

KEYWORD: Financial

DIGEST: Applicant is a 46-year-old employee of a defense contractor. He still owes a significant number and amount of delinquent debts that resulted from his failed attempt to start a restaurant business. Although he has resumed stable employment and is working to pay off his debts, it will be several years before his financial situation is solvent. Security concerns raised by financial considerations were not mitigated. Clearance is denied.

CASENO: 06-23854.h1

DATE: 09/25/2007

DATE: September 25, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-23854
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
DAVID M. WHITE**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 46-year-old employee of a defense contractor. He still owes a significant number and amount of delinquent debts that resulted from his failed attempt to start a restaurant business. Although he has resumed stable employment and is working to pay off his debts, it will be several years before his financial situation is solvent. Security concerns raised by financial considerations were not mitigated. Clearance is denied.

## STATEMENT OF THE CASE

\_\_\_\_\_ Applicant applied for a security clearance on February 7, 2006, in conjunction with his employment by a defense contractor as a project management specialist. On May 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended. The SOR detailed reasons, under Guideline F (Financial Considerations), of the revised Adjudicative Guidelines (AG),<sup>1</sup> why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations on a notarized, annotated copy of the SOR, dated July 3, 2007, admitting the truth of some of the allegations and denying others, and elected to have a hearing before an administrative judge. The case was then assigned to me on August 7, 2007. A Notice of Hearing was issued on August 9, 2007, and the hearing was held as scheduled on August 28, 2007. During the hearing, the Government submitted a motion to amend the SOR by correcting certain obvious typographical errors. This motion was granted at the hearing, without objection, and Department Counsel made pen and ink corrections to the original SOR. The Government offered six exhibits that were marked as Government Exhibits (GE) 1 through 6, and admitted without objection. Applicant testified, but offered no documentary evidence or exhibits. DOHA received the hearing transcript (Tr) on September 5, 2007.

## FINDINGS OF FACT

Applicant formally admitted the truth of the factual allegations set forth in SOR ¶¶ 1.h, 1.i, 1.k, 1.m, 1.n, and 1.o, pertaining to financial considerations under AG F. Those admissions are incorporated herein as findings of fact. He denied the remaining allegations under AG F in his response to the SOR. After a complete and thorough review of all the evidence in the record, and upon due consideration of same, I make the following findings of fact:

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<sup>1</sup>*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (August 2006)* as implemented by Under Secretary of Defense Memorandum of Aug. 30, 2006 for use in adjudication of all cases in which an SOR had not been issued by Sept 1, 2006. These revised AG replaced those found in enclosure 2 of the Directive, which is pending revision to incorporate them. Copies of the applicable AG were provided to Applicant with the SOR.

Applicant is a 46-year-old employee of a defense contractor seeking to obtain a security clearance for the first time.<sup>2</sup> He is married, for the second time, with seven children ranging from a son who just finished undergraduate studies at Columbia to a newborn. He has two other children in college. His wife does not work because daycare for their three pre-school children would cost more than she can earn. He initially came to the United States from Nigeria in 1982 for college and graduate school, and became a naturalized citizen in 1993.

Applicant formerly lived in a city whose economy depends heavily on high-technology corporations. He had a good job with a large corporation and good credit until he decided to open a restaurant business. In mid 2003, he quit his job to work in the restaurant full time. Unfortunately, an economic downturn caused massive layoffs and his business began to fail about six months after it opened. Applicant stopped paying personal bills and incurred additional debt, both commercial and to friends, trying to keep the business afloat. He took a consulting job to generate extra income, but finally realized the business could not be saved. In April 2005, he relocated and started his current employment. He now makes \$84,000 per year and is working to pay off some of his delinquent debts. He is current on his rent and car payments, and is not incurring additional delinquent debt.<sup>3</sup>

Applicant admitted to owing \$11,071 in delinquent debts, as alleged in SOR ¶¶ 1.h, 1.i, 1.k, 1.m, 1.n, and 1.o.<sup>4</sup> He further admitted that he most probably owes the \$1,349 delinquent debt alleged in ¶ 1.f, but denied it because he is not sure which debt that is.<sup>5</sup> He also admitted that he owes the \$9,427 debt placed for collections as alleged in ¶ 1.g, but denied that it is delinquent since he is making regular payments of \$102 per month under a repayment plan agreement with the creditor.<sup>6</sup> Thus, the total SOR-alleged debt that Applicant admittedly still owes is \$21,847. In addition, he owes an estimated \$12,000 to \$15,000 to close friends who informally lent him more than \$25,000 to help keep his family going while he tried to save his restaurant business.<sup>7</sup>

SOR ¶¶ 1.a and 1.b alleged 18 delinquent medical debts, totaling \$4,202. He does not intend to pay these debts, testifying that they are overcharges by the medical providers. He said his insurance paid their maximum allowable amounts and he paid his deductibles and co-pays, but the providers wanted more than his insurance would allow and billed him for the difference. He does

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<sup>2</sup>GE 1 (e-QIP, dated Feb. 7, 2006) at 6, 11-12, 37.

<sup>3</sup>Tr at 52-55.

<sup>4</sup>See also, GE 3 (credit bureau report (CBR) dated Jul 18, 2007); GE 4 (CBR dated May 11, 2007); GE 5 (CBR dated Dec. 12, 2006; and GE 6 (CBR dated Mar. 8, 2006) documenting these debts, as well as those debts Applicant disputed for reasons discussed below. The “dispute” noted in his response to the SOR, concerning the ¶ 1.h debt, was with the date rather than the amount due or its delinquent status. Tr at 43-44. (Note: the transcript incorrectly reads, “debts” on page 43, lines 11 and 13, when Applicant used the word, “dates.”)

<sup>5</sup>Tr at 85-86, 99-100.

<sup>6</sup>Tr at 31, 53; GE 2 (Interrogatories) at attachment 8.

<sup>7</sup>Tr at 83.

not feel he owes these debts, but they are not removed from his CBRs because the creditors documented valid claims when he disputed them.<sup>8</sup>

The debts alleged in SOR ¶¶ 1.c, 1.d, 1.j, and 1.l, totaling only \$660, involve three close-out utility bills and one apartment cleaning fee claimed by the creditors after Applicant moved various times. He has disputed owing each of them, but decided it is not worth it to return to the various locations to fight them in court. He does not plan to pay them and, other than reporting them to the credit bureaus, none of the creditors are actively seeking payment.<sup>9</sup>

Applicant fully resolved the \$7,383 delinquent debt alleged in SOR ¶ 1.e in 2005.<sup>10</sup> He consulted a debt consolidation service, but calculated that it would merely cost him significant additional interest and fees to enter their repayment plan. He has refused advice to file for bankruptcy, as he considers that dishonorable and intends to pay his debts when he can. His approach to debt repayment is to save enough money to approach his creditors, one at a time, and negotiate a figure at which they are willing to settle the debt in full. He accomplished this with some of his creditors. In July 2006, he decided to start paying down his informal debts to friends, with available funds at the rate of at least \$1,000 per month.<sup>11</sup> At this rate it will be at least another year before they are repaid, although he will have an additional \$650 per month available when his current auto lease expires next January. He expects he will not be able to repay all of his delinquencies until late 2009 at the earliest.<sup>12</sup>

## POLICIES

The revised AG that replaced Enclosure 2 of the Directive set forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the AG are divided into disqualifying conditions (DC) that may raise security concerns, and mitigating conditions (MC) that may reduce or negate security concerns. Applicable DCs and MCs must be considered in deciding whether to grant, continue, deny or revoke an individual's eligibility for access to classified information. Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, under Guideline F (Financial Considerations), are set forth and discussed in the conclusions section below.

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are intended to be applied in conjunction with the factors set forth in the Adjudicative Process provision

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<sup>8</sup>Tr at 34-36, 60-64.

<sup>9</sup>Tr at 36-37, 44-47, 65, 70-73.

<sup>10</sup>GE 2 at attachments 2 through 4; GE 3 at 4 (item number six); Tr at 37-41.

<sup>11</sup>Tr at 29-32, 48-50, 75-78.

<sup>12</sup>Tr at 52-55.

of the Directive,<sup>13</sup> to assist the administrative judge in reaching fair and impartial, common sense decisions.

The entire decision-making process is a conscientious scrutiny of a number of variables known as the “whole person concept.” All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider, in addition to the applicable guidelines, are: (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.

Protection of the national security is the paramount consideration, so the final decision in each case must be arrived at by applying the standard that issuance of a clearance must be clearly consistent with the interests of national security. Any doubt as to whether access to classified information is clearly consistent with national security must be resolved in favor of the national security.<sup>14</sup> 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.

In the decision-making process, facts must be established by “substantial evidence.”<sup>15</sup> The burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. “Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.”<sup>16</sup> “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 [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance

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<sup>13</sup>AG ¶ 2.

<sup>14</sup>AG ¶¶ 2(b), 2(c).

<sup>15</sup>“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>16</sup>Directive ¶ E3.1.14.

decision.”<sup>17</sup> Once it has met its initial burden of production, the burden of persuasion (including any burden to disprove a mitigating condition) never shifts to the government.<sup>18</sup>

A person applying for access to classified information seeks to enter a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an 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 specifically provides that any adverse industrial security clearance decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned,” so the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

As set forth in the Directive, every personnel security determination must be a fair and impartial overall common sense decision based on all available evidence, both favorable and unfavorable. The decision must be arrived at by applying the standard that the grant or continuance of a security clearance or access to classified information is clearly consistent with the interests of national security.

### **Guideline F: Financial Considerations**

Financial considerations raise security concerns when a person has significant delinquent debts. “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.”<sup>19</sup>

I have considered all of the Financial Considerations Disqualifying Conditions (FC DC), and find that FC DC 19(a) (“inability or unwillingness to satisfy debts”) and FC DC 19(c) (“a history of not meeting financial obligations”) apply to Applicant’s situation and raise security concerns. He admittedly owes almost \$22,000 in SOR-alleged delinquent debts, which he does not intend to begin

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<sup>17</sup>Directive ¶ E3.1.15.

<sup>18</sup>ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005); “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

<sup>19</sup>AG ¶ 18.

repaying for at least a year, while he repays \$12,000 to \$15,000 in informal loans from friends. He disputes owing, and does not intend to repay, another \$4,860 in medical, utility and apartment cleaning bills that are sufficiently legitimate to remain on his credit report after he challenged them. He did not meet his burden of proving that these bills are invalid. No other FC DC applies.

I have considered all of the Financial Considerations Mitigating Conditions (FC MC) that might apply to Applicant's inability to meet, and history of not meeting, his financial obligations. FC MC 20(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") does not apply since his delinquent indebtedness continues to date.

FC MC 20(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") applies to some degree. Applicant chose to leave secure employment to begin a restaurant business. This business failed, and he chose to continue trying to make it work by allowing other debts to go unpaid. When he realized he could not save the business, he again obtained stable employment and is working to reduce his debts rather than declaring bankruptcy and avoiding them. However, the pressures resulting from the delinquent indebtedness and a bad credit rating remain.

FC MC 20(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") was not established by Applicant. He chose not to follow a debt consolidation program, did not follow the advice of counsellors, and his financial difficulties are not yet at the point of being resolved or under control.

FC MC 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") also does not apply to mitigate security concerns arising from his financial situation. He showed that he is making regular payments toward one major delinquent debt, and claimed without corroboration that he was making significant monthly payments toward debts he owes to friends from informal loans. He does not intend to resume paying his SOR-listed debts until about a year from now, and does not intend to pay a significant portion of that debt at all.

Applicant disputes the legitimacy of some of his past-due debts, but presented no documentation to substantiate the basis of the disputes, or actions to resolve them. Accordingly, FC MC 20(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") does not mitigate security concerns, even with respect to the portion of the indebtedness he disputes. No unexplained affluence concerns were raised, so FC MC 20(f) has no bearing in this case.

### **Whole Person Analysis**

I have considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. The nature, extent, and seriousness of his delinquent indebtedness may be coming under control, and is not getting worse. However, his financial situation remains tenuous, with large ongoing family obligations and significant off-the-books debt in addition to that listed in the SOR. Applicant is a mature, educated adult professional who took a risk starting

a business that failed, and offered no reason he should not be considered accountable for his voluntary actions. He has secured good employment and is repaying debts as he can, which is some evidence of rehabilitation or other permanent behavioral changes. The evidence shows that continuation of these problems is highly probable over the next few years, although he is resolving the debts as quickly and responsibly as he is able to do. Accordingly, I do not find that Applicant has mitigated the security concerns raised by the financial considerations of his current situation. With continued efforts, he may resolve and mitigate these concerns in a few years, but it is not clearly in the interest of national security to grant him access to classified material right now.

### **FORMAL FINDINGS**

Formal Findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 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:	For 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

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

David M. White  
Administrative Judge