



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 07-13306  
)  
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Applicant for Security Clearance )

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

June 19, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

On February 7, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 March 20, 2008, and requested a hearing before an administrative judge. On April 22, 2008, DOHA assigned the case to

me. A Notice of Hearing issued the same day, and the case was heard on May 14, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Exhibits (AE) A through C into evidence without objection. At the conclusion of the hearing, I left the record open until May 28, 2008, to give Applicant an opportunity to submit additional information. On May 23, 2008, DOHA received the hearing transcript (Tr.). On May 27, 2008, Applicant submitted three exhibits that I marked as AE D, E and F and admitted into the record without objection by the Government.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations contained in ¶¶ 1.a, 1.c, 1.e to 1.g, 1.i to 1.l, 1.n, and 1.o. He denied the factual allegations contained in ¶¶ 1.b, 1.d, 1.h, 1.m, and 1.p of the SOR. Those admissions are incorporated into these findings of fact.

Applicant is 50 years old and married. He and his wife have two children, one of whom lives with them, along with her baby. In June 1993, he earned a Bachelor of Science in Computer Science. Since April 1994, he has worked as a software engineer for a federal contractor. He has held a security clearance throughout his employment. (Tr. 20).

Applicant's financial difficulties began occurring seven to eight years ago. He attributed them to personal problems, medical bills for his daughter's various surgeries, a lack of sufficient income, and a previous drinking problem. He admits that he made mistakes over that period of time, which affected his financial situation and resulted in the accumulation of delinquent debts. (Tr. 20-21). He previously stated that he did not intend to pay debts that had been removed from his credit report because they were no longer legally enforceable. (GE 2 at 51). However, he is now aware of his responsibility to resolve those outstanding obligations, in light of the effect they may have on his employment. (Tr. 66). He testified, "I regret the debts extremely, and I'm going to try and rectify the situation. I'm going to contact these people immediately." (Tr. 75).

In February 2006, Applicant completed an e-QIP. In answer to Section 28: Your Financial Delinquencies, he forthrightly disclosed eight debts whose "Status was pending." (GE 1 at 98). In his November 2007 response to a set of Interrogatories pertaining to financial delinquencies, he listed 21 debts and their outstanding balances. (GE 2 at 49). He attached a November 2007 credit bureau report (CBR) to the response and noted he "will be paying this off in the next few weeks" next to a \$283 utility debt. (*Id.* at 58). On February 25, 2008, the SOR notified him of the specific debts that created a security concern. On May 12, 2008, (two days before the hearing in this case), he entered into a debt repayment agreement for four debts, incorporating two debts disclosed on his e-QIP and two listed in the Interrogatories. On May 27, 2008, he paid the outstanding \$283 utility bill.

The SOR alleged that Applicant has 15 delinquent debts, totaling \$32,109. Two of those debts are duplicates, reducing the amount allegedly owed to \$29,918.<sup>1</sup> All of the debts were disclosed by Applicant on either his e-QIP or Interrogatories. The status of the 13 debts is as follows:

Applicant paid four debts that total \$7,866. He completed payment on ¶ 1.h (his student loan for \$7,189), through a garnishment that ended in June 2007. (AE D). On May 27, 2008, he paid ¶ 1. d (a \$60 medical bill), ¶ 1. e (a \$283 utility bill), and ¶ 1. k (a \$334 department store debt). (AE E and F).

Applicant entered into a repayment agreement on May 12, 2008, which includes four debts, totaling \$12,718: ¶ 1.b (a \$5,567 credit card company debt); ¶ 1.c (a \$5,734 automobile loan); ¶ 1.j (a \$217 loan); and ¶ 1.n (a \$1,200 loan). According to the plan, Applicant was required to make an initial payment of \$212 on May 20, 2008.

Five debts remain unresolved: ¶ 1.f is a department store debt for \$2,665; ¶ 1.g is a credit card debt for \$5,984; ¶ 1.i is a department store debt for \$235; ¶ 1.l is a gasoline credit card debt for \$150; and ¶ 1.o is a department store debt for \$300. These debts total \$9,334.

Applicant submitted a budget with the November 2007 Interrogatories that essentially remains accurate. His current net monthly income is \$6,000 and includes his spouse's \$600 salary. The family expenses are \$5,366, including payments on his mortgage and car loan. With an increase in gas prices, he estimates he has between \$150 and \$500 remaining for discretionary items. (Tr. 69).

Throughout his testimony, Applicant acknowledged that he has procrastinated in resolving these debts. He admitted that the garnishment of his wages to repay his student loan was due to his procrastination. (Tr. 73). He also "waited and waited" before calling the debt consolidation company at the last minute to set up the repayment plan for the four debts. (Tr. 58). At the conclusion of the hearing, Applicant expressed concern over losing his job as a result of these security concerns. In reference to the six unresolved debts, he stated:

Of the six debts that I have to – or the six entities I have to contact, there's one that's enough where it could be added on to this agreement that I've made with this debt company, and the other six I can pay separately. That's going to be done. All I can say is that I will get – take care of what we have agreed to as quickly as possible and get the proof of that to you as quickly as possible in whatever form you'd like and I only hope that you'll let me have a couple of weeks or a week or so to do that, and I will take care of it. [Sic]

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<sup>1</sup>SOR ¶ 1. a (\$2,018) is a duplicate of ¶ 1.b (\$5,567); ¶ 1.m (\$173) is a duplicate of ¶ 1.f (\$2,665).

Pursuant to his request, the record remained open for two weeks to give him an opportunity to resolve or submit additional information on the six debts that remain unresolved. He subsequently produced evidence that he paid the \$263 utility bill, a \$60 medical bill, and one of the six debts that owed to a department store (for \$334) and disclosed on his e-QIP. He did not address the other outstanding five debts.

### **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 to obtain a favorable security decision. 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."

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.

## **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 two conditions that could raise security concerns and may be potentially applicable in this case. Under AG ¶ 19(a), "an inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant began accumulating a significant amount of delinquent debt seven or eight years ago that he did not intend to pay until recently. The evidence is sufficient to raise these disqualifications.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial worries arose seven to eight years ago and continue into 2008 because he did not intend to resolve many of them. Because the problems have been ongoing, are not isolated, and resulted from a decision not to address them, his judgment and reliability are called into question. Hence, AG ¶ 20(a) cannot apply.

Applicant's debts accumulated as a result of personal problems, his daughter's medical problems, and insufficient income. Some of those circumstances were outside of his control. As he did not present evidence indicating that he attempted to manage his debts over the years, I find AG ¶ 20(b) has partial application.

Applicant produced evidence that he paid \$7,866 of his debt. He documented the execution of a recent repayment plan for \$12,718 of his outstanding debts, but provided no evidence that he made any payment. He did not fully address \$9,334 of the outstanding debts, which he indicated he intended to do at the end of his testimony. He did not provide evidence that he obtained credit counseling. Hence, I conclude AG ¶ 20(c) and AG ¶ 20(d) has only partial application. They apply fully to the debts that he paid. They have limited application to those that he placed on a repayment plan, but not full application because he did not produce evidence of having made any payment on it. Consequently, he did not adequately demonstrate that his debts are under control or that he made a good-faith effort to address them. These two AGs do not have any application to the five unresolved debts.

There is no evidence to support the application of AG ¶ 20(e) and AG ¶ 20(f).

### **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). They include the following:

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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 a 50-year-old married man. He is intelligent and educated. He has worked for his current employer since 1994 and held a security clearance during that time. About seven to eight years ago, he began accumulating delinquent debts as a result of various circumstances. In February 2006, he disclosed eight of those debts to the Government. In November 2007, the Government inquired further into his delinquencies. In his response to that inquiry, he listed additional debts and indicated that he intended to let some of them become legally unenforceable and not make payments. He also noted he was going to pay a past due utility bill of \$283 within a couple weeks (which he did not do). At the time, he felt that he did not have an obligation or responsibility to pay the numerous debts that he incurred.

After receiving the SOR in February 2008, Applicant clearly realized his delinquencies were creating potential employment problems. Two days before the hearing, he entered into a repayment plan with a company to begin resolving his debts, but did not make any initial down payment on it. While testifying, he further expressed his employment concerns and requested time to resolve six unresolved debts. The record was held open for two weeks to give him time to provide further documentation in support of his case. Although he subsequently presented evidence of payment for three debts, including the previously mentioned utility bill, a small medical bill, and a department store charge, he did not resolve five debts, totaling \$9,334, as he said he would. His history of procrastination and refusal to pay his bills, demonstrate a consistent pattern of poor judgment and a lack of reliability. Based on that history, I am concerned that he will not comply with his repayment plan or resolve the debts that remain outstanding. Despite a budget that will accommodate a repayment plan, I believe similar problems may recur in the future until he commits to establishing a solid financial track and gains insight into the reasons for his procrastination.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of the above 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:	(Same as 1.b)
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For 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:	Against Applicant
Subparagraph 1.m:	(Same as 1.f)
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge