



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-09691
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: Pro se

March 12, 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 Application (SF 86), on July 19, 2006. On October 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial) and E (Personal Conduct) 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 November 10, and 17, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on December 26, 2007, and I received the case assignment on January 3, 2008. 2007. DOHA issued a notice of hearing on January 14, 2008, for a hearing on January 29, 2008 and I convened the hearing as scheduled.

At the hearing, the government offered three exhibits (Exh.) which were admitted in evidence without objection. Applicant submitted 26 exhibits which were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 6, 2008. I granted Applicant's request to keep the record open until March 3, 2007, to submit additional evidence but none was received. 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 15 days notice and indicated he was ready to proceed (Tr. 6).

#### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by deleting the two allegations under Guideline E (Personal Conduct) for falsification of information on his SF 86 relating to delinquent debts (Tr. 7). Department Counsel showed that the allegation was in error upon examination of the SF 86 dated July 19, 2006. The motion was granted.

### **Findings of Fact**

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

Applicant is a 34-year-old employee of a government contractor working in shipyards since 2006. He began as a power washer for another contractor in June 2006. In September 2006 he was hired by his present employer as a welder with improved pay. He has held a security clearance for most of the time of his current employment.

Applicant served in the Navy for almost four years as an operations specialist from the time of his high school graduation in 1991 until 1995 when he was discharged at age 22. He lived on the west and gulf coasts for approximately ten years. The first two or three years was with a significant other. During that time most of his debts

accumulated. Upon breaking up that relationship, he was responsible for credit card debts and purchases the two of them had made. He also had legal bills for a paternity suit of over \$4,000 in 2001 (Exh. 10). During a large part of that ten year period, he was employed in the fast food business at low wages. He is now married with three children ages 8, 4, and 3.

Applicant returned to his childhood home on the east coast in 2006 to be near his family. He was unemployed for a period of three months which further complicated his financial problems. His father, who works at the same facility with him, helped him with his financial problems and has been repaid (Tr. 38). Since obtaining his present employment, he has done well in his work and is favorably regarded by his corporate supervisor who supports his effort to obtain a security clearance (Exh. 26). His current annual salary is approximately \$52,000 but that is based on travel assignments when he receives additional pay. When he does not travel his pay is lower (Tr. 25). He needs a security clearance to be able to travel because the work he does requires access to secure facilities. When he is employed with extra travel pay he has approximately \$1,400 left over at the end of the month after expenses (Tr. 30). His wife has not been employed since moving to the east coast but is starting work and will be making around \$700 a month in hourly wages (Tr. 25).

Applicant's service in the Navy in a demanding job was considered outstanding by his ship's captain (Exh. 8). His former private employers regarded his work as exceptional for his dedication and long hours of service (Exhs. 9 and 10).

The status of the delinquent debts is as follows:

Half of the 16 alleged delinquent debts have been paid and half have not. Eight of the debts totaling \$6,000 have been settled or paid in full. Three were paid before the SOR was issued. One in 2003 (SOR ¶ 1.a.) for \$180 (Exh. 17), a second in October 2005 (SOR ¶ 1.k.) for \$1,283 was paid by a credit card, and a third in September 2007 (SOR ¶ 1.o.) for \$318 (Exh. 12).

The other five were paid in November 2007 after the SOR was issued. They are (SOR ¶ 1.b. (Exh. 16), h.(Exh. 13), i. (Exh. 13 and 15), l. (Exh. 14),and n.(Exh. 13). Most of them were paid from the proceeds of a \$4,800 loan from a credit union which he is repaying in monthly installments.

The remaining eight delinquent debts (SOR ¶ ¶ c.-g., j., m., and p.) are for credit cards and constitute most of the larger debts totaling almost \$25,000. They range in amounts from \$1,334 to \$5,386. Applicant intends to pay all of them and has been in contact with most of the creditors. However, several of the creditors are unwilling to discuss settlement and insist on full payment (Tr. 22, 23). As a result he is contacting them sequentially in an effort to settle them one at a time when he has sufficient funds to pay each of them.

## 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 *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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated the delinquent debts and was unable to pay the obligations for a long period of time. The evidence is sufficient to raise 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." Applicant's financial problems arose between 1995 and 2006. 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 a large number with large amounts remain unsatisfied. While he has excellent references and the support of his employer, the remaining 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 periods of unemployment and low pay, the breakup with his significant other ten years ago leaving him with debts, and the move back to his hometown and a delay until he could find employment. He did resolve a few of the debts before the SOR was issued but most were after the issuance. It appears that most of these debts were paid with proceeds from a loan which must still be repaid. He has repaid his father for a loan during the period before obtaining his present employment.

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). 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 has not received counseling and the delinquent debts have not been resolved either by payment or settlement. While some of them have been resolved, the vast majority of the total dollar amount has not been. While it is 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 in this amount be settled or paid. The fact that most of those that have been resolved are the smaller debts and that they were resolved by a loan that must be re-paid, does not satisfy the requirements for mitigation. Thus, I conclude that the mitigating conditions do 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 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 low wages (See AG ¶ 2(a)(2).) Since that time, Applicant has moved, and has a better paying job. He is married and has three children. As a result, he has focused his attention on providing a stable domestic environment for his family. He has a record of commendable duty performance during military service in a responsible position. Although he has taken action to pay or resolve some of the smaller delinquent debts, the majority in dollar amounts are yet unresolved. (See AG ¶ 2(a)(6).)

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 and efforts to resolve these financial issues and that, if he does not have a clearance with the opportunity to earn a higher income, it will take longer to resolve the debts. However, I 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: For Applicant  
Subparagraph 1.b.: For 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.: For Applicant  
Subparagraph 1.i.: For Applicant  
Subparagraph 1.j.: Against Applicant  
Subparagraph 1.k.: For Applicant  
Subparagraph 1.l.: For Applicant  
Subparagraph 1.m.: Against Applicant  
Subparagraph 1.n.: For Applicant  
Subparagraph 1.o.: For 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. Eligibility for access to classified information is denied.

---

CHARLES D. ABLARD  
Administrative Judge