



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



In the matter of:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-26741
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: Pro se

May 19, 2008

**Decision**

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ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

Applicant submitted his Security Clearance Application (SF 86), on March 20, 2006. On January 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial) for 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. Applicant answered the SOR in writing on January 31, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on February 11, 2008, and I received the case assignment on February 25, 2008.

DOHA issued a notice of hearing on February 27, 2008, for a hearing on March 14, 2008, and I convened the hearing as scheduled.

At the hearing, the government offered four exhibits (Exh.) which were admitted in evidence without objection. Applicant submitted six exhibits which were admitted without objection. He and one witness testified on his behalf. DOHA received the transcript of the hearing (Tr.) on March 24, 2008. I granted Applicant's request to keep the record open until April 15, 2008, to submit additional evidence. Two additional documents were received on April 14, 2008, and admitted without objection. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

#### **Notice**

The hearing notice was dated 15 days before the hearing date. I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to the 15 days notice and indicated he was ready to proceed (Tr. 9).

#### **Pleading**

The government conceded that two allegations (SOR ¶ 1.i. and k) are duplicates and withdrew the second (Tr. 7).

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted eleven of the fourteen allegations in the SOR relating to approximately \$11,000 in delinquent debts. He denied the other three allegations. He attached copies of letters dated the same date as his answer (Exh. D) that he sent to several of the creditors questioning the debts or asking for information about them. He also wrote to three credit reporting agencies on March 8, 2008, a week before the hearing, regarding duplicate reports and erroneous reports of debts.

Applicant is a 41-year-old employee of a government contractor working as a logistics specialist supporting Special Forces since January 2006. He held an interim security clearance until this matter arose. He served in the Marine Corps between 1983 and 1991 and was honorably discharged as a corporal. He served in Okinawa and in a NATO group in the Mediterranean. He served in Kuwait during Operation Desert Storm. Between the time of his discharge and his present employment he worked in several jobs as a cook. He was unemployed for three months in 2003. He has some college education in the culinary field. He took a second job one year ago as a restaurant cook

in an effort to earn more and resolve the delinquent debt issues raised in this proceeding.

Applicant has been married twice. The first was in 1985 and he was divorced in 1992. He married again in 1994 and was separated in 2003. He is not divorced from his second wife, but is attempting to do so which is difficult since she lives in another state and he has been unable to have much contact with her. He now lives with his fiancé and they have a three- year-old child. He had medical problems in 2002 and was operated and treated for cancer.

The delinquent debts arose from an automobile repossession, and various other bills for products and services. A summary of the debts and their status based on testimony reveals the following (Tr. 30-48).

1. SOR ¶ 1.a. is for \$5,432 arising from an automobile repossession in 2002. It constitutes the largest of the delinquent debts. One credit report does not now list it but the debt is still owed. The creditor has not been in contact with Applicant and when Applicant obtains a divorce he hopes any remaining issue will be resolved in a financial decree apportioning the debt.

2. SOR ¶ 1.b. Utility bill for \$68 which is unpaid and he is checking on it with the creditor.

3. SOR ¶ 1.c. Satellite dish debt for \$256 was settled for \$200. (Exh. A)

4. SOR ¶ 1.d. Gymn membership debt of over \$2,000 from a one year membership that he could not cancel when he lost a job. Charges have built up and he has been unable to resolve the issue. He was in contact with a credit counselor on this issue but is not now.

5. SOR ¶ 1.e. Telephone bill for \$313 which he believed his wife had paid.

6. SOR ¶ 1.f. Cell phone bill for \$649 and his wife took the phone with her when she they separated.

7. SOR ¶ 1.g. He is unaware of this debt on the credit report for \$804 but wrote to the creditor for information.

8. SOR ¶ 1.h. A debt for \$281 to a bank where he had a checking account. He is unaware of the source of the debt and has written to the bank.

9. SOR ¶ 1.i. Debt to a video store for \$70. He wrote to the company but the letter was returned (Exh. D). He still has an account with the same company.

10. SOR ¶ 1.j. Cable service debt of \$298 but he still has an account with the same company and is unaware of the debt.

11. SOR ¶ 1.k. Duplicate of 1.i. Dismissed from SOR by government.

12. SOR ¶ 1.l. Medical bill for \$561 from hospital where he was treated but was not been billed. He has discussed the debt with the hospital and written to them. He believes it is in error but hospital has not answered letter.

13. SOR ¶ 1.m. Medical debt which he paid in full for \$137 (Exh. B).

14. SOR ¶ 1.n. A medical debt for \$165 which he cannot identify. He has written to the creditor but no response.

15. SOR ¶ 1.o. A dental bill from 2003 which had a balance of \$185 after dental insurance paid the remainder. He believed that his wife had paid the bill. Paid in full on February 1, 2008 (Exh. C).

Thus, he has paid only two of the delinquent debts for \$357 out of the total delinquent debts of \$11,000.

In addition to the above delinquent debts cited in the SOR, Applicant had two other debts on which he offered evidence. The first of these was for outstanding student loans of \$24,000 most of which were consolidated in 2006. He pays \$158 per month to the lender (Tr. 62-63). He also pays an additional \$50 a month to an attorney who is collecting for the portion that was not consolidated. The second related to dispute and claim of over \$1,000 to an apartment complex where he once lived. It was settled for \$185 on February 1, 2008 (Exh. C).

Applicant's annual salary from his principal employment is approximately \$38,000 (Tr. 74). His annual salary from his second job is \$15,000 (Tr. 63). With his second job, he has over \$1,000 a month remaining after expenses and deductions (Tr. 87). He has one automobile which is fully paid (Tr. 88). His fiancé owns the home they live in and he pays the mortgage.

Applicant is highly regarded by his government contract employer in his evaluation and letter of recommendation from his supervisor. (Exh. F and G). His

supervisor at his second job testified favorably about his skills and dedication to the job (Tr. 78-85).

## **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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. 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security 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 Executive Order 10865 provides that 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 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 accumulated the delinquent debts cited in the SOR and was unable or unwilling to pay the obligations for several years. Thus, the evidence clearly raises these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20 (a), the disqualifying condition 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.” Most of Applicant’s financial problems arose in the past ten years when he had marital problems and low paying jobs in the food service industry. While they have been extant for a period of time, he has held a job for over two years which pays a reasonable salary and a second job for over a year that provides supplemental income so he could have made more progress during that time to pay or resolve more of the debts.

Under AG ¶ 20 (b), the security concern also may be mitigating 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.” As noted above, some of the financial problems arose from his medical problems and periods of reduced income. He has paid only two of the 15 debts listed in the SOR in the past year. The two debts total only \$337 out of the \$11,000 listed. While some of the debts may not be his responsibility, the issues of responsibility have not be resolved. His efforts to communicate with creditors and the credit agencies was tardy at best. While some of the debts may have arisen for causes

beyond his control, his actions since they became known to him have not been responsible.

Under AG ¶ 20 (c) mitigation by applied if the person has received counseling or is receiving it and the problem has been resolved or is under control. Applicant received some counseling for the second largest debt (SOR ¶ 1.d.) but dropped it before resolution of the debt so this condition is inapplicable.

AG ¶ 20 (d) is another mitigating condition that applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary for mitigation to apply that all of the delinquent debts be resolved, it is necessary that a significant portion of this many debts be settled or paid. I believe this test has not been met. He should have taken steps earlier to resolve more of the debts. He has resolved two of the debts that he has been able to identify and authenticate. He has only recently and in anticipation of the hearing communicated in writing or orally with the other creditors to ascertain the source of the debts. Thus, I conclude that the mitigating conditions do not 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 the 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) 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 as well as the above nine factors in light of all the facts and circumstances surrounding this case. Applicant was employed in the food service for 15 years at low wages during which time he married twice, was divorced once and separated once. He also had some serious health issues. Although the medical expenses do not seem to have added much to his financial problems, they complicated his ability to resolve them. The separation from his

second wife whom he believed was paying the bills was a major element in creating his financial situation.

Although, he has taken some steps to resolve the delinquent debts and is in a position to do so now with his second job, at this time there has been an insufficient showing of timely responsible action to justify application of the mitigating conditions or the whole person concept. Applicant has not mitigated the security concerns arising from these financial considerations and it is premature to grant a security clearance.

### **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**

Subparagraph 1.a.: Against Applicant  
Subparagraph 1.b.: Against Applicant  
Subparagraph 1.c.: Against Applicant  
Subparagraph 1.d.: Against Applicant  
Subparagraph 1.e.: Against Applicant  
Subparagraph 1.f.: Against Applicant  
Subparagraph 1.g.: Against Applicant  
Subparagraph 1.h.: Against Applicant  
Subparagraph 1.i.: Against Applicant  
Subparagraph 1.j.: Against Applicant  
Subparagraph 1.k.: Against Applicant  
Subparagraph 1.l.: Against Applicant  
Subparagraph 1.m.: Against Applicant  
Subparagraph 1.n.: Against Applicant  
Subparagraph 1.o.: Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Access to classified information is denied.

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CHARLES D. ABLARD  
Administrative Judge