



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-05168  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: Pro Se

December 19, 2008

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 5, 2005. On February 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 requested a hearing before an Administrative Judge. I received the case assignment on October 28, 2008. DOHA issued a notice of hearing on November 18, 2008, and I convened the hearing as scheduled on December 9, 2008. The Government offered Exhibits (GE 1-8), which were received without objection. Applicant testified in his own behalf. He submitted Exhibits (AE A-D), without objection. DOHA

received the transcript on December 17, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, dated July 10, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.m and 1.o through 1.s of the SOR. He denied the other allegations in the SOR because the debts were paid or he had no knowledge of them and disputed them. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 43-year-old employee of a defense contractor. He graduated from high school in 1985 and from college in 2002. Applicant lived with his girlfriend for approximately 17 years (1987-2001). He married in 2004. He has three natural children and two stepchildren. He has been employed since late 2004 with his current employer (GE 1).

Applicant's longtime girlfriend opened credit card accounts without his knowledge during the course of their relationship. However, Applicant acknowledged that they both accumulated some credit card debt. Applicant has worked his entire life but had a period of unemployment for two months in 2004 (Tr. 30). Applicant was ill and out of work about a month ago and lost wages. Due to Applicant's illness when he was unemployed, he incurred medical debt because he did not have medical insurance (Tr. 41).

Applicant's wife lost her job recently. She found a new job but at a lower pay rate. They have two children in college and are paying for their education. Due to a lower income for Applicant and his wife, he was in arrears in his child support. He is current with his child support at this time. Applicant also experienced some difficulty during the recent hurricane. He estimates that due to hotel costs he incurred about \$700 in additional expenses (Tr. 34).

The SOR alleges 19 delinquent debts/collection accounts including, unpaid medical debt, six collection accounts and two federal tax liens. The total amount of the delinquent debt is approximately \$56,900.

SOR ¶ 1.a is a federal tax lien filed in 2002 in the amount of \$6,165. Applicant admitted that he owed the debt. Applicant has paid this amount to the IRS. (AE A ).

SOR ¶ 1.b is a federal tax lien filed in 2006 in the amount of \$4,193. Applicant is paying \$150 a month through a garnishment (AE B). His balance is approximately \$2,000.

SOR ¶ 1.c is a charged off account in the amount of \$15,567. This account is for a vehicle that was repossessed in 2005. He is trying to settle the debt but does not

have the sum of money needed to do so at this time. Applicant has not paid the account.

SOR ¶ 1.d is for a charged off credit card account in the amount of \$1,372. Applicant has not paid the amount and is disputing the information.

SOR ¶ 1.e is for a medical account in the amount of \$361. Applicant has not paid this account.

SOR ¶ 1.f is for a collection account in the amount of \$240. Applicant has not paid this account.

SOR ¶ 1.g is for a collection account to a phone company in the amount of \$164. Applicant has not paid the account because he is disputing the information. He filed a challenge with the credit reporting company. ( Tr. 39). He also has not paid the account because it is "old" and is deleted from his credit report.

SOR ¶ 1.h. is another charged off account in the amount of \$227. Applicant has not paid this account.

SOR ¶ 1.i is a collection account in the amount of \$426. Applicant has not paid this account because the file is deleted from the credit report. This account is one that his ex-girlfriend opened without his knowledge but he admits that his name is also on the account and he is responsible for it.

SOR ¶ 1.j is a charged off medical account in the amount of \$15,584. It is the result of Applicant's illness and no medical insurance at the time. He called the hospital to settle the account but does not have a sufficient amount to do so.

SOR 1.k is a medical debt of \$332. This is also due to lack of insurance and is not paid.

SOR 1.l is for a collection account for in the amount of \$655. Applicant is disputing this account.

SOR 1.m is for a collection account in the amount of \$383 for a cell phone that belonged to his ex-girlfriend. She was paying on it but stopped and now Applicant is responsible for the bill. This is not paid.

SOR 1.n is a collection account in the amount of \$3,575 which Applicant believes is "old" and is deleted from his credit report.

SOR 1.o is a collection account in the amount of \$3,472 which Applicant disputes. This is for furniture. He called the company but it no longer exists and the account is now in collection. It is not on his credit report due to age.

SOR 1.p is a collection account in the amount of \$3,435. Applicant is disputing this information. He never had a credit card with the company.

SOR 1.q is a collection account in the amount of \$155 for cable. Applicant has not paid this account.

SOR 1.r is a medical collection account in the amount of \$519. It is not paid.

SOR 1.s is for a collection account in the amount of \$101. Applicant has no knowledge of it.

Applicant has contacted his creditors and is paying on small debts. His main concern is the tax issue. He has addressed both liens. In his answer to the SOR, he stated payment was forthcoming on six small accounts for a total of \$1,957 (AE C). Some of the accounts are as small as \$100. As noted above, one is paid and he is making monthly payments on the tax lien. He is also paying \$400 a month in child support for his 15-year-old (Tr. 51).

Applicant's current monthly net income is \$2,500, which includes his wife's salary. After monthly expenses and payment on some debt, he has no money left (Tr.47). He is current with his car payment. Applicant paid for a 2000 vehicle that he has in 2006 (Tr. 15).

Applicant has not received financial counseling and he does not contemplate filing for bankruptcy. He has no savings at this time. Although he desires to pay his delinquent debts, he states he cannot do so until the IRS lien is paid.

### **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, 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 *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<sup>6</sup> is potentially disqualifying. Similarly under AG & 19©, Aa history of not meeting financial obligations<sup>6</sup> may raise security concerns. Applicant has numerous delinquent debts and could not meet his financial obligations from 2001 until the present. He had tax liens. The evidence is

sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the 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 worries are partially the result of his relationship with his longtime girlfriend who opened accounts in his name without his knowledge. He also had a period of illness in 2004 after he was laid off from one job. He incurred a significant medical bill without the benefit of medical insurance. His delinquent debts, however, have various sources and have been ongoing. This potentially mitigating condition does not apply.

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, his financial problems may have been exacerbated, but Applicant did not act responsibly in identifying and resolving his debts that preceded those events. He did not take an active stance when he learned about many of them. Applicant has worked steadily for many years with a few periods of unemployment. I find this potentially mitigating condition does not apply.

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). This does not apply. Applicant has no budget and has had no financial counseling. He is paying one debt (tax lien) through a garnishment. He does not have a handle on his financial affairs.

AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has paid one tax lien and is paying on the second. He has contacted his creditors and is promising to pay the accounts. He waited many years before attempting to resolve his financial issues. I conclude this potentially mitigating condition applies in part.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that some of the alleged debts were unknown to him and were accounts opened by his ex-girlfriend. He has not provided sufficient documentation for this assertion and he has not tried to collect any money from her. I conclude this potentially mitigating condition does not apply.

## **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©, the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 and conclude that under the whole person, there is not sufficient mitigation to overcome the government's case.

Applicant has worked all his life. He supports his family and his five children. He had some unemployment and ill health that affected his ability to pay his bills for a number of years. He also disputes some of the accounts due to his ex-girlfriend. Applicant promises to pay the debts when he can. He has tried to settle some of his medical accounts but does not have a sufficient amount to do so.

Applicant has not sought financial counseling nor does he have a budget or a plan to restructure his debt and begin repayment. Some of the debts are "old" and they are not on his credit report and he relies on that for dispute purposes. Applicant has about \$45,000 in delinquent debt remaining. He has no ability to pay at this point in time because he has no money left after he pays his expenses. Given the significant debt, Applicant's positive characteristics have not overcome the security concerns.

Overall, the record evidence leaves me with questions and doubts 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 under 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c- 1.s:	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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NOREEN A. LYNCH  
Administrative Judge