



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-12250
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

September 5, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 9, 2007. On February 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for Applicant. 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.

On April 11, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 8, 2008. The case was assigned to another administrative judge on May 19, 2008 and transferred to me on May 21, 2008. On June 12, 2008, a Notice of Hearing was issued, scheduling the hearing for July 9, 2008. On July 7, 2008, Applicant requested a delay. The delay was granted and the case was rescheduled for August 5, 2008. The case was heard on that date. The Government offered six exhibits which were admitted as

Government Exhibits (Gov) 1 – 6 without objection. Applicant testified. The record was held open until August 19, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a six-page document that was admitted as AE A without objection. Department Counsel's response to Applicant's post-hearing exhibit is marked as Hearing Exhibit 1. The transcript was received on August 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, 1.m, and 1.o. He denies the allegations in SOR ¶¶ 1.d, 1.g, 1.l, and 1.n.

Applicant is a 41-year-old employee with a Department of Defense contractor seeking a security clearance. He has held his current position since February 2007. He has a bachelor of science degree in computer science. He is married and has three children, ages 15, 12 and 5 months. (Tr at 7-8, 22; Gov 1.)

On March 9, 2007, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1.) A subsequent background investigation revealed that Applicant had 15 delinquent accounts, with a total approximate balance of \$30,254. (Gov 2; Gov 3; Gov 4; Gov 5; Gov 6.)

Applicant's delinquent accounts include: a \$555 delinquent medical account placed for collection in May 2007 (SOR ¶ 1.a: Gov 4 at 2; Gov 6 at 2); a \$39 returned check placed for collection in January 2007 (SOR ¶ 1.b: Gov 4 at 2; Gov 6 at 2); a \$482 insurance account placed for collection in January 2007 (SOR ¶ 1.c: Gov 2 at 6,11; Gov 3 at 8, 14); a \$150 delinquent account placed for collection in August 2006 (SOR ¶ 1.d: Gov 2 at 7,15; Gov 3 at 15; Gov 4 at 2; Gov 6 at 2); a \$112 cable television account placed for collection in August 2006 (SOR ¶ 1.e: Gov 2 at 7, 12; Gov 3 at 15; Gov 4 at 2); a \$213 satellite television account placed for collection in August 2006 (SOR ¶ 1.f: Gov 2 at 7; Gov 3 at 15); a \$112 returned check placed for collection in March 2006 (SOR ¶ 1.g: Gov 2 at 6; Gov 3 at 9); a \$210 cell phone account placed for collection in April 2006 (SOR ¶ 1.h: Gov 2 at 6, 12; Gov 3 at 9, 15; Gov 4 at 2; Gov 6 at 2); a \$1,966 delinquent account that was charged off in January 2006 (SOR ¶ 1.i: Gov 2 at 6, 13; Gov 3 at 11; Gov 4 at 2; Gov 6 at 2); a \$160 returned check that was charged off in December 2004 (SOR ¶ 1.j: Gov 2 at 6; Gov 3 at 6; Gov 4 at 3; Gov 6 at 2); a \$7,543 delinquent automobile loan that was charged off in June 2004 (SOR ¶ 1.k: Gov 2 at 13; Gov 3 at 11; Gov 4 at 3; Gov 6 at 2); a \$952 state tax lien entered in January 2004 (SOR ¶ 1.l: Gov 3 at 4-5; Gov 5 at 1); a \$5,125 federal tax lien entered on April 1, 2003 (SOR ¶ 1.m: Gov 2 at 6, 9; Gov 3 at 4-6; Gov 4 at 1; Gov 5 at 2; Gov 6 at 1); a \$439 state tax lien entered in January 2002 (SOR ¶ 1.n: Gov 2 at 6, 9-10; Gov 3 at 4, 6; Gov 4 at 1; Gov 5 at 3; Gov 6 at 1); and a \$12,196 federal tax lien entered on February 16, 2001 (SOR ¶ 1.o: Gov 2 at 6, 10; Gov 3 at 5; Gov 5 at 4).

Applicant's financial problems began in 2001 with the federal tax lien filed by the Internal Revenue Service (I.R.S.). (SOR ¶ 1.o) His ability to pay his financial obligations was further hindered a result of being laid off from February 2005 to October 2005. During his period of unemployment, he did some small jobs, but it was not enough to meet his expenses. His wife has been unemployed since 2005. (Tr at 20.) He continued to incur delinquent accounts after finding full-time employment. He consulted a credit counselor about seven years ago and considered filing for bankruptcy. He has not attended any recent financial counseling. (Tr at 53.)

Of the debts alleged in the SOR, the \$7,543 debt alleged in SOR ¶ 1.k has been paid off. Applicant's wages were garnished to pay off this debt. (AE A at 4-5; Gov 2 at 10.) Credit reports indicate the debts alleged in SOR ¶ 1.e (Gov 6 at 2) and SOR ¶ 1.h (Gov 4 at 2; Gov 6 at 2) are paid. The state tax debts alleged in SOR ¶¶ 1.l and 1.m have been paid. (AE A at 6.) The total balance owed for federal income taxes alleged in SOR ¶¶ 1.m and 1.o is now approximately \$31,000. Applicant states the I.R.S. has placed the account on hold until he is able to start making payments. He is not able to arrange a payment plan with the I.R.S. (Tr at 41-42.) Applicant claims the debts alleged in SOR ¶¶ 1.e, 1.h, and 1.j were paid, but provided no proof such as a receipt verifying payment. (Tr at 32-33, 35, 39.) He has not paid the remaining debts. Three weeks prior to the hearing, his van was repossessed due to lack of payment. (Tr at 54.)

Prior to being laid off in 2005, Applicant earned between \$30,000 to \$40,000 annually. His present salary is \$63,000. (Tr at 23.) His monthly take home pay is approximately \$2,500. He supplements his income with occasional side jobs. His monthly expenses are approximately \$2,800. (Tr at 44-49.)

### **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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a) (an inability or unwillingness to satisfy debts); FC DC ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. The SOR alleged 15 delinquent debts totaling approximately \$30,254. Of that amount, \$18,712 was for delinquent federal and state income taxes.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(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) is not applicable. Applicant's financial problems continue. Three weeks prior to the hearing, his van was repossessed, which will likely result in a deficiency judgment. Most of the delinquent debts remain unresolved. Applicant currently operates at a negative balance each month. His expenses are \$300 more than his income.

FC MC ¶ 20(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) applies, in part, due to the loss of Applicant's job in 2005 and his subsequent nine-month period of unemployment. His wife also lost her job in 2005 and has not worked since that time. However, this mitigating condition cannot be fully applied because Applicant has taken minimal steps towards resolving his delinquent accounts once he obtained full-time employment in February 2007. It cannot be concluded that he acted responsibly under the circumstances with regards to resolving his delinquent accounts.

FC MC ¶ 20(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) does not apply. Applicant attended financial counseling approximately seven years ago and did not attempt to attend recent financial counseling. Although the debt in SOR ¶ 1.k was paid by garnishing Applicant's wages, and the state tax debts alleged in SOR ¶¶ 1.l and 1.n are resolved, the remaining delinquent accounts remain unresolved. His federal income tax debt has increased to \$31,000. His financial problems are not likely to be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies, with respect to the debts alleged in SOR ¶¶ 1.e, 1.h, 1.k, 1.l, and 1.n. However, Applicant has not met his burden of proof pertaining to the resolution of the other debts in the SOR. He took minimal action towards resolving these accounts.

Guideline F is decided against Applicant.

### **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 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 provided no information about his work history. I considered Applicant's period of unemployment since 2005, and his efforts to resolve some of the accounts. However, the majority of the delinquent accounts remain unresolved. Applicant's outstanding federal tax debt has increased to \$31,000. His van was recently repossessed. Applicant's budgetary information provided at hearing reveals that his expenses are greater than his income. It is too soon to conclude Applicant has mitigated the concerns raised under financial considerations. Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under financial considerations.

### **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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against 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:	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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ERIN C. HOGAN  
Administrative Judge