



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-04747
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

March 31, 2016

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 59-year-old employee of a defense contractor. He is alleged to be delinquent on 20 debts. One debt was listed on the SOR twice. He resolved two debts, but the other 17 remain unresolved. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 22, 2013, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On July 23, 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.

On August 11, 2015, Applicant answered the SOR (Answer), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) Department Counsel submitted the Government's written case on September 22, 2015, containing six Items.<sup>1</sup> A complete copy of the File of Relevant Material (FORM) was provided to Applicant, 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 signed the document acknowledging receipt of his copy of the FORM on September 25, 2015. He did not respond to the FORM, make any objection to consideration of any contents of the FORM, or request additional time to respond. I received the case assignment on February 4, 2016.

### **Findings of Fact**

Applicant is a 59-year-old employee of a defense contractor. He has worked for his current employer since July 2013. He has been divorced twice, and has four children, ages 40, 38, 35, and 14. He is the custodial parent on his 14-year-old son. (Item 3.)

As listed in the SOR, Applicant was alleged to be delinquent on 20 debts. Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a through 1.r, with clarifications. He denied the debts in SOR ¶¶ 1.s and 1.t. His debts are identified in the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 5; GE 6.) After a thorough and careful review of the pleadings, I make the following findings of fact.

Applicant's debts were caused by 14 months of unemployment, after he was laid off from by his employer of 15 years. He went from earning \$80,000 annually to "trying to survive on unemployment benefits" of \$265 per week (which works out to \$13,780 annually). When he found employment, his salary was "reduced to half of what [he] had been previously able to earn." He indicated that he was in contact with his creditors "to alert them of [his] situation and discuss a path forward with my obligations." However, his unemployment lasted longer than he anticipated, and he was unable to resolve these debts. While he was hired by a Government contractor in 2013, he delayed seeking permanent solutions in settling these debts since then, because his employment was conditioned on a security clearance being granted. (Item 2.)

Applicant admitted he was indebted on a repossessed vehicle in the amount of \$5,942, as alleged in SOR ¶ 1.a. This debt has been delinquent since 2013. It remains unresolved. (Item 5.)

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<sup>1</sup> Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in August 2013. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness.

Applicant admitted he was indebted to a bank in the amount of \$3,164, as alleged in SOR ¶ 1.b. Applicant claimed this debt is the same debt alleged in SOR ¶ 1.l, but failed to produce documentation to substantiate this claim. These debts have been delinquent since 2012 and both remain unresolved. (Item 5; Item 6.)

Applicant admitted he was indebted to a collection agent in the amount of \$3,097, as alleged in SOR ¶ 1.c. Applicant claimed this debt is the same debt alleged in SOR ¶ 1.i, but produced no evidence to support his claim. These debts have been delinquent since 2012 and both remain unresolved. (Item 5.)

Applicant admitted he was indebted to a collection agent in the amount of \$1,242, as alleged in SOR ¶ 1.d. Applicant claimed this debt is the same debt alleged in SOR ¶ 1.h but produced no evidence to support his claim. These debts have been delinquent since 2011 and both remain unresolved. (Item 5.)

Applicant admitted he was indebted to a collection agent in the amount of \$765, as alleged in SOR ¶ 1.e. Applicant claimed this debt is the same debt alleged in SOR ¶ 1.o for \$763, but presented nothing to substantiate his claim. These debts remain unresolved. (Item 5.)

Applicant admitted he was indebted on a delinquent store credit card in the amount of \$555, as alleged in SOR ¶ 1.f. This debt has been delinquent since 2011. It remains unresolved. (Item 5.)

Applicant admitted he was indebted to a collection agent in the amount of \$424, as alleged in SOR ¶ 1.g. Applicant claimed this debt is the same debt alleged in SOR ¶ 1.j, but produced no evidence to support his claim. These debts have been delinquent since 2012 and both remain unresolved. (Item 5.)

Applicant admitted he was indebted to a collection agent in the amount of \$765, as alleged in SOR ¶ 1.k. Applicant claimed this debt is the same debt alleged in SOR ¶ 1.r, but produced no evidence to support his claim. These debts have been delinquent since 2011 and both remain unresolved. (Item 5.)

Applicant admitted he was indebted to a collection agent in an unstated amount, as alleged in SOR ¶ 1.m. Applicant claimed this debt is the same debt alleged in SOR ¶ 1.p in the amount of \$7,460. Applicant's credit reports identify this debt as originating with the creditor identified in ¶ 1.m and placed for collections with the creditor identified in ¶ 1.p. They appear to be the same debt. This debt has been delinquent since 2012 and remains unresolved. (Item 5; Item 6.)

Applicant admitted he was indebted on a delinquent credit card in the amount of \$1,616, as alleged in SOR ¶ 1.n. This debt has been delinquent since 2012. It remains unresolved. (Item 6.)

Applicant admitted he was indebted on a delinquent medical debt in the amount of \$85, as alleged in SOR ¶ 1.q. This debt has been delinquent since 2011. It remains unresolved. (Item 6.)

Applicant denied he was indebted to the United States Internal Revenue Service (IRS) for past-due income taxes for the 2011 tax year in the amount of \$1,100, as alleged in SOR ¶ 1.s. Applicant presented an IRS account transcript with his answer that shows his balance for tax year 2011 is \$0.00. This debt has been resolved. (Item 2.)

Applicant denied he was indebted to the mother of his child for unpaid child support, as alleged in SOR ¶ 1.t. He provided a notarized statement, dated July 27, 2015, from the mother that indicated Applicant “is current on all child support obligations, maintenance, etc.” This debt is resolved. (Item 2.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. 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, administrative judges apply the guidelines 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(c), the entire process is a conscientious scrutiny 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 has a history of financial indebtedness documented by the credit reports in evidence that substantiated all of the allegations. He resolved his IRS debt and his delinquent child-support obligation. He has been unwilling to address his remaining delinquencies, despite his full employment since 2013. The evidence raises security concerns under both of these disqualifying conditions, thereby shifting 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's financial problems are ongoing. He has 17 unresolved delinquent accounts, as identified on the SOR, and has not taken any action to address them. Given his inaction on this debt, he has not demonstrated that future financial problems are unlikely, despite significant savings. AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on his extended unemployment and his reduced salary after finding employment. While these are conditions beyond Applicant's control, he failed to act responsibly under the circumstances, and did not address his remaining debt in a timely manner. AG ¶ 20(b) has not been fully established.

Applicant presented no evidence of financial counseling and failed to show clear indications that his financial problems are being resolved or are under control. Only two debts have been addressed. Neither AG ¶¶ 20(c) nor 20(d) have been fully established.

Applicant provided no documented proof of any disputes with his SOR-listed creditors. AG ¶ 20(e) has not been fully established.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a mature adult and responsible for his choices and financial obligations. He has not acted responsibly with respect to his finances. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Financial Considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.r:	Against Applicant
Subparagraphs 1.s and 1.t:	For 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.

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Jennifer I. Goldstein  
Administrative Judge