



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



In the matter of: )  
 )  
----- ) ISCR Case No. 06-20282  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 23, 2009

**Decision**

HOWE, Philip S., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 28, 2005. On August 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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's receipt for the SOR is dated August 14, 2008. He answered the SOR in writing on August 22, 2008, and requested his case be decided on the written record in lieu of a hearing.

On November 7, 2008, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on November 13, 2008. Applicant did not file a response to the FORM within the 30 day time allowed that would have expired on December 14, 2008. I received the case assignment on January 22, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, dated August 22, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.c of the SOR, with explanations.

Applicant is 37 years old, divorced, and works for a defense contractor as a computer technician. He is a veteran and received an honorable discharge. His SF 86 does not show any periods of unemployment between 1998 and the present time which significantly would have decreased his income in that time period. (Item 5)

Applicant admits three delinquent debts totaling \$24,517. First, Applicant owes \$162 to a bank on a credit card debt. He closed this account in 2001. This debt has not been paid, except he submitted proof of payment of \$57 in April 2008 on the credit card debt, but no further proof of any payments. (Items 5-10)

Applicant also admits he owes \$23,380 to a bank on a car loan debt. He borrowed \$27,000 to purchase the car in September 2004, and the monthly payments were \$685. He allowed this vehicle to be repossessed in 2005 after he could no longer make the payments. This debt has not been paid. (Items 5-10)

Finally, Applicant also admits he owes \$975 on a judgment for unpaid rent. His former roommate is also liable on this debt. Applicant has not paid this delinquent debt. (Items 5-10)

### **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, the administrative judge applies the guidelines 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.

Directive ¶ E3.1.14 requires the Government to 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 and has the ultimate burden of persuasion to obtain 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. Since 2002 Applicant accumulated substantial delinquent debt (\$24,517) in only three debts that he has not paid or resolved. The evidence is sufficient to raise these potentially disqualifying conditions..

AG ¶ 20 of the guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Those mitigating conditions are:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and,

(f) the affluence resulted from a legal source of income.

The burden of proof is on him to show that the mitigating conditions should apply to him. He failed in this burden. Examining each of the mitigating conditions, Applicant's debts are current obligations, was not infrequent, and Applicant did not explain any circumstances which were unlikely to recur, so ¶ 20 (a) does not apply. Applicant did not explain that the conditions which caused his financial problems were beyond his control, so ¶ 20 (b) does not apply. There is no evidence of any counseling undertaken by Applicant, so ¶ 20 (c) does not apply. There are no good-faith efforts shown to repay these debts, so ¶ 20 (d) does not apply. Applicant has not stated any reasonable basis for disputing these debts. In fact, Applicant admitted the three debts, so ¶ 20 (e) does

not apply. Finally, there is no affluence shown by Applicant, and ¶ 20 (f) cannot apply. None of the mitigating conditions are factors for consideration in this case.

Applicant does not explain his inability or inaction over the past few years to repay these three debts. He has not paid them, and offers no reasonable, good-faith explanation as to why he has not resolved the debts listed in the SOR.

### **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) 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. Applicant is 37-years old and works for a Federal contractor. He accumulated three debts over the past several years, but does not propose any action to repay these debts. He had three years to repay the car loan. The two smaller debts could have been repaid easily within the past two years, but no such repayment has been taken. (See AG ¶ 2(a)(4).) Applicant does not explain what plans he has to avoid such problems in the future. (See AG ¶ 2(a)(2).) Applicant provided no information concerning efforts to repay the debts or behavioral changes to remedy the situation (See AG ¶ 2(a)(6).) The potential for coercion, exploitation or duress exists because of the size of the debt, which will affect his credit ratings, thereby causing him to take advantage of any method to extricate his finances from this predicament, including coercive methods by other persons. (See AG ¶ 2(a)(8).) Applicant voluntarily entered into these debts, and it is likely he will continue in his refusal to repay them based on the evidence in this record. (See AG ¶ 2(a)(5) and (9).)

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant did not mitigate the security concerns arising from his financial considerations.

### **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

### **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. Eligibility for access to classified information is denied.

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PHILIP S. HOWE  
Administrative Judge