



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-12541  
SSN: ----- )  
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Applicant for Security Clearance )

**Appearances**

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

July 22, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On December 21, 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 February 26, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on March 7, 2008. Applicant did not file a response to the FORM. The case was assigned to me on May 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 41 year old employee of a defense contractor.

Applicant has two delinquent, charged off debts with CAP 1 Bank in the approximate amounts of \$744.00 and \$1,521.00.

Applicant is indebted to Palisades in the approximate amount of \$1,327.00. This is a collection account that HSBC NV sold or transferred to Palisades.

Applicant is indebted to Palisades in the approximate amount of \$2,848.00. This is a collection account that WAMU/PROVIDIAN sold or transferred to Palisades.

Applicant is indebted to Palisades in the approximate amount of \$735.00. This is a collection account that AT&T sold or transferred to Palisades.

Applicant is indebted to Capital 1 FA in the approximate amount of \$11,899.00. This debt was placed for collection.

The SOR alleges, and applicant denies, that he has six debts with USA Funds totaling approximately \$22,348.00. Exhibit 5 establishes that the six debts originated with JP MORGAN CHASE as student loans, all six went delinquent, and all six were transferred to USA Funds for collection. On a January 2007 security questionnaire (e-QIP), applicant indicated he is indebted to Pioneer Credit Recovery in the amount of \$23,000.00 for student loans (which originated with Salliemae), and these debts are past-due. Based on the similar debt amounts and similar numbers for the accounts listed on both credit reports (Exhibits 5 and 6), it appears these are the same debts. I therefore find that applicant has approximately \$22,348.00 in delinquent student loan debt. On the same e-QIP, applicant stated his debt "is set for direct reimbursement through the checking account currently and will once again be in good standing with Salliemae in February." Although he had the opportunity to do so, applicant provided no evidence that he followed through and made any payments on his student loan debts.

Applicant is indebted to Ford Motor Company in the approximate amount of \$7,092.00. This debt represents the difference in value between applicant's repossessed vehicle and what he still owed on the vehicle loan at the time of repossession. The debt was placed for collection. According to information applicant provided on his January 2007 e-QIP, the debt went to judgment. Applicant stated on the e-QIP that he is working with a law firm to "pay back the remaining balance." Although he had the opportunity to do so, he provided no evidence that he has made any payments to Ford.

Applicant is indebted to Safeway as a result of a returned check in the approximate amount of \$194.00.

## **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 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.” Applicant’s numerous delinquent debts are still outstanding. He provided no explanation for them. There is no basis to conclude debts he incurs in the future will not be ignored. 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 evidence that would indicate his inability or unwillingness to pay his debts was caused by conditions 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 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 stated on his e-QIP that he is working with a law firm to satisfy his Ford debt, and has made arrangements to repay his delinquent student loan debt. Despite at least two opportunities to do so (i.e., in response to the SOR and in response to the FORM), applicant offered no evidence that he has paid anything to Ford or to the creditor holding his student loan debt. But even if he had, in the context of his overall past-due indebtedness, this would not constitute a good-faith effort to resolve his 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. Because he offered no explanation for his financial irresponsibility, there is no basis to conclude it will not continue. 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