



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



In the matter of:	)	
	)	
-----, -----	)	ISCR Case No. 07-01752
SSN: --- - - - -	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 16, 2008

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on January 13, 2006. On August 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant.<sup>1</sup> 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 acknowledged receipt of the SOR on August 27, 2007.<sup>2</sup> He answered the SOR in writing on September 21, 2007, and requested that his case be decided by

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<sup>1</sup>Item 1.

<sup>2</sup>Item 3.

an Administrative Judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on October 22, 2007. A complete copy of the file of relevant material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of his copy of the FORM on October 30, 2007, and returned it to DOHA. He provided no further response to the FORM within the 30-day period he was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on December 13, 2007. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 42-year-old employee of a defense contractor. From March 1984 to March 2004, he served on active duty in the U.S. Navy, retiring at pay grade E-6. He is married, with one child living at home and another who lives with his former wife. His personal financial statement, dated April 5, 2007, reflects about \$73,000 in equity in his home and \$2,400 in monthly surplus of family income over expenses.<sup>5</sup>

In his Answer to the SOR, dated September 21, 2007, Applicant admitted the factual allegations in ¶¶ 1.f, 1.g, and 1.i of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a through 1.e, and 1.h of the SOR. He provided additional explanations to support his denials concerning most of those allegations.

The three delinquent debts alleged in SOR ¶¶ 1.a, 1.d, and 1.e involved credit card balances with two retailers and a bank that were charged-off between 2001 and 2003, while Applicant was still in the Navy. He does not deny that he owed the original creditors these amounts. In fact, he listed two of these three accounts as delinquencies in response to question 28a on his security clearance application.<sup>6</sup> In his SOR response, he acknowledges the existence of the original debts, but claims that the absence of written contracts with the debt collection services to whom the debts were assigned absolves him of any duty to pay them.<sup>7</sup> The total amount of these three debts is \$11,312.

Applicant denied owing the delinquent cell phone debt alleged in ¶ 1.b, without any explanation. This \$476 debt appears on all three credit bureau reports (CBRs) in

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<sup>3</sup>Item 4.

<sup>4</sup>The government submitted eight items in support of the allegations.

<sup>5</sup>Item 6 at 4.

<sup>6</sup>Item 5 at 35-36 of 37.

<sup>7</sup>Item 4 at 3.

the FORM.<sup>8</sup> This account first became delinquent in August 2001, and was assigned for collection in March 2005. The three delinquent debts, alleged in SOR ¶¶ 1.f, 1.g, and 1.i, to which Applicant admitted, total \$292 and comprise two electric bills and a medical co-pay. All three also became delinquent while Applicant was serving in the Navy. Applicant provided no evidence of payment or other resolution concerning any of these debts.

Applicant stated that he paid the \$38 cable-service bill alleged in SOR ¶ 1.c. He did not provide proof of payment, but the debt does not appear on either of the two 2007 CBRs in the FORM, which is consistent with his claim. He also denied the \$38 delinquent natural gas bill alleged in SOR ¶ 1.h, explaining that he did not live in the state at the time the debt allegedly arose in August 2003. The evidence supports this denial, since he was living in another state from September 2000 through January 2004 during his final tour of naval duty.<sup>9</sup>

### **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,

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<sup>8</sup>Item 6 at 12; Item 7 at 1; Item 8 at 6.

<sup>9</sup>Item 5 at 9 of 37; Item 6 at 11; Item 8 at 12.

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. Section 7 of Executive Order 10865 provides that “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.”

A person who applies for access to classified information seeks to enter 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.

## **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 some delinquent debt during his final years of active naval service, was apparently unable to pay some obligations for a period of time, and has been unwilling to repay significant debts after becoming able to do so. Excluding the debts alleged in SOR ¶¶ 1.c, and 1.h, which were not established, Applicant demonstrated no effort to resolve any of the remaining \$12,080 of proven delinquent debt. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters.

The guideline includes several 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." Applicant's financial issues first arose between about 2000 and 2002, while he was in the Navy. Since 2004, his combined military retirement pay and other family income has been sufficient to repay these debts. However, he has not done so. He has not incurred any recent additional delinquencies, but the old debts remain unpaid to date. His disregard of these financial obligations is ongoing, and continues to raise concerns about his current reliability, trustworthiness, or good judgment. The evidence does not support this potentially mitigating condition.

Under AG ¶ 20(b), it 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, even if some of the financial problems arose from his former inability to pay all his bills from his Navy pay, his more recent employment generated sufficient funds to permit resolution of his outstanding obligations. He chose not to act responsibly in identifying and resolving these debts. I find this potentially mitigating condition is not supported as a factor for consideration in this case.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant neither asserted nor provided evidence of either of these conditions, except with respect to the \$38 debt alleged in SOR ¶ 1.c. I conclude these potentially mitigating conditions do not apply.

Applicant has the current means to address and resolve the delinquent debts established by the Government. He has neither done so, nor expressed any intention to do so, even after receiving notice of the security concerns raised by these issues. This does not support an inference that he is now financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. It does, however, indicate a lack of judgment and unwillingness to abide by rules and regulations, thereby raising substantial questions about his reliability, trustworthiness, and ability to safeguard classified information.

### **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 in light of all the facts and circumstances surrounding this case. When these financial problems arose, Applicant was in the final years of a twenty-year naval career. He provided no information to show that any of these debts arose due to circumstances largely beyond his control. Applicant has secured lucrative employment for the past several years, with the means to resolve his delinquent debts should he choose to do so. He has chosen not to resolve them without valid justification. There is no evidence of rehabilitation or permanent behavioral change. While risk of coercion or duress is not significant, his ongoing disregard of lawful obligations, especially after receiving notice of the security concerns raised thereby, creates continuing doubt about his trustworthiness and reliability. He offered no other evidence to mitigate these concerns.

Overall, the record evidence creates substantial doubt as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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.

DAVID M. WHITE  
Administrative Judge