



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-11504  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Edmunds, Department Counsel  
For Applicant: *Pro Se*

May 16, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On December 10, 2007, 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 January 2, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on February 7, 2008. Applicant filed a response to the FORM on March 14, 2008. The case was assigned to me on March 27, 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 31 year old employee of a defense contractor.

Applicant was indebted to a police department on an account placed for collection in 1999. He satisfied the debt in February 2008.

Applicant is indebted to United Airlines Employees Credit in the approximate amount of \$610.00. This debt was placed for collection in 2000. In his response to the FORM, applicant stated he "connected" with the collection agency and they had no record of his name or social security number. He further stated he is "trying to do some research in order to satisfy debt."

Applicant is indebted to Wachovia Bank in the approximate amount of \$11,611.00 as a result of a student loan he defaulted on that was subsequently charged off in 2004. In his response to the FORM, applicant stated the debt is now with a collection agency (ACT) and that he "was able to arrange a \$231.00 monthly payment with ACT after making a \$1,000.00 down payment." He further stated that the monthly payments begin on March 28, 2008. He attached to his FORM response two letters from ACT establishing they received two \$500.00 post dated checks from applicant in February 2008.

Applicant is indebted to British Petroleum in the approximate amount of \$108.00 on an account that was placed for collection in January 2005. In his response to the FORM, applicant stated, "Account paid in full, still waiting for a copy of the statement."

Applicant was indebted to Cingular Wireless in the approximate amount of \$1,307.00. In March 2005, this debt was placed with Cavalry for collection. Applicant recently satisfied the debt.

Applicant was indebted to TCF National Bank in the approximate amount of \$626.00 on an account referred to AMR and then to ACC for collection. This debt was satisfied by applicant on December 27, 2007.

Applicant is indebted to ARS in the approximate amount of \$726.00 for a debt referred to it for collection by US Cellular in 2006.

A Personal Financial Statement dated September 25, 2007 indicates applicant had a positive monthly cash flow of approximately \$1,382.00.

Applicant completed an electronic questionnaire for national security positions (EQNSP) in January 2006. In response to two questions on the EQNSP, applicant denied that (1) in the prior seven years he had been over 180 days delinquent on any debt and (2) he was then over 90 days delinquent on any debts. As documented above, applicant was well over 180 days delinquent on many debts when he completed the EQNSP. In his response to the SOR, applicant explained his denials by stating he was not aware of these debts until he was interviewed by an investigator in February 2007. Applicant's explanation for his denials is not credible. It is simply unbelievable that he

would not have recalled any of these delinquent debts, particularly his large student loan debt, when he completed the EQNSP.

A letter from applicant's immediate supervisor during the past two years was attached to applicant's SOR response. In it, the supervisor stated that applicant has been a "stellar" performer who is "simply the best employee" she has.

## **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 has made some progress dealing with his delinquent debt, his failure to honor his financial obligations is both recent and frequent. Furthermore, having been provided no credible evidence explaining the circumstances leading up to his financial irresponsibility, it is impossible to conclude his financial irresponsibility will not recur. 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 presented no credible evidence that would justify application of this mitigating condition.

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 20.c. This mitigation condition does not apply.

Paragraph 20.d. applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant provided proof that he satisfied three of the seven debts alleged in the SOR, and stated he paid a fourth and is waiting for a "copy of the statement." He also stated that he worked out a payment agreement with his largest creditor, ACT, requiring him to make a \$1,000.00 deposit and then \$231.00 monthly payments. Although he did not provide a copy of the agreement, he did provide proof that he sent ACT the \$1,000.00 deposit. As

to the other two debts, he stated he is trying to make contact with the creditors. Overall, his efforts evince a good-faith effort to repay or otherwise resolve his debts. Accordingly, this mitigating condition applies.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," may be disqualifying. This disqualifying condition is applicable because applicant intentionally provided false, material information on an EQNSP.

Paragraph 17 sets forth conditions that could mitigate security concerns. I considered each of them and conclude none 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 2(c), 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. In addition, he lied to the Government in January 2006 when he, in essence, denied any delinquent debt. Applicant's inability or unwillingness to honor his financial obligations and to be truthful about them is

serious and recent. His failure to explain why he did not honor his financial obligations, and his incredible denial of an intent to deceive the Government about his financial condition, preclude a finding that applicant's financial difficulties will not recur and that applicant is unlikely to provide false information to the Government in the future. Based on the foregoing, I conclude applicant failed to mitigate the security concerns arising from Guidelines E and 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

Paragraph 2, Guideline E: 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