



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-10408
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles., Esq., Department Counsel  
For Applicant: *Pro Se*

March 6, 2008

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial history. Eligibility for access to classified information is denied.

On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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 answered the SOR in writing on November 30, 2007, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on January 17, 2008, and reassigned to me on February 4, 2008. DOHA issued a notice of hearing on January 28, 2008. I convened the hearing as

scheduled on February 20, 2008. The government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AE) A, without objection. I granted Applicant's request to keep the record open until March 3, 2008, to submit additional matters. Applicant submitted eight pages of documents marked as AE B through F, and received without objection. Department Counsel's memo is marked Hearing Exhibit (HE) I. The record closed on March 3, 2008. DOHA received the transcript of the hearing (Tr.) on February 28, 2008.

### **Procedural and Evidentiary Rulings**

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.

### **Findings of Fact**

In his Answer to the SOR, dated November 30, 2007, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k, and 1.r of the SOR, with explanations. He denied the remaining allegations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 37-year-old employee of a defense contractor. He is a high school graduate and attended technical school. He served in the U.S. military from 1989 to 1996, and was honorably discharged. His marriage from 1989 to 1992 ended in divorce. He remarried in 1994. He and his wife have two children, ages thirteen and four. He has a 17-year-old child from a previous marriage and a 19-year-old stepchild.<sup>1</sup>

Applicant's wife has owned a business since before they married. After they married, Applicant became an owner and worked for the business. They were not paid salaries; their income was dependent upon the profits from the business. In the summer of 2005, his wife was in a car accident and severely injured her right arm. She was out of work for two months following the accident. The company then lost two large contracts and lost 95% of its income. They were not able to pay their debts and many became delinquent. Applicant obtained a job outside the family business in the spring of 2006, and obtained his current job in about September 2006. His wife still owns and runs the business, but the business has not recovered and her income is low. She has taken a part-time job as a waitress to supplement their income.<sup>2</sup>

SOR ¶¶ 1.a through 1.g, 1.i, 1.j, and 1.r allege ten delinquent debts totaling approximately \$44,854. SOR ¶¶ 1.a and 1.e, totaling approximately \$19,363, reflect the amounts owed after two cars were repossessed. SOR ¶ 1.g for \$14,416 is from a second mortgage taken out to install a swimming pool. Applicant admitted owing all the above debts and none of the ten debts have been paid. SOR ¶ 1.h alleges Applicant

---

<sup>1</sup> Tr. at 20, 37, 40-41; GE 1.

<sup>2</sup> Tr. at 16-17, 27-28; Applicant's Answer to SOR; GE 1.

was approximately \$10,975 past due on his mortgage and it was proceeding to foreclosure. Applicant has reaffirmed the mortgage to the mortgagor's satisfaction and established a new payment schedule.<sup>3</sup>

The debts as alleged in SOR ¶¶ 1.k through 1.q reflect a series of state tax liens. The debts were for sales tax owed from the company's sales of inventory. The sales tax was collected from the company's customers but not fully paid to the state. Applicant admitted owing the state tax lien of \$8,534 filed in December 2005, as alleged in SOR ¶ 1.k, but he stated that the underlying tax debt was paid. Applicant submitted a copy of a paid check of \$8,045 to the state. The check was dated December 28, 2004, and cleared the bank on January 13, 2005. The state verified that the payment had been received and that it was not posted due to an error in their system. Applicant denied owing the other sales tax allegations, stating the liens were "released due to incorrect calculations in amount." He testified that he and his wife were waiting for documentation from the state but that he believed the amount they owed was approximately \$2,500. Court records show state tax liens of \$8,534 entered on December 15, 2005; \$2,055 entered on August 14, 2006; \$11,938 entered on March 23, 2007; \$1,346, \$1,297 and \$9,677 entered on April 3, 2007; and \$4,548 entered on May 23, 2007. The court records do not reveal the tax periods the liens represent. Applicant submitted evidence that the \$8,534 and the \$9,677 liens were released. Letters from the state dated February 27, 2008, revealed a total of \$3,092 owed for the period of April 2004 to May 2006, and \$2,447 owed for the period of August 2006 to November 2006, for a total amount owed to the state of \$5,539.<sup>4</sup>

The debts as alleged in SOR ¶¶ 1.c through 1.g all state that the debts have been "charged off." Applicant was told that means "that it's like they've written them off and closed the accounts," and that they are no longer owed. He stated they intend to start paying off the state taxes and the other debts that were not charged off.<sup>5</sup>

Applicant received financial counseling in the late 1990s to address medical and credit card bills, but has not received any counseling since that time.<sup>6</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.

---

<sup>3</sup> Tr. at 21-23, 30; Applicant's Answer to SOR.

<sup>4</sup> Tr. at 18, 23-27; Applicant's Answer to SOR; GE 2; AE A, C-F.

<sup>5</sup> Tr. at 18-19, 22.

<sup>6</sup> Tr. at 37-38.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, Administrative Judges apply the guidelines 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise the above potentially disqualifying conditions. The debts as alleged in SOR ¶¶ 1.k through 1.q reflect a series of state tax liens for unpaid sales tax. The records of the liens do not reveal what tax periods the liens represent. The tax liens reflected in SOR ¶¶ 1.k and 1.q for \$8,534 and \$9,677 were released. Applicant owes \$5,539 to his state for sales tax. None of the tax liens are for the exact amount still owed. I am attributing the unpaid balance to the lien that is closest in amount to, but less than, the figure still owed; that is the lien in SOR ¶ 1.n for \$4,548. The allegations of the other tax liens, as reflected in SOR ¶¶ 1.k through 1.m, and 1.o through 1.q, are concluded for Applicant.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Applicant's financial difficulties resulted from his wife's car accident in the summer of 2005, and the subsequent loss of business for their company. These are conditions that were largely beyond his control. Personal debts became delinquent and money collected for sales tax was not paid to the state. Applicant obtained his current job in about September 2006. Several of the personal debts in SOR ¶¶ 1.a through 1.g, 1.i, 1.j, and 1.r were charged off by the creditors, but none have been paid. The evidence does not support an affirmative finding that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable. He received counseling in the late 1990s for other financial problems, but has not received counseling for his current financial problems. There are not clear indications that his financial problems are being resolved or are under control. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(c) is partially applicable. No other mitigating condition is fully applicable.

### **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) the 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's financial problems are related to his wife's car accident and the loss of business for their company. Personal debts became delinquent and they failed to pay the state all the sales tax they collected from their customers. The personal debts in SOR ¶¶ 1.a through 1.g, 1.i, 1.j, and 1.r have not been paid since Applicant started working for his current employer in 2006, and more than \$5,500 is still owed to the state. Applicant appeared sincere at his

hearing and I also gave weight to his honorable military service. However, he has not submitted sufficient evidence to prove that he has control of his finances.

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 issues.

### **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-1g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i and 1.j:	Against Applicant
Subparagraphs 1.k-1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraphs 1.o-1.q:	For Applicant
Subparagraph 1.r:	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.

---

Edward W. Loughran  
Administrative Judge