



**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. 07-08655

**Appearances**

For Government: Rita C. O'Brien, Esquire, Department Counsel  
For Applicant: Pro Se

March 6, 2008

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on August 10, 2006. On October 22, 2007, 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 acknowledged receipt of the SOR on November 15, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on January 15, 2008. I received the case assignment on January 17, 2008. DOHA issued a notice of hearing on January 28, 2008, and I convened the hearing as scheduled on February 14, 2008. The government offered Exhibits (Ex.) 1 through 5 which were received without objection. Applicant testified on his own behalf and submitted Exhibits

A and B, without objection. DOHA received the transcript of the hearing (Tr.) on February 25, 2008. 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 November 15, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.m, and 1.o, of the SOR. He denied the factual allegation in ¶ 1.n of the SOR.<sup>1</sup> He provided additional information to support his request for eligibility for a security clearance.<sup>2</sup>

Applicant is a 46-year-old employee of a defense contractor. He graduated from high school in 1980 and attended college for several years. He is married with three adult children. He has worked for his current employer since 2004.<sup>3</sup>

Applicant has been gainfully employed since 1987 except for a for a short period of time in 1997. He also was unemployed for six months in 2003. His wife does not work. He has consistently advanced in his positions.<sup>4</sup>

In 2000, he purchased a home. In mid 2002, the house was foreclosed. Applicant was not paying the mortgage because he did not know where to send the payments. Applicant's mortgage balance was approximately \$77,000. The house was sold and approximately \$35,000 was the balance owed.<sup>5</sup> He was told to contact the company so that his credit report would reflect the true amount. He did not follow up.<sup>6</sup>

Applicant and his wife have medical problems. He is under a physician's care for heart problems. He had a heart attack in 2001. He has to go frequently to have his blood checked because of a problem with his pituitary gland. His wife is diabetic. He has health insurance through his employer.<sup>7</sup>

Beginning in November 2005, Applicant incurred medical bills from hospitals and physicians. He recalls paying some of the bills but does not have records or recall which ones he has paid. He admitted just forgetting about some of them. He intends to get them resolved.

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<sup>1</sup>Applicant's answer to SOR.

<sup>2</sup>AE A and B.

<sup>3</sup>GE 1 (Security Clearance Questionnaire, dated August 10, 2006 ).

<sup>4</sup>Tr. 21.

<sup>5</sup>Tr. 51.

<sup>6</sup>Tr. 28.

<sup>7</sup>Tr. 58.

The SOR alleges 15 delinquent debts. The total amount of debt is approximately \$10,100.<sup>8</sup> Applicant acknowledged the debts except allegation 1.n for \$1,562.<sup>9</sup> He is adamant that he has no idea about the company and has not heard of them. More than half the debts are from medical providers.

Applicant admitted the collection account for a time share in allegation ¶ 1.a for \$4,652 was the result of an initial transaction he signed in 2001. He claimed that he changed his mind about purchasing the vacation package. He asserts that he told the salesman within the required period of time that he did not wish to pursue the deal. However, Applicant did not follow up. It is still on his credit report. He admits it was a mistake not to formally file any paperwork. He does not intend to pay it now.<sup>10</sup>

The delinquent debt listed in allegation ¶ 1.b for \$126 is the result of a telephone account for his daughter. He did not realize that it was in his name. He has not made any attempt to pay it.<sup>11</sup>

The delinquent debts listed in allegations ¶ 1.c for \$120 and 1.d for \$642 are for electricity bills. He moved to another location and thought the bills had been paid. When he learned about the debts during the investigation, he promised to pay the bills. He has not done so.

The allegations in 1.e through 1.i are for medical providers. They total approximately \$1,437. The accounts are from 2003 until the present. Applicant was confused about the accounts. He knows he has paid medical bills over the years but he is not certain which accounts are paid. He intends to resolve the issue but has not reviewed his paperwork.<sup>12</sup>

The allegation in 1.m is for a credit collection account for \$1,544 from 2002. Applicant has not paid the bill.<sup>13</sup>

The allegation in 1.n is for a charged off account in the amount of \$1,562. As noted above, Applicant does not recognize the name of the creditor. At the hearing he did not think it should be listed on his credit report. He does not remember co-signing

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<sup>8</sup>GE 3 (Credit Bureau Report for Applicant, dated August 2007).

<sup>9</sup>Tr.37.

<sup>10</sup>Tr. 23.

<sup>11</sup>Tr.46.

<sup>12</sup>Tr.43.

<sup>13</sup>Tr. 52.

any accounts for his wife or other family member. He has not disputed the account. He will not pay for it until he believes it is his account.<sup>14</sup>

The final allegation in 1.o is for failing to make payments on his home in 2002. This is the foreclosure that is discussed above. He does not believe he should be responsible for any balance owing on the account after foreclosure. He has no intention of contacting the company.

Applicant's income increased from \$40,000 in 2004 to \$52,000 in 2007. He often works overtime. During the recent past he has averaged \$1,400 in overtime per month. His current monthly net income is \$3,046. After monthly expenses of \$2,577.04, and payments on two other accounts, he has a net remainder of \$32.06. He contributes to his retirement fund through an automatic payroll deduction.<sup>15</sup>

Applicant completed financial interrogatories in August 2007. At that time he acknowledged that he had overlooked the debts in SOR 1.g, 1.i. and 1.j. He promised to pay them.

Applicant has not received any financial counseling. He did not contact his creditors to arrange any settlements or make even small payments on any of the delinquent accounts. He does intend to take care of the medical bills when he can review his papers and correctly identify the accounts.<sup>16</sup>

Applicant is a valued employee with his current employer. He is one of the top performers and proved himself a leader in the group. He trains other employees and received the highest rating possible during his last performance review. He has a strong sense of integrity and works well with his fellow employees.<sup>17</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

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<sup>14</sup>GE 2 (Response to Interrogatories, dated August 2007).

<sup>15</sup>*Id.*

<sup>16</sup>Tr.69.

<sup>17</sup>AE B (Letter from Supervisor).

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>@</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>@</sup> may raise security concerns. Applicant accumulated delinquent debt and was unable to pay some obligations for a period of time. Credit reports confirm that he has not paid the medical bills or charged off collection accounts. He does not intend to pay the amount from the foreclosure because he does not believe he owes anything. The activity for the delinquent debts ranges from 2002 until the present. The approximate amount of debt is \$10,000. 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 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.<sup>@</sup> Applicant's financial worries arose because he accumulated some delinquent debt due to his medical problems. He also had a six month period of unemployment in 2003. While the unemployment may have precipitated the debt, the inquiry does not end at that point. The Applicant's problems have been ongoing and he has not resolved the debts. His inaction after being employed raises concerns about his current reliability, trustworthiness, and good judgment. 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.<sup>@</sup> As noted above, some of the financial problems arose from his medical bills. He did not act responsibly in identifying and resolving these debts. I find this potentially mitigating condition is not 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<sup>@</sup> 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.<sup>@</sup> Applicant has not received counseling and has not resolved the delinquent debts, either by payment or settlement. He is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions do not apply.

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 a credit bureau report confirms three debts that Applicant disputes. He believes the time share transaction was cancelled in a timely fashion and should not appear on his credit report. However, he has not provided any documentation. Nor has he contacted anyone about this recently. Likewise, he disputes a charged off credit account but has not formally done anything about it. The foreclosure account balance remains and Applicant has done nothing to resolve the issue. 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(c), 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. Applicant and his wife both have health problems. He had a heart attack several years ago and is monitored by his physician. This has created numerous medical bills. Although Applicant has been gainfully employed and has health insurance, he has not paid all the medical bills. He did have a short time of unemployment as well in 2003. He accumulated debt due to circumstances largely beyond his control. However, he did not act responsibly under the circumstances. He is married and has three children. As a result, he has focused his attention on providing a stable domestic environment for his family. However, he has not taken affirmative action to pay or resolve most of the delinquent debts raising concerns about his good judgment. Of course, the issue is not simply whether all his debts are paid. It is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has not resolved most of his delinquent debts and despite promises to do so, he has not. He has not met his burden of proof in this case to overcome the government's case.

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 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:- 1.o:                      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