



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-08937
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Pro Se

February 15, 2008

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on November 3, 2005. On September 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations 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.

On October 5, 2007, Applicant answered the SOR and requested his case be decided on the written record on November 5, 2007. Department Counsel prepared a File of Relevant Material (FORM) on November 20, 2007. The FORM was forwarded to Applicant on November 27, 2007. He received the FORM on December 5, 2007. Applicant had 30 days from receipt of the FORM to submit any additional material. He did not respond to the FORM. The FORM was forwarded to the hearing office on January 28, 2008 and assigned to me on that same date. 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 5, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d – 1.h, 1.i, 1.j-1.l, and denied the allegations in ¶¶ 1.c and 1.i. (Item 5.)

Applicant is a 48-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since August 2005. He is married but has been separated since December 25, 2004. He has one child and two stepchildren. (Item 6.)

On November 3, 2005, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). (Item 6.) In response to the questions related to financial matters in Section 27 of the e-QIP, Applicant indicated that vehicle repossession in the amount of \$16,000 (SOR ¶ 1.c); a Chapter bankruptcy filed in December 2000 (SOR ¶ 1.a; see Items 7 at 2; Item 10; Item 11 at 1; and Item 12 at 1.); a \$240 medical debt (SOR ¶ 1.j); a \$170 medical debt (SOR ¶ 1.k); a \$326 phone bill (SOR ¶ 1.l); a \$985 fuel bill (SOR ¶ 1.d); a \$208 electric bill (SOR ¶ 1.e); a \$2,417 bank loan (SOR ¶ 1.g); and a \$1,000 cell phone bill. (SOR ¶ 1.f.)

In the additional comments section, Appellant indicated that he moved to another state in 2004 for new employment. His wife stayed behind where he previously resided. She did not pay any bills and had an affair. He is in the process of getting a divorce and catching up on unpaid medical bills. (Item 6.)

His subsequent background investigation also revealed a Chapter 7 bankruptcy filed in March 1990. (Item 8.) There are two additional delinquent debts not listed on the e-QIP investigation; a \$1,700 bank loan placed for collection (SOR ¶ 1.h; see Item 11 at 2.); and a \$5,718 collection account (SOR ¶ 1.i; see Item 7 at 4.).

In his response to the SOR, Applicant reiterates that his financial problems are the result of his estranged wife not using the money he sent her to pay their debts. His first priority is to complete his divorce and then pay his debts. He indicates that although he was laid off five years ago, he held a security clearance for 15 years prior. (Item 3.) He filed for bankruptcy in November 2000 because he was informed that he was being laid off. He filed for bankruptcy in 1990 because he was told he was going to be laid off, but it was later postponed. (Item 5.) In a previous personnel security questionnaire, signed by the Applicant on June 6, 1990, he indicated that he filed for bankruptcy in 1990 due to his ex-wife's bills and car. (Item 9 at 5.)

In November 2000, Applicant was laid off. He was unemployed for one year. He has been steadily employed since November 2001. (Item 6, Section 11.)

Applicant denies the debt alleged in SOR ¶ 1.c, the \$13,797 automobile repossession. He admits to being co-signer of the loan, but claims that his estranged wife had possession of the vehicle and neglected to make the payments. He also denies the \$5,718 debt alleged in SOR ¶ 1.i because he does not recall the account. (Item 5.) He provided proof that the debts alleged in SOR ¶¶ 1.j, 1,k were paid. (Item 5 at 3-4). Although he provided a receipt which he claims verifies payment for the debt alleged in SOR ¶ 1.l, the receipt is partially obscured so you cannot determine who the original creditor is and whether the debt was paid. On its face, it appears to be a letter from a collection agency attempting to collect a debt as opposed to a settlement letter. (Item 5 at 5.) He provided no proof that he was attempting to resolve the remaining debts alleged in the SOR.

### **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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts) and FC DC ¶ 19(c), (a history of not meeting financial obligations) apply to Applicant’s case. He has a history of not meeting financial obligations. He filed for Chapter 7 bankruptcy in July 1990 and December 2000. After his second discharge, he incurred ten additional delinquent debts, an approximate total of \$26,953.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(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) is not applicable. Applicant has history of financial irresponsibility going back to 1990. Although he resolved three of the debts alleged in the SOR, he has taken no steps to resolve the remaining debts. Even though he blames his estranged wife for not paying the debts, the debts are in his name and he has the ultimate responsibility for paying his debts.

FC MC ¶ 20(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) applies, in part, due to the fact that Applicant is in the process of a divorce and that he was unemployed for one year from November 2000 to November 2001. However, it cannot be concluded that he acted responsibly under the circumstances. Since November 2001, Applicant has had full-time employment. Applicant states his estranged wife is responsible for the debts. This is not sufficient for FC MC ¶ 20(b) to apply. While Applicant's ex-wife may have not paid the bills, the debts are in Applicant's name. He had a duty to take action to resolve these accounts. When he discovered that she did not pay the bills, he could have contacted his creditors and provided a forwarding address to have the bills sent directly to him.

FC MC ¶20(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) does not apply. There is no evidence that Applicant attended financial counseling. Most of the delinquent debt remains unresolved and it is unlikely the debt will be resolved in the near future. There is nothing in the record evidence which states Applicant's current financial situation.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies, in part, with respect to SOR ¶¶ 1.j, and 1.k. However, Applicant has taken no action to resolve his other delinquent accounts.

FC MC ¶20(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) does not apply. Although Applicant denies the debts alleged in SOR ¶¶ 1.c and 1.i, both debts are listed on his credit reports. He provided no supporting evidence that these debts are not his nor that he took any action to dispute the debt. He denies the debt alleged in SOR ¶1.c because he claims that although he was a co-signer on the car loan, it was his wife's responsibility. Regardless of what personal issues Applicant may have with his estranged wife, he has an obligation to his creditors to pay his debts. When you sign as a co-signer on a loan, you become responsible for the debt if the principal signer defaults on the loan.

### **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 has provided no information about his work performance. While Applicant is in the process of a divorce, he has an extensive history of financial problems dating to 1990. He has filed for bankruptcy two times and continues to encounter financial difficulties. While he blames his estranged wife for his financial problems, the accounts were in his name and he took no steps to resolve most of the accounts.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	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:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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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ERIN C. HOGAN  
Administrative Judge