



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



In the matter of: )  
)  
) ISCR Case No. 07-11038  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 22, 2008

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Security Clearance Application (SF 86), on May 25, 2006. On November 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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, 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.

On December 31, 2007, Applicant answered the SOR in writing and requested that his case be determined on the record in lieu of a hearing. The Government

compiled its File of Relevant Material (FORM) on February 2, 2008. The FORM contained documents identified as Items 1 through 8. By letter dated February 5, 2008, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on February 26, 2008. His response was due on March 26, 2008. He did not submit any additional information within the required time period. On April 17, 2008, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains 23 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.w.) (Item 1.) In his Answer to the SOR, dated December 31, 2007, Applicant admitted 18 of the allegations (¶¶ 1.a. through 1.q., ¶ 1.v.); he denied four allegations (¶¶ 1.r., 1.t., 1.u., and 1.w.); and he did not address the factual allegation at ¶ 1.s. of the SOR. He also provided additional information to support his request for eligibility for a security clearance. (Item 3.)

Applicant is 32 years old and never married. Since June 2004, he has been employed as a network engineer by a government contractor. From about October 2001 to about May 2003, Applicant was employed as a senior network engineer by Company A. He was one of 250 employees at Company A. In 1999, while employed by the Federal government, Applicant was granted a security clearance. (Attachment to Item 3; Item 4.)

In May 2003, Applicant purchased a home for an undisclosed amount and assumed a monthly mortgage payment of \$2,000. Five days after Applicant signed his mortgage agreement, his employer filed for bankruptcy, an action that left him and the other employees of Company A without health insurance. Two weeks later, Applicant was diagnosed with testicular cancer. (Attachment to Item 3.)

In May 2003, Applicant began a year-long course of chemotherapy treatment for his cancer. The treatment was intense and he was unable to work during this time. His mother and brother helped him with his mortgage, utilities, car payments, and food. His family members also paid some of his medical expenses. Applicant charged some of his additional medical expenses on his credit cards. (Attachment to Item 3.)

The SOR alleged, and Applicant admitted, that he owed approximately \$18,670 to medical providers (¶¶ 1.c., 1.d., 1.e., 1.f., 1.g., 1.o., 1.p., and 1.v.). The SOR also alleged, and Applicant admitted, that he owed approximately \$40,719 to credit card companies for debts incurred in 2003 (¶¶ 1.b. and 1.h.). The SOR alleged, and Applicant admitted a judgment against him for \$9,394 in favor of an automobile credit company (¶ 1.i.). The SOR alleged, and Applicant admitted, approximately \$28,920 in additional consumer debt (¶¶ 1.a., 1.j., 1.k., 1.l., 1.m., 1.n., and 1.q.). He denied three debts to communication providers totaling \$899 (¶¶ 1.r., 1.t., and 1.u.). All three accounts were listed on his credit bureau report of August 4, 2006, and Applicant provided no credible evidence to rebut the allegations that the debts belonged to him

and remained unpaid. (Item 6.) He also denied a SOR allegation that his personal financial statement showed a net monthly remainder of \$299 and did not reflect monthly payments for many of the debts alleged in the SOR (¶ 1.w.). (Item 1; Item 3.)

Applicant did not address a debt of \$189 alleged at SOR ¶ 1.s. His credit bureau reports of August 8, 2006, November 6, 2007, and January 15, 2008 show that the collection account identified at SOR ¶1.a. has the same account number as the collection account identified at SOR ¶1.s. Applicant admitted the SOR allegation at ¶1.a. and was correct in not admitting the duplicate allegation at ¶ 1.s. Accordingly, the allegation at ¶ 1.s. is concluded for Applicant. (Item 6; Item 7; Item 8.)

Applicant responded to financial interrogatories from DOHA on October 16, 2007. In his response, he provided a sworn statement reporting that his total net monthly income was \$3,944. He listed \$3,120 in fixed monthly expenses. Additionally, he reported that he was paying \$75 a month to the automobile judgment creditor listed at ¶ 1.i. of the SOR. He provided corroborative evidence of payments of \$75 paid to the judgment creditor in May, June, July, August, September and October 2007. (Item 5 at 4, 7.)

Applicant also stated he was making payments of \$150 a month to a creditor to whom he owed approximately \$10,000. He provided corroborative evidence that he had made payment of \$1,200 to the creditor on October 17, 2007 and had a scheduled payment of \$150 to the creditor on November 15, 2007. (Item 5 at 9.)

In remarks attached to his financial statement, Applicant stated he owed a \$12,000 personal debt to a family member and was paying \$300 a month on the debt. He stated he had two payments remaining on the debt, and, when the debt was satisfied, he would begin to pay on his remaining financial obligations. He failed to provide credible evidence to corroborate his remarks. (Item 5 at 4, 11.)

On his SF-86, Applicant reported a month of foreign travel for pleasure in March and April 2006. In extended remarks attached to his SF-86, he stated he had elected not to file for Chapter 7 bankruptcy because he believed he had a responsibility to pay his creditors. He stated he was paying his outstanding debts one at a time. He failed to provide evidence he had contacted his creditors to discuss future payment plans. The record does not suggest that Applicant has participated in consumer credit counseling. (Item 4 at 20, 27.)

### **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, the administrative judge applies these 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(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 substantial delinquent debt and was unable to pay his creditors. This 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. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence 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. (AG ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d))

Most of Applicant's financial delinquencies arose between May 2003 and May 2004, when he purchased a home, lost his health insurance coverage, was subsequently diagnosed with cancer, a medical condition which required expensive treatment, and was unable to work while under treatment. These circumstances occurred nearly five years ago and have resulted in overwhelming debt which continues to the present day, a situation which raises concerns about Applicant's good judgment.

Applicant was unable to work for nearly a year and relied on family members to help him pay medical bills and living expenses. Once his health improved, Applicant was able to acquire another job, which he has held for nearly four years. During that time, Applicant has not contacted the majority of his creditors to arrange payment plans to initiate settlement, nor has he sought consumer credit counseling. He asserts he has two more payments of \$300 remaining to retire a \$12,000 debt to a family member, but he provided no evidence to corroborate his assertion. He provided financial records to show he began to pay two other creditors in 2007. He has no plan in place to

systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that AG ¶ 20(b) and AG ¶ 20(d) apply in part in mitigation, but that AG ¶ 20(a) and AG ¶ 20(c) do not apply in mitigation to the facts of Applicant's case.

### **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. (See AG ¶ 2(a)(4).) He accumulated debt due to circumstances largely beyond his control, including the loss of his health insurance, a diagnosis of cancer, and large, unexpected medical expenses. (See AG ¶ 2(a)(2).) In the nearly five years since that time, however, Applicant has not taken affirmative action to pay or resolve the majority of his delinquent debts, and this continues to raise security concerns. He has held his current job since June 2004, and he had sufficient discretionary income to travel abroad for a month in 2006. He has initiated payment on three of his debts, but he has not used his remaining monthly discretionary income to satisfy any of his many other debts. (See AG ¶ 2(a)(6).)

Applicant's financial situation arises from unusual circumstances, and he may find it beneficial to seek professional financial counseling and legal advice about resolving his debts and acquiring financial stability in the near term. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

## **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. through 1.r.: Against Applicant

Subparagraph 1.s.:                         For Applicant

Subparagraphs 1.t. through 1.w.: 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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Joan Caton Anthony  
Administrative Judge