



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-12553
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Pro Se

June 3, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on February 4, 2006. On November 15, 2007, 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 December 5, 2007, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on February 6, 2008. The FORM was forwarded to Applicant on February 7, 2008. Applicant received the FORM on March 3, 2008. He had 30 days from receipt of the FORM to submit any additional material. He did not respond to the FORM. The FORM was forwarded to the hearing office on April 29, 2008 and assigned to me on

May 2, 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, dated December 5, 2007, Applicant admitted SOR ¶¶1.d, 1.i, 1.m, 1.s, 1.u, 1.v, 1.y, and 1.ad, He denies the remaining SOR allegations. (Item 4.)

Applicant is a 45-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since May 2005. He was born in Nigeria. He became a naturalized U.S. citizen on July 6, 2001. He is married and has no children. (Item 5.)

Applicant's background investigation revealed 33 delinquent accounts, a total approximate balance of \$49,126. The delinquent accounts include: a \$288 medical account placed for collection in November 2005 (SOR ¶ 1.a; Item 6 at 10; Item 7 at 2; Item 8 at 2); a \$620 account placed for collection in July 2001 (SOR ¶ 1.b; Item 6 at 7; Item 7 at 12; Item 8 at 4); a \$99 account placed for collection in June 2003 (SOR ¶ 1.c; Item 6 at 2; Item 7 at 4, 5, 16; Item 8 at 2, 3); a \$264 delinquent cell phone account placed for collection in June 2005 (SOR ¶ 1.d; Item 6 at 10; Item 7 at 17, 19; Item 8 at 2); a \$934 satellite television account placed for collection in November 2005 (SOR ¶ 1.e; Item 6 at 10; Item 7 at 4, 17, 18, 19; Item 8 at 2); a \$3,568 credit card account placed for collection in July 2003 (SOR ¶ 1.f; Item 7 at 11); a \$1,021 account placed for collection in October 2007 (SOR ¶ 1.g; Item 8 at 4); a \$619 account placed for collection in October 2007 (SOR ¶ 1.h; Item 8 at 3); a \$54 delinquent cell phone account placed for collection in April 2006 (SOR ¶ 1.i; Item 7 at 11; Item 8 at 4); a \$1,308 delinquent credit card account placed for collection in November 2002 (SOR ¶ 1.j; Item 6 at 6; Item 7 at 10, 19); a \$507 delinquent credit card account placed for collection in May 2003 (SOR ¶ 1.k; Item 6 at 6; Item 7 at 10, 16; Item 8 at 3); a \$3,465 delinquent credit card account placed for collection in May 2003 (SOR ¶ 1.l; Item 6 at 6; Item 7 at 14, 18; Item 8 at 3); a \$950 gas station credit card account that was charged off in March 2002 (SOR ¶ 1.m; Item 6 at 8; Item 7 at 14; Item 8 at 2-3); a \$1,529 account charged off in July 2001 (SOR ¶ 1.n; Item 6 at 5); an \$826 delinquent credit card account charged off in August 2001 (SOR ¶ 1.o; Item 7 at 9; Item 8 at 3); a \$500 delinquent account charged off in October 2005 (SOR ¶ 1.p; Item 6 at 5; Item 7 at 9; Item 8 at 2); a \$1,020 delinquent credit card account charged off in January 2004 (SOR ¶ 1.q; Item 6 at 7; Item 7 at 11; Item 8 at 2); a \$3,696 delinquent account placed for collection in July 2006 (SOR ¶ 1.r; Item 6 at 8; Item 7 at 16); a \$653 delinquent credit card account placed for collection in August 2001 (SOR ¶ 1.s; Item 7 at 4, 16; Item 8 at 4); a \$1,680 delinquent account placed for collection in March 2006 (SOR ¶ 1.t; Item 7 at 4, 17); a \$261 delinquent phone account placed for collection in April 2006 (SOR ¶ 1.u; Item 7 at 12, 17; Item 8 at 3); a \$262 delinquent account placed for collection in November 2004 (SOR ¶ 1.v; Item 7 at 18); a \$144 cable account placed for collection in February 2001 (SOR ¶ 1.w; Item 7 at 18); a \$127 cable account placed for collection in July 2000 (SOR ¶ 1.x; Item 7 at 18); a \$478 delinquent account placed for collection in May 2002 (SOR

¶ 1.y; Item 7 at 19); a \$7,116 delinquent account placed for collection in July 2006 (SOR ¶ 1.z; Item 7 at 5); a \$9,327 delinquent account placed for collection in September 2006 (SOR ¶ 1.aa; Item 7 at 9); a \$5,233 delinquent account placed for collection in September 2006 (SOR ¶ 1.ab; Item 7 at 9); a \$254 delinquent account placed for collection in September 2006 (SOR ¶ 1.ac; Item 7 at 8); a \$477 delinquent account placed for collection in April 2000 (SOR ¶ 1.ad; Item 6 at 6; Item 7 at 10); a \$723 delinquent account placed for collection in April 2000 (SOR ¶ 1.ae; Item 6 at 5; Item 7 at 8); a \$641 delinquent credit card charged off in April 2002 (SOR ¶ 1.af; Item 7 at 6); and a \$472 judgment entered in December 2002 (SOR ¶ 1.ag; Item 6 at 2; Item 7 at 3; Item 8 at 1.)

In his answer to the SOR, Applicant did not explain why he denies the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f, 1.g, 1.h, 1.j, 1.k, 1.l, 1.n, 1.o, 1.p, 1.q, 1.r, 1.t, 1.w, 1.x, 1.z, 1.aa, 1.ab, 1.ac, 1.ae, 1.af, and 1.ag. He did not provide information on the status of any of the debts alleged in the SOR. He did not provide information as to what caused his financial problems. He did not provide information about his current financial status, such as a monthly budget. He did not provide information about his work performance.

Based on the record evidence, I find for Applicant with respect to SOR ¶ 1.j because the credit report dated, January 13, 2007, lists the debt as paid. (Item 7 at 19.) I find for Applicant with respect to SOR ¶ 1.r because it is a duplicate of the debt alleged in SOR ¶ 1.aa. SOR ¶ 1.aa lists the most recent creditor and balance. (Item 6 at 8; Item 7 at 9, 16.)

## **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); and FC DC ¶19(c), (a history of not meeting financial obligations); apply to Applicant’s case. Since 2000, Applicant has a history of not meeting financial obligations. He incurred 32 delinquent accounts, an approximate total balance of \$49,126.

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 has provided no information as to what caused his financial problems and what steps, if any, have been taken to resolve his financial situation.

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) cannot be applied. There is nothing in the record evidence suggesting the applicability of FC MC ¶ 20(b).

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. There is no evidence that Applicant attended financial counseling and no information was provided regarding steps taken to resolve his financial situation.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.j because a January 13, 2007 credit report indicates the debt was paid. However, at the close of the record, the status of 31 delinquent accounts, an approximate total of \$44,122 remained uncertain. I cannot conclude that Applicant initiated a good-faith effort to resolve his overdue accounts.

FC MC ¶20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) does not apply. While Applicant denies 25 of the debts alleged in the SOR, he provided no explanation as to why he denies them and/or supporting documentation which indicates he has a reasonable basis to dispute the legitimacy of the past-due debts.

Under the revised AG, the overall concern under financial considerations is not only whether a person who is financially over-extended is at risk of having to engage in illegal acts to generate funds, but also the 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. Applicant's failure to honor his financial obligations to his creditors remains a security concern. He has not mitigated the security concerns raised under financial considerations.

## 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 has provided no information about his current financial situation or the status of his delinquent debts. There is insufficient evidence to conclude Applicant has mitigated the security concerns raised 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:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	Against Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	Against Applicant
Subparagraph 1.ab:	Against Applicant
Subparagraph 1.ac:	Against Applicant
Subparagraph 1.ad:	Against Applicant
Subparagraph 1.ae:	Against Applicant
Subparagraph 1.af:	Against Applicant
Subparagraph 1.ag:	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