



**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. 07-09255

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel

For Applicant: *Pro se*

January 17, 2008

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 5, 2006. On September 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision deny his application, citing security concerns under Guideline F (Financial Considerations). 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 acknowledged receipt of the SOR on September 26, 2007; answered the SOR on September 27, 2007; and requested a hearing before an administrative judge. DOHA received the request on September 28, 2007. Department Counsel was prepared to proceed on October 16, 2007, and the case was assigned to me on October 22, 2007. DOHA issued a notice of hearing on November 8, 2007, and I convened the hearing as scheduled on November 29, 2007. Government Exhibits (GX)

1 through 5 were admitted in evidence without objection. Applicant testified on his own behalf, and he submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I granted Applicant's request to keep the record open to enable him to submit additional matters. Applicant timely submitted AX G, and it was admitted without objection. Department Counsel's response to AX G is attached to the record as Hearing Exhibit I. DOHA received the transcript of the hearing (Tr.) on December 6, 2007. The record closed on December 14, 2007. Based upon my 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, Applicant admitted eight of the 20 delinquent debts alleged (SOR ¶¶ 1.c, 1.e, 1.f, 1.g, 1.h, 1.j, 1.r, and 1.s). He disputed the amounts of four alleged debts, claiming they were inflated (SOR ¶¶ 1.d, 1.k, 1.m, and 1.t). His admissions in his answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 47-year-old security officer employed by a federal contractor. He has worked for his current employer since September 2006. He served on active duty in the U.S. Army from December 1980 to May 1992. He received a security clearance in January 1981, while he was on active duty in the Army. He has not held a clearance since he left the Army (Tr. 11).

Applicant was separated from the Army with a disability, and he receives disability pay of \$225 per month. He attended college from January 1993 to August 1998 under a vocational rehabilitation program and obtained a bachelor's degree. When he was unsuccessful in obtaining a job paying more than the minimum wage, he returned to school and obtained a master's degree in May 2003. After obtaining his master's degree, he sent out about 3,000 resumes, including more than 800 with the Department of the Army (AX D), but could not find employment offering more than minimum pay. He is currently in a doctoral program and expects to obtain his PhD within two years (Tr. 72). He has over \$100,000 in student loans (Tr. 72).

Since his military service, Applicant has held numerous low-paying jobs, including working as a security guard, night auditor at several hotels, night stocker at a home improvement store, hotel desk clerk, customer service representative, and computer technician. For two periods, from November 1999 to September 1999, and from May 2000 to February 2002, he was working two jobs. He testified his take-home pay during this period was about \$800 per month, of which \$600 was used for rent and utilities (Tr. 64-65). He was unemployed in November and December 2005. His current job is his first that pays more than \$20 per hour.

During his periods of underemployment, Applicant incurred numerous delinquent debts, including those alleged in the SOR. Some of his debts (SOR ¶¶ 1.e, 1.m, and 1.q) date back to the year 2000. In the spring of 2007, Applicant hired a law firm to

dispute some of the debts listed on his credit reports (GX 2 at 15-30). The law firm advised him not to initiate any direct contact with his creditors. He has terminated his relationship with the law firm because he was not satisfied with its progress (Tr. 58-59).

In August 2007, in response to DOHA interrogatories, Applicant submitted a personal financial statement reflecting monthly net income of \$3,400, expenses of \$2,200, debt payments of \$240, and a net remainder of \$960 (GX 2 at 2). He testified his net remainder is now a little higher because he recently received a raise (Tr. 62). He is unmarried and not responsible for supporting anyone but himself. However, he assists his sister from time to time (Tr. 68-69).

In November 2007, about three weeks before the hearing, Applicant enrolled in a debt management program with a credit counseling service. He is required to deposit about \$247 per month with the service, which will make monthly payments to the creditors alleged in SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, and 1.n (AX E at 1-2). His first payment was due on December 12, 2007 (Tr. 43).

In his answer to the SOR, Applicant denied the debts in SOR ¶¶ 1.a, 1.b, and 1.i, but his debt management program provides for payments on these debts. He disputed the payday loan debt in SOR ¶ 1.o, because it was incurred when the lender repeatedly processed a check until it cleared (Tr. 53-54). The evidence concerning the debts alleged in the SOR is summarized in the table below.

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	Cell Phone	\$584	Debt management	AX E
1.b	Rent	\$3,098	Debt management	AX I
1.c	Federal Tax Lien	\$5,074	Paying \$150 per month	AX G
1.d	Collection Account	\$426	Disputed; debt verified; unpaid	GX 2 at 30; AX A
1.e	Utilities	\$185	Debt management	AX E
1.f	College Fees	\$793	Debt management	AX E
1.g	Telephone	\$273	Debt management	AX E
1.h	Cosigned Loan	\$751	Debt management	AX E
1.i	Telephone	\$73	Debt management	AX E
1.j	Credit Card	\$466	Debt management	AX E
1.k	Credit Card	\$1,246	Denies amount; unpaid	Tr. 48
1.l	Credit Card	\$722	Denies; unpaid	GX 3 at 5
1.m	Credit Card	\$328	Denies amount; unpaid	Tr. 51-52
1.n	Rent	\$1,292	Debt management	AX E
1.o	Payday Loan	\$411	Denies; unpaid	Tr. 53-54
1.p	Telephone	\$88	Denies; unpaid	Tr. 54-55
1.q	Collection Account	\$30	Denies; unpaid	Tr. 56
1.r	Collection Account	\$84	Admits; unpaid	GX 3 at 7
1.s	Collection Account	\$345	Admits; unpaid	GX 3 at 7
1.t	Credit Card	\$934	Denies amount; unpaid	Tr. 57-58

## Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

The security concern relating to Guideline F (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.

Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. The disqualifying condition in AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

Applicant's delinquent debts and his admitted inability to pay them are sufficient to raise AG ¶¶ 19(a), (c) and (e). No other enumerated disqualifying conditions under this guideline are raised by the evidence.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Under AG ¶ 20(a), a 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.” This is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was “so long ago,” or “so infrequent,” or “occurred under such circumstances that it is unlikely to recur.” If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the

conduct “does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.”

Applicant’s delinquent debts are recent and frequent. Many of them are not covered by his debt management plan and remain unresolved. Thus, neither of the first two prongs (“so long ago” or “so infrequent”) is established. With respect to the third prong (“unlikely to recur”), it is too soon to tell whether he will adhere to his debt management plan and incorporate the remaining delinquent debts into the plan. Lurking over the horizon is his educational debt of more than \$100,000. I conclude the third prong also is not established. Thus, Applicant has failed to carry his burden of establishing AG ¶ 20(a).

Under AG ¶ 20(b), security concerns under this guideline may be mitigated 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.” Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established. Applicant’s long period of underemployment was beyond his control. He reacted responsibly by working two jobs at a time and attempting to improve his credentials. He appears to have been living modestly during his underemployment. I conclude AG ¶ 20(b) is established.

Under AG ¶ 20(c), security concerns may be mitigated by 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.” Applicant’s credit counseling agency has addressed his debt problem, and some of his debts will be under control if he adheres to the payment plan. However, many of the debts alleged in the SOR are not included in his plan. Furthermore, it is too soon to tell whether he will adhere to the payment plan. I conclude AG ¶ 20(c) is not established.

The mitigating condition in AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Security concerns based on financial considerations are not mitigated by payment of debts only under pressure of qualifying for a security clearance.

Applicant began his current employment in September 2006. He hired a law firm to assist him sometime during the spring of 2007, but he hired the firm to dispute items on his credit report, not to negotiate and settle legitimate debts. He responded to DOHA interrogatories about his finances in August 2007, but it was not until three weeks before the hearing that he engaged a credit counseling agency to negotiate payments on his delinquent debts. Although four debts alleged in the SOR were under \$100, he did not use his \$960 net monthly remainder to resolve any of them. His inaction was understandable after the law firm cautioned him against contacting the creditors, but it

does not explain his inaction between September 2006 and the spring of 2007. He now has a payment plan for nine of the debts alleged in the SOR, and he has a payment plan for the federal tax lien. However ten debts, including three for less than \$100, remain unresolved. I conclude AG ¶ 20(d) is not established.

Under the whole person concept, an 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. An 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. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a mature, well-educated adult. His long period of underemployment may have some significance with respect to his job-hunting skills, but not his financial responsibility. However, his failure to address his financial problems promptly after he began his current position raises doubts about his prudence and sense of obligation. He has belatedly taken a step in the right direction by engaging a credit counseling agency, and he has been making regular payments on the federal tax lien. However, many debts are not included in his debt management plan, and he has not yet established a track record of compliance with his plan. If Applicant can incorporate all his delinquent debts into his debt management plan or otherwise resolve them, and if he establishes a track record of compliance with his plan, he may be able to mitigate the security concerns based on his financial history, but it is too soon to make that determination. See Directive ¶ E3.3.37-E3.1.40 (reconsideration authorized after one year).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

## **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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.t	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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LeRoy F. Foreman  
Administrative Judge