



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03909
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: Catie E. Young, Esq.

July 9, 2015

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 36-year-old employee of a defense contractor. He is alleged to be in debt to five creditors in the approximate amount of \$132,942. His home was foreclosed upon in 2013. He is resolving or has resolved all of his delinquencies. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 17, 2014, 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 December 17, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 4,

2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 20, 2015, scheduling the hearing for May 22, 2015. The hearing was convened as scheduled. The Government offered Hearing Exhibits (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through L, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of additional documents. On June 29, 2015, Applicant presented AE M through AE P.<sup>1</sup> Department Counsel had no objections to AE M through AE P and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on June 2, 2015.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. He has worked for his employer since 2007. He has held a Top Secret security clearance since 2008. He is divorced and has no children. (GE 1; AE K; Tr. 53.)

As listed in the SOR, Applicant was alleged to be in debt to five creditors in the approximate amount of \$132,942. Applicant admitted all of the allegations. His debts are identified in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 4; GE 5; GE 6.)

Applicant attributes his financial delinquencies to his divorce. He was financially and emotionally unable to resolve his delinquencies that resulted from the dissolution of his marriage in 2012. He acknowledged he made mistakes with his finances at that time, and is now working to correct them. (Tr. 28-29, 40-45, 55-71.)

Applicant was indebted on a primary mortgage account that was past due in the amount of \$39,000, with a total loan balance of \$390,000, as alleged in SOR ¶ 1.a. He was indebted on second mortgage for the same home, in the amount of \$71,621, as alleged in SOR ¶ 1.b. Applicant purchased his wife's childhood home from his then in-laws in 2006 for \$518,000. He put \$52,000 down toward the home's purchase and financed the rest, through the two mortgages in dispute. Applicant was the only name on the loans because his ex-wife did not have good credit when they married. Both of their names were on the deed. They were current on the mortgages from 2006 to 2011. In 2011 during the divorce proceedings, Applicant's ex-wife was awarded exclusive use and possession of the home. Applicant stopped making the mortgage payments. He acknowledged he made a mistake, but at the time, he could not emotionally justify paying on the home where his ex-wife and her boyfriend were living. The home was foreclosed upon in 2013. It was sold for \$395,000, which satisfied the first mortgage. Applicant's April 2015 credit report reflects the second mortgage as "account paid for less than full balance." Both debts are resolved. (GE 6; AE O; Tr. 28-29, 40-45, 55-71.)

Applicant was indebted on a vehicle loan in the amount of \$12,479, as alleged in SOR ¶ 1.c. This vehicle belonged to Applicant's ex-wife and was purchased in 2011,

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<sup>1</sup> Applicant labeled his additional exhibits AE L through AE O. I have renamed them to avoid having two exhibits named AE L.

during their marriage. Applicant co-signed the loan. His ex-wife made the payments on the vehicle and was assigned physical and financial responsibility for it during the divorce. However, about three months after the divorce, she stopped making payments on it. The vehicle was repossessed in 2013. On May 15, 2015, Applicant reached a payment agreement with this creditor. Applicant made a \$150 payment to this creditor on June 23, 2015, according to the terms of the agreement. This debt is being resolved. (AE L; AE N; Tr. 33-38, 71-75.)

Applicant was indebted on a delinquent credit card account in the amount of \$9,555, as alleged in SOR ¶ 1.d. He stopped making payments on this credit card in 2012, around the time the divorce proceedings were initiated. Applicant recently initiated a monthly repayment agreement with this creditor. He paid \$75 to this creditor on May 15, 2015, and June 15, 2015, in accordance with that agreement. This debt is being resolved. (AE B; AE M; Tr. 27-32, 75-77.)

Applicant was indebted on a delinquent medical account in the amount of \$287, as alleged in SOR ¶ 1.e. He presented a letter from this creditor, dated April 20, 2015, which shows this debt was paid in full. This debt is resolved. (AE A; Tr. 25-26.)

Applicant's budget shows he has approximately \$507 left at the end of the month after meeting his monthly expenses. (AE C.) He has approximately \$3,000 in his savings account. He also has \$14,925 in a 401(k) savings plan. (AE G.) He is current on all of his revolving credit accounts. (GE 6.)

His performance reviews show that Applicant meets his performance objectives. (AE H.) He earned an employment-based award in April 2014 for his "extremely hard" work. (AE I.) He was recently promoted to a higher grade level. (AE I.) His facility security officer noted that Applicant pays "consistent attention to details" when it comes to security policy. Applicant's family, friends, co-workers, and management believe Applicant is honest, responsible, conscientious and diligent. (AE J.)

### **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 was in debt to five creditors in the approximate amount of \$132,942. He became delinquent on these debts in 2012. He also lost his home to foreclosure in 2013. His two mortgages were resolved through foreclosure and his consumer debts remained unaddressed until shortly prior to the hearing, despite his positive monthly remainder. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 fully apply:

- (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
- (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.

Applicant's delinquent debt and foreclosure were due, in part, to irresponsible financial choices made from 2012 to 2015. His choices were emotional choices made out of the angst from his divorce and are unlikely to occur in the future. He has finally recovered emotionally and is taking responsibility for his poor judgment during and after his divorce. He recently resolved one debt and is making payments on two others. He has no liability on his mortgage obligations. He is current on all of his revolving credit accounts. He has a significant monthly surplus. Applicant has demonstrated that his financial problems are resolved. His past financial problems do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(b) 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.

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 respected by his colleagues and performs well at work. No new delinquencies have been incurred. He has sufficient income to satisfy his monthly obligations, including his payment agreements with his remaining creditors.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person concept for Applicant.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

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Jennifer I. Goldstein  
Administrative Judge