



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-11039  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Department Counsel  
For Applicant: *Pro Se*

July 10, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On January 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guideline F. 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 February 2, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on March 18, 2008. Applicant did not file a response to the FORM. The case was assigned to me on May 29, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 44 year old employee of a defense contractor.

In 1996, a judgment in favor of a bank in the amount of \$1,679.00 was entered against applicant. The debt remains outstanding.

In 1998, a judgment in favor of Zale Jewelers in the amount of \$2,282.00 was entered against applicant. The debt remains outstanding.

In 1999, a judgment in favor of Hechts in the amount of \$329.00 was entered against applicant. The debt remains outstanding.

In 1999, a judgment in favor of Citibank in the amount of \$8,556.00 was entered against applicant. The debt remains outstanding.

Applicant is indebted to Pace Financial in the approximate amount of \$2,430.00. This debt was placed for collection in 2000 and remains outstanding.

Applicant is indebted to Union Acceptance in the approximate amount of \$216.00. This debt was charged off in 2000 and remains outstanding.

Applicant became indebted to Montgomery Wards in the approximate amount of \$891.00 many years ago. As of August 2004, the debt remained unpaid.

Applicant became indebted to JC Penney/Arrow Financial Services in the approximate amount of \$787.00 many years ago. As of October 2004, the debt remained unpaid.

Applicant became indebted to Bank of America in the approximate amount of \$5,373.00 many years ago. The debt was charged off, and as of July 2001, it remained unpaid.

Applicant became indebted to Peebles in the approximate amount of \$51.00 many years ago. The debt was charged off, and as of July 2001, it had not been paid.

Applicant became indebted to Sears/Risk Management Alternatives in the approximate amount of \$620.00 many years ago. The debt was placed for collection, and as of July 2001, it had not been paid.

In his response to the SOR and in Exhibit 7, applicant stated that he has been unable to pay his debts during the past eight years due to a bad relationship with his former fiancée, the financial support he has been providing to his mother, "judgments against [his] paycheck," and poor management of his credit cards.

## Policies

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.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President 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. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph 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).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a long history of an inability or unwillingness to pay his debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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.” Although applicant’s numerous debts appear to have been incurred years ago, they are still outstanding. His current inability or unwillingness to address them casts doubt on his current judgment, reliability and trustworthiness. Accordingly, this mitigation condition is not applicable.

Under Paragraph 20.b., it 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.” Applicant stated that a bad relationship, support provided to his mother, judgments, and poor management of his credit cards caused his financial problems and prevented him from satisfying his long-standing debts. Although these “conditions” may very well have caused applicant’s financial problems, they were not largely beyond his control. Accordingly, this mitigating condition is not applicable.

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 Paragraph c. This mitigation condition does not apply.

Paragraph d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” This mitigating condition does not apply.

### **“Whole Person” Analysis**

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate

determination of whether to grant 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 is a mature man who has a history of not meeting his financial obligations. Although the debts listed in the SOR appear to have been incurred years ago, applicant's continuing inability or unwillingness to address them reflects adversely on his current judgment, reliability and trustworthiness. Based on the foregoing, I conclude applicant failed to mitigate the security concerns arising from Guideline F.

### **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

### **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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JOSEPH TESTAN  
Administrative Judge