ¶ 1.b. This debt had been delinquent since April 2008. Applicant reached a written payment agreement with this creditor in March 2016 to resolve this debt for 12 payments of \$500. He documented that he successfully made the first two payments under this agreement. This debt is being resolved. (AE E; AE F.)

Applicant attributes his delinquencies to a “debt consolidation gone wrong.” (Tr. 15.) His wife had control of his finances while he was deployed and she incurred a large amount of debt. After returning from deployment, he sought to consolidate all of his debt with a credit counseling firm, but these two debts were inadvertently left unresolved. They were then charged off by the creditor and Applicant thought that he was not permitted to pay on charged-off accounts. However, he realized his error and made payments as set out above. There are no delinquent debts on his current credit report. (GE 6; AE B.) He completed a financial counseling class entitled “Saving and Investing.” (AE A.) 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. (AE C; AE D; Tr. 30-34.)

Applicant was awarded the Navy and Marine Corps Commendation Medal (Gold Star in Lieu of Eighth Award) in November 2012. (AE A.) His DD Form 214 shows he has also received the Meritorious Service Medal, three Navy and Marine Corps Achievement Medals, and two Navy Unit Commendations, among many other decorations and citations. (AE E.) His performance appraisals for his work with a government contractor reflect he is an outstanding employee. (AE E.)

### **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 two debts in the total amount of \$32,371. They have been delinquent since 2008. 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 two provide mitigation:

- (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; and
- (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.

Applicant's financial problems occurred while he was deployed. He attempted to resolve them responsibly after he returned, but two of his debts were inadvertently left off his debt resolution plan. While it took him a long time to finally address his remaining two delinquencies, he has recently acted responsibly by addressing them. One debt is fully resolved and he is making payments on the other 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. There are clear indications that his delinquencies are being resolved or are under control. 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.

### **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. While Applicant's actions to resolve his debts came after the hearing, he testified credibly about his understanding that charged-off debts could no longer be repaid. Once he discovered his belief was in error, he took immediate action and contacted his creditors. Given his 30 years of service in the Navy, his history of holding a security clearance without incident, and his recent efforts to resolve his debt, overall, the record evidence leaves me without doubt as to Applicant's present eligibility and suitability for a security clearance. He met his burden to mitigate the security concerns arising under the guideline for 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: FOR APPLICANT

Subparagraphs 1.a and 1.b: 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