



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-04373

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel

For Applicant: Pro se

March 26, 2008

**Decision**

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 Applications (SF 86), on April 12, 2005, and September 27, 2005. On October 19, 2007, 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, 1990), 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 December 5, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on December 17, 2007, and I received the case assignment on December 20, 2007.

DOHA issued a notice of hearing on January 14, 2008, for a hearing on January 31, 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 five exhibits which were admitted without objection. He and one witness testified on his behalf. DOHA received the transcript of the hearing (Tr.) on February 14, 2008. I granted Applicant's request to keep the record open until March 14, 2008, to submit additional evidence. Two additional documents were received on February 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. 10).

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted twelve of the sixteen allegations in the SOR relating to approximately \$29,000 in delinquent debts. He denied the other four allegations.

Applicant is a 32-year-old employee of a government contractor working as a propellant mechanic since March 2005. He supervises ten people and has never held a security clearance. He was married in 1997 and he and his wife bought a home and did not budget wisely. He was injured soon thereafter and was out of work for nine months. Their debts continued to grow and he was laid off from his former job in 2003 and took a low paying hourly job thereafter. He is now fully employed and earning more than he did with his two former employers.

Applicant is well regarded by his present employer and his former employers for his skill and dedication (Exhs. A, B, and F, and Tr. 62-65). He also has several excellent character references from people who know him well (Exhs. C, D, and E). His wife and he are expecting their first child after several years of working with a fertility clinic. They acquired another home in 2004 from a friend when they were unable to obtain financing.

The delinquent debts arose from two automobile repossessions, credit cards used for household and trade expenses, and medical bills. A summary of the debts and their status based on testimony reveals the following (Tr. 30-48).

1. The two automobile repossessions constitute the largest of the delinquent debts (SOR ¶¶ 1.b. and j. for \$12,777 and \$5,857) which occurred in 1997 and are unresolved but probably written off by the creditors.

2. There are five credit card debts used for living expenses listed on the SOR but there are two duplicates which he denied in his answer (SOR ¶¶ 1.a. and g, and e. and f.). Thus, these four allegations are for only two debts of \$949 and \$793. The remaining one is for \$749 (SOR ¶ 1.d.). None have been paid.

3. A single debt for \$2,354 (SOR ¶ 1.c.) was for tools used in a former job from which he was laid off. He has not made payments on the debt since 2003.

4. There are six medical debts of over \$3,000 (SOR ¶¶ 1.k.-p.), the largest for \$2,500 is for a fertility clinic used by Applicant's wife (SOR ¶ 1.k.). Applicant thought this bill should have been covered by insurance but the claim was denied. The others are for small amounts and some have been delinquent for since 2004 and 2005. None have been paid.

5. He denied two debts one of which for \$183 he had no recollection of but had not called the number listed on the credit report to find out (SOR ¶ 1.h.). The second one for \$968 (SOR ¶ 1. i.) was for dish network equipment which he returned to the provider.

Applicant's financial situation is now stable and he is current on expenses. His wife is the beneficiary of a trust established by her father which pays her \$650 per month. He recently received \$30,000 by inheritance from his father. The funds from the inheritance were used to pay the balance due on an expensive automobile he purchased before he received the inheritance (Tr. 52). He has also purchased a truck for \$25,000 for which he pays \$255 per month by payroll withholding (Tr. 51). The trust fund payments to his wife are placed in a savings account when received and now total approximately \$10,000 (Tr. 72).

## **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 *a/so* 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. The evidence shows that he has been able pay many, if not all, of the debts for the past year yet very little has been

done to even contact the creditors. 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 ago. He now has a job which pays a reasonable salary and his wife is employed. It seems likely that he will be able to resolve the debts over time but all of them, some with significant amounts and others with small amounts, remain unsatisfied. While he has excellent references and the support of his employer, the delinquent debts does raise security concerns under the Guideline F.

Under AG ¶ 20(b), the security concern 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 unemployment and reduced income. However, he has been employed with a better income for three years with no payment or settlement of any of delinquent debts. Rather than doing so, Applicant used the funds from his father’s inheritance to pay the balance on an expensive automobile and his wife is saving all the payments from her trust.

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 a 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 recently started credit counseling with the aim of resolving the delinquent debts but this only began after the hearing in this matter (Exh. G). While laudable, it is not timely. 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. Even this test has not been met. Not a single debt listed in the SOR has been paid. Thus, I conclude that the mitigating conditions do not apply.

The debts cited in the SOR remain outstanding except for two (SOR ¶ 1.e. and f.) that are duplicates. Two of the four debts that he denied are duplicates and are mitigated. However, the dish network and fertility clinic debts (SOR ¶ ¶ 1.i. and k.) appear to be valid debts and his explanations to mitigate are not persuasive.

### **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 problems first began, Applicant was a young man in his early 20's (See AG ¶ 2(a)(4)). He accumulated debt during periods of unemployment and medical problems (See AG ¶ 2(a)(2)). Since that time he has obtained a better paying job, has received funds from an inheritance, but has not resolved any of the debts. .

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. I recognize his interest to resolve these financial issues to restore his credit rating. However, the lack of action to resolve these delinquent debts over the past three years when he and his wife had extra income from inheritances yet did nothing to use those funds to resolve his delinquent debts, prompts me to conclude Applicant has not mitigated the security concerns arising from these financial considerations and that it is premature at this time 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.: For Applicant  
Subparagraph 1.g.: For 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  
Subparagraph 1.p.: 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