

DATE: December 11, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 04-11154
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant incurred approximately \$50,572 in delinquent debt, including many charged off collection accounts and student loans. He did not provide any documentation concerning his payment arrangements in a repayment plan to his creditors. He has not mitigated the security concerns raised under the financial considerations guideline. Applicant's eligibility for a security clearance is denied.

STATEMENT OF THE CASE

On February 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F (Financial Considerations) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On April 2, 2007, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on September 5, 2007. Applicant received a complete file of relevant material (FORM) on September 8, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case.² Applicant did not submit additional information by October 8, 2007. The case was assigned to me on November 30, 2007.

FINDINGS OF FACT

Applicant admitted allegations in subparagraphs 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.m, 1.n, and 1.o, in his SOR response under Guideline F. The admissions are incorporated as findings of fact. He denied allegations in subparagraphs 1.a, 1.h, 1.i, 1.j, 1.k, 1.l, 1.p, 1.q, 1.r, 1.s, 1.t, 1.u, 1.v, 1.w, 1.x, 1.y, 1.z, and 1.aa because the accounts were paid or he had a plan to pay them on a monthly basis³. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a defense contractor. After he graduated from high school, he entered the U.S. Army and served from 1991 until 1998. He is divorced with two children. He has worked for his current employer since August 2002.⁴ On October 22, 2004, he completed his security clearance (SF 86) application.⁵

Applicant was granted a secret level security clearance in 1993. He received an honorable discharge from the military in 1998. From 1995 until approximately 2004, he attended community

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²The government submitted ten items in support of its contentions.

³Item 2 (Applicant's answer with attachments, dated April 2, 2007).

⁴Item 4 (Application for Security Clearance (SF 86), October 22, 2004).

⁵*Id.*

college classes.⁶ As a result he has student loans which he paid on as agreed until 2003. However, his 2007 credit reports list the loans in default.⁷

Applicant divorced in 1997 as a result of financial difficulties encountered in the marriage. His military pay could not support his wife and child. He used credit cards for loans and incurred much debt. He also could not pay on his vehicle loan and the car was eventually repossessed. His brother died during this time and Applicant paid for his funeral and burial. He also began to care for his parents financially.⁸

After his discharge from the military, Applicant worked as a network administrator for approximately two years. He then worked in a variety of positions over the years. Twice he was terminated due to downsizing. These circumstances drained his savings and caused late payments on his bills.⁹

Applicant's debts in the SOR total approximately \$50,904. There are numerous delinquent consumer accounts from the period 2002 until the present. In 2003, Applicant entered a credit counseling program, and entered a debt management program on July 8, 2003. However, there is no evidence of payments having been made to the debt management company.¹⁰

In April 2007, Applicant entered another repayment plan and received more financial guidance. However, he did not like their business practices and stopped using the program by October 2007. He claims his student loans are not in default. Applicant plans to enroll in another credit consolidation program to pay off his debts.¹¹

He earned approximately \$3,900 net per month working a regular schedule in 2003. This information was not updated. In 2003, he reported a -\$37 net remainder for the month.¹²

The current status of Applicant's alleged debts listed in the SOR is as follows:

⁶*Id.*

⁷Item 10 (Credit Bureau Report, dated August 30, 2007).

⁸Item 5 (Applicant Statement, dated 2005).

⁹*Id.* at 5.

¹⁰Item 6 (AFS Repayment Schedule 2003).

¹¹ Letter from Applicant dated October 30, 2007 (file).

¹² Personal Financial Statement dated July 11, 2003.

SOR ¶	Type of Account/Amount	Status	Evidence
1.a	Judgment \$962	Paid/garnishment	Item 4 at 9. ¹³
1.b	Collection account \$3,609	Unpaid	Item 10
1.c	Collection account \$565	Unpaid	Item 10
1.d	Collection account \$713	Unpaid	Item 10
1.e	Collection account \$568	Unpaid	Item 10
1.f	Collection account \$990	Unpaid	Item 10
1.g	Charge off \$529	Unpaid	Item 10
1.h-1.k	Student loans \$16,339	Collection	Item 10
1.l	Collection account \$1,199	Unpaid	Item 10
1.m	Phone account \$1,537	Unpaid	Item 10
1.n	Collection account \$781	Unpaid	Item 10
1.o.	Collection account \$2,088	Unpaid	Item 10
1.p-1.y	Past due/ Sallie Mae \$8,413	Collection	Item 10
1.z	Charge off \$11,056	Unpaid	Item 10
1.aa	Charge off \$1,555	Unpaid	Item 10

Applicant acknowledges his financial mistakes in the past. He has repeatedly attempted to consolidate his debts into a loan repayment program. He stated that he intends to pay his creditors. However, he has no structured plan at this time and has provided no documentation of any payment records for the last few years.

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹⁴ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

¹³This judgment is for child support obligation from 1999. In his 2004 security application, Applicant answered question 34 concerning the wage garnishment for the child support judgment.

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”¹⁵ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁶ An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.¹⁷

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹⁸ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹⁹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²⁰ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²¹ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

¹⁵ Directive, ¶ E2.2.1.

¹⁶ Directive, Revised Adjudicative Guidelines (AG) ¶2 (a)(1)-(9).

¹⁷ *Id.*

¹⁸ Directive, ¶ E3.1.14.

¹⁹ Directive, ¶ E3.1.15.

²⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²¹ Directive, ¶ E2.2.2.

Guideline F (Financial Considerations) The Concern: *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.*²²

In this matter, the government provided substantial evidence that Applicant accrued delinquent debts with an approximate total balance of \$50,904. He admits they are still outstanding debts except for student loans. His 2007 credit report confirms his alleged debts from the SOR. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and FC DC AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Condition (FC MC) AG ¶ 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*). It does not apply because Applicant has many outstanding debts and none are in a repayment plan despite his repeated promises since 2003.

Applicant's debt has been with him for several years. His divorce occurred in 1997 and he did have financial difficulties as a result. However, he still has substantial debts and despite his claim that he had a repayment schedule in 2004, he has no record of any payments. He has not shown that he acted responsibly under the circumstances to support the FC MC AG ¶ 20(b) (*the conditions that resulted in the behavior 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*).

I have considered the remaining mitigating conditions. FC MC AG ¶ 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 under control*) partially applies in this case. FC MC AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. FC MC AG ¶ 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 apply.

Applicant has received financial counseling and developed a structured plan to resolve these debts in 2003 and again in 2007. However, he stopped using the credit consolidation. He did not submit any information on a new plan. He also did not have any documented payments to any of the consolidation companies. The record is devoid of any evidence that Applicant has paid any of the debts. There are no clear indications that the financial problem is being resolved or is under control. His promises to pay in the future do not mitigate his debts. His credit reports reflect inactive payments for several years. He has a stable income. But he does not have a solid plan or the determination to resolve his debts despite his many promises to do so.

²²AG ¶ 18.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant was honorably discharged from the U.S. Army. His inability to stay on his repayment plan was not explained. He began another plan in April 2007 but decided it was not appropriate by October 2007. He has not made good faith efforts to resolve his delinquent debts. His steady income and his financial counseling has not resulted in resolution of his debts. He has not presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security determination. Applicant has not mitigated the government's concerns under Guideline F. It is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

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:	For Applicant
Subparagraph 1.b-1.aa:	Against Applicant

DECISION

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

Noreen A. Lynch
Administrative Judge