



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-12416
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

May 14, 2008

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On January 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 January 29, 2008, and elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on March 17, 2008. The FORM was mailed to Applicant on March 19, 2008, and it was received on March 25, 2008. Applicant was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on May 9, 2008.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 31 years old and has worked for a federal contractor since 2001. He served on active duty in the Navy from 1997 to 2001, and was honorably discharged. He is divorced and remarried and provides child support for his two children from his first marriage.

Applicant has 11 delinquent accounts, totaling approximately \$11,461, that he admitted he owes, and he has not provided any proof of payment or resolution toward any of the accounts.<sup>1</sup> He listed the debts on his security clearance application (SCA) that he signed on September 26, 2006.<sup>2</sup> The accounts were referred for collection or charged off beginning in 2002 until 2006. Applicant has been continually employed since 1997 and with his current employer since 2001.<sup>3</sup> In his December 5, 2006 statement to an investigator from the Department of Defense, he stated he had spoken to a mortgage/loan officer who advised him not to pay the debts because it would reopen the accounts and thereby hurt his credit.<sup>4</sup> He reiterated this response to interrogatories on October 26, 2007.<sup>5</sup> In his answer to the SOR dated January 29, 2008, he stated:

I realize that I have a lot of old and negative marks on my credit report. I have taken this opportunity to take a hard look at my credit situation and have hired a credit counseling service, to help me target and clean up these old debts. The company is [A] and I have an account with them and am working to repair and correct my credit situation. I have enclosed my account details and their contact information.<sup>6</sup>

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<sup>1</sup> Applicant admitted the allegation in SOR 1.I. relieving the Government of having to prove it. The allegations stated that on January 5, 2007, an incident report was filed indicating Applicant's company credit card was in arrears in the amount of \$10,000 and he was unable to pay it due to litigation related to a personal family matter. On January 18, 2007, the report reflected that this account had been paid in full. The debt was paid 13 days after the incident report. I find for Applicant regarding this allegation.

<sup>2</sup>On Applicant's Electronic Questionnaire for Investigations Processing (e-QIP) signed on September 26, 2006, he admitted he had eleven delinquent debts. The total he listed was \$14,248.

<sup>3</sup> Item 4.

<sup>4</sup> Item 5.

<sup>5</sup> Item 6.

<sup>6</sup> Item 3.

Applicant provided a three page document that introduces him to Company A's program, their governing laws, and a limited power of attorney. Applicant signed the documents on January 29, 2008. No other information was provided as to what action Applicant has taken on his debts. There is no evidence Applicant has paid any of his delinquent debts or has set up any payment plans.

### **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. 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. I have considered all of them, especially AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has eleven delinquent debts that remain unpaid. He listed them on his SCA in September 2006 and has not provided any information that he has attempted to resolve them. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions. I especially considered AG ¶ 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”), (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”), and (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”).

Applicant has more than \$11,000 in delinquent debts. He has not paid them and offered no explanation as to why, other than he did not want to reopen them. He has been employed steadily since 1997. Therefore, I find (a) and (b) are not applicable. After receiving the SOR, Applicant contacted a credit counseling service, but provided no proof of any substantive action he has taken to pay or resolve his debts. There is no evidence Applicant received counseling to assist him in resolving his financial problems.

There are no indications the problems are being resolved or that he has initiated a good-faith effort to pay his creditors. Applicant has not acted responsibly toward his just debts. Some of the debts were sent to collection as far back as 2002 and 2003. Applicant was aware of the debts and listed them on his SCA in 2006. Despite being aware of the concern, he has not taken action to pay even the smallest debt. I find none of the remaining mitigating conditions apply.

### **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 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. Applicant is 31 years old and has been employed since 1997. He has numerous delinquent debts that date as far back as 2002. Despite being aware of them he chose for a period of time to do nothing because he did not want to reopen them. Recently, he contacted a credit counseling service, but did not provide proof that he has actually set up a payment plan or resolved any of his debts. Applicant's irresponsible attitude towards his finances is a cause of concern. I am unable to conclude Applicant has successfully mitigated the security concerns raised. Overall the record evidence leaves me with serious questions and 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 from 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-1.k:	Against Applicant
Subparagraph 1.l.	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge