



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



In the matter of:	)	
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	)	ISCR Case No. 14-06150
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
*Pro se*

November 23, 2015

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on May 14, 2014. (Government Exhibit 1.) On January 24, 2015,<sup>1</sup> the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

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<sup>1</sup>The SOR had the date of issuance being January 24, 2014. That is incorrect and has been corrected on the SOR to show the proper year.

Applicant answered the SOR in writing on February 12, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 24, 2015. This case was assigned to me on April 30, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2015. I convened the hearing as scheduled on June 17, 2015. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through C, also without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit D on June 24, 2015; Applicant Exhibit E on June 30, 2015; and Applicant Exhibit F on July 7, 2015. The exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 25, 2015. The record closed on July 7, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 47, and married. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant denied both of the allegations in the SOR under this paragraph. He also submitted additional information to support his request for a security clearance.

The SOR listed two delinquent debts, totaling approximately \$16,738. The existence and amount of the debts is supported by credit reports dated May 24, 2014; April 24, 2015; and June 10, 2015. (Government Exhibits 2, 3, and 4.)

The current status of the debts is as follows:

1.a. Applicant denied that he owed \$16,648 for a past-due bank credit card debt. The credit card was used by Applicant in connection with a small business he ran with his wife in the 2002-2008 time frame. The small business had financial issues and eventually closed. Applicant maintains that he always made timely payments on this account, keeping it current, and that it was never in default. (Answer at 1; Tr. 28-30.)

Eventually the payments required by the bank became impossible for Applicant to sustain. He made a payment arrangement with this creditor in August 2012. Applicant submitted documentary evidence showing the initial payment of \$927 made on August 1, 2012, in fulfillment of this agreement. An additional 24 monthly payments of \$396.41 were made, as shown in additional bank records supplied by Applicant. The creditor sent Applicant a letter stating that the settlement had been completed. In addition, in September 2014 the creditor issued Applicant a Form 1099, which indicated that

\$12,752.61 of the debt was cancelled. Applicant properly included this debt forgiveness on his 2014 tax return. This debt is resolved. (Applicant Exhibits D at 5-19, 23, E, and F; Tr. 30-32, 39-47.)

1.b. Applicant denied that he owed \$90 for a past-due dental debt. It appears that the debt was the result of a clerical error by the dental provider, and Applicant only became aware of the debt when interviewed for his security clearance. He submitted a statement from the debt collector indicating that the debt was paid in full after a payment of \$4.35. (Applicant Exhibits C, and D at 24; Tr. 26-28.) This debt is resolved.

Applicant's current financial situation is stable. He is able to pay his monthly debts. (Applicant Exhibit D at 20-22; Tr. 35-39.)

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he made false statements to the Department of Defense during the clearance screening process. Applicant admitted his failure to disclose the existence of the debts described above on his e-QIP, but denied any intentional falsification.

Applicant filled out a Government questionnaire on September 27, 2013. Section 26 of the questionnaire, "Financial Record - Delinquency Involving Routine Accounts," asks:

Other than previously listed, have any of the following happened? **In the past seven (7) years**, you had bills or debts turned over to a collection agency? . . . you had any account or credit card suspended, charged off, or cancelled *for failing to pay as agreed*" (Item 5 at Section 26.) (Bold in original.) (Italics supplied.)

Applicant stated, "No," to these questions. That was not correct, as set forth in detail under Paragraph 1, above.

Applicant argues that he did not intend to mislead the Government in relation to his answers on the questionnaire. With regard to the dental debt for \$90 (subparagraph 1.b), Applicant states that he had no knowledge of that alleged past-due debt until his interview with a Government investigator. (Tr. 34.)

Turning to the \$16,648 debt set forth in subparagraph 1.a, Applicant states that he made a mistake and should have listed the debt. He stated:

I went back and read my application [Government Exhibit 1]. I realized that I had said that I did not have this canceled or charged-off debt. And in fact, the terminology is correct that it is that. And I not understanding exactly what all those terminologies meant didn't know whether if you negotiate with a creditor for a settlement of debt whether that actually exists as something like a - - a mark on your credit record, if you will. (Tr. 33.)

Applicant adamantly stated that he never stopped paying on this account. Therefore, in his opinion, while the account was suspended, it was not suspended for failing to pay as agreed, which is the gravamen of the question. As described above, Applicant provided documentation showing that he had a payment arrangement with this creditor beginning in August 2012, and that he made payments on this account on a regular monthly basis for two years until the payment arrangement was concluded. Government Exhibit 2, the credit report dated May 24, 2014, incorrectly states that the last activity on this account was in September 2010 and that it was a charged-off account.

This particular debt is described in the following way on both of the Government's later credit reports, "Account closed at *consumers request*. Account paid for less than full balance." (Government Exhibits 3 and 4 at entry 14.) (Emphasis supplied.)

Accordingly, Applicant's interpretation of the situation involving his debts was reasonable, is supported by documentation in the record, and may in fact have been correct. I find that he did not intentionally falsify his questionnaire with regard to his financial situation.

## **Mitigation**

Applicant's manager submitted a letter of recommendation. (Applicant Exhibit B.) He has known Applicant for ten years. As part of this very laudatory letter he states, "[Applicant] is one of the most honest and trustworthy individuals I have ever known."

Applicant submitted his last four annual performance reviews. They all show Applicant "Exceeds Job Requirements." (Applicant Exhibit A.)

## **Policies**

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (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 as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on

his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. 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, “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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had two accounts that he had not repaid in full, and were reported to be delinquent on his credit report, at the time the SOR was issued. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. It appears that the majority of this debt was incurred as a result of the downturn in the economy, which affected a family small business run by his wife. Applicant did not try to avoid this situation, but has worked hard to resolve it. As stated, he presented evidence that a payment arrangement was made with his largest creditor, that he made regular payments in accordance with the agreement, and the remaining debt was forgiven by that creditor in 2014. The other debt, which was quite small, was actually the result of a clerical error and Applicant resolved it quickly once informed of it. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. As the DOHA Appeal Board has said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”<sup>2</sup> All of these mitigating conditions apply to the facts of this case. Paragraph 1 is found for Applicant.

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<sup>2</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

As stated above at length, Applicant had a reasonable explanation for his failure to notify the Government of his debts. He had made a payment arrangement and was fulfilling it in accordance with that arrangement. Indeed, the latest credit reports in the record support his explanation. The Government failed to meet its burden on this allegation and it is found for Applicant.

## **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. While Applicant has had financial problems in the past, they have been resolved, and he has the knowledge and ability to avoid such problems in the future. He did not falsify his questionnaire.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation and alleged personal conduct. Accordingly, the evidence supports granting his request for a security clearance.

### **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 through 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

WILFORD H. ROSS  
Administrative Judge