



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-13332
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

January 8, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 19, 2006. On December 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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.

On January 9, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 31, 2008. The case was assigned to another administrative judge on February 1, 2008 and transferred to me on July 9, 2008. In January 2008, it was discovered that Applicant was working in Iraq. He did not return to the U.S. on leave until November 2008. On October 21, 2008, a Notice of Hearing was issued, scheduling the hearing for November 18, 2008. The case was heard on that date. The Government offered five

exhibits which were admitted as Government Exhibits (Gov) 1 – 5 without objection. Applicant testified and offered five exhibits which were admitted as Applicant Exhibits (AE) A – E without objection. The record was held open until December 19, 2008, to allow Applicant to submit additional documents. No additional documents were submitted. The transcript was received on December 4, 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 SOR ¶¶ 1.c, 1.d, 1.g, 1.h, and 1.j. He denies SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.i, 1.k, 1.l, 1.m, 1.n and 1.o.

Applicant is a 39-year-old help desk administrator employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since October 2006. He is a police academy graduate and has a high school diploma. He served on active duty in the United States Army from 1994 to 1995. He was injured during basic training and was medically discharged with an honorable discharge. He married his first wife in December 1992. They divorced in June 2000. A daughter was born of the marriage, now age 13. His first wife passed away on September 11, 2002. He married his second wife in February 2002. They divorced in September 2004. A daughter was born of the marriage, now age 6. He married his current wife in August 2006. She has an eight-year-old daughter. Applicant and his current wife have a two-year-old son. His six-year-old daughter lives with her mother. His 13-year-old daughter, 8-year-old stepdaughter, and two-year-old son live with Applicant and his wife. (Tr at 4-6, 27-28, 30, 35, 63, 65-66; Gov 1; AE A.)

Applicant has worked as a contractor in Iraq since March 2005. From February 2005 to March 2006, he worked for a previous contractor. He was sent back early as a result of medical issues related to a spider bite. He accepted his current position in October 2006. He has been assigned to Iraq since that time and will be in Iraq until October 2009. He was home on leave at the time of the hearing. (Tr at 34-37.)

On September 19, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1.) He disclosed several delinquent debts in response to section 27 on his questionnaire. Credit Reports obtained during Applicant's subsequent background investigation listed the following delinquent accounts: a \$136 medical account placed for collection in January 2000 (SOR ¶ 1.a: Gov 3 at 2; Gov 4 at 3,6,10; Gov 5 at 3, 8, 12); a \$115 medical account placed for collection (SOR ¶ 1.b: Gov 4 at 3, 8, 10, 13); a \$4,629 medical account owed to a hospital, placed for collection in October 2002 (SOR ¶ 1.c: Gov 3 at 2; Gov 4 at 9, 10, 12, 14; Gov 5 at 11, 15, 17); a \$1,070 medical account placed for collection in September 2005 (SOR ¶ 1.d: Gov 3 at 2; Gov 4 at 5, 10, 13; Gov 5 at 3, 16); a \$3,995 credit card account that was placed for collection in January 2000 (SOR ¶ 1.e: Gov 5 at 5); and a \$3,476 debt owed to a credit card placed for collection in February 2001 (SOR ¶ 1.f: Gov 4 at 11; Gov 5 at 3, 5, 13).

Additional debts include a \$12,718 debt owed from an automobile repossession charged off as a bad debt in February 2003 (SOR ¶ 1.g: Gov 3 at 1, 3; Gov 4 at 4; Gov 5 at 5); a \$28,221 debt owed as result of a truck repossession charged off as a bad debt in September 2005 (SOR ¶ 1.h: Gov 4 at 6; Gov 5 at 7); a \$3,030 debt owed on an automobile placed for collection in September 2002 (SOR ¶ 1.i: Gov 4 at 8; Gov 5 at 10); a \$3,770 debt owed on an apartment lease, placed for collection in October 2006 (SOR ¶ 1.j: Gov 3 at 2; Gov 4 at 6, 12); a \$253 cell phone account charged off as a bad debt in March 2002 (SOR ¶ 1.k: Gov 3 at 2; Gov 4 at 9; Gov 5 at 10); a \$484 telephone account placed for collection in April 2003 (SOR ¶ 1.l: Gov 4 at 12; Gov 5 at 9, 15); a \$723 electric utility account charged off as a bad debt in October 2005 (SOR ¶ 1.m: Gov 3 at 3; Gov 4 at 8); a \$621 satellite television account placed for collection in October 2004 (SOR ¶ 1.n: Gov 4 at 4, 11, 13; Gov 5 at 4, 12); and a \$496 Direct TV account, placed for collection in July 2006 (SOR ¶ 1.o: Gov 4 at 11, 13; Gov 5 at 11, 15, 17).

Applicant had several periods of unemployment since 1995. He was unemployed for six months after separating from the U.S. Army in 1995. (Tr at 64.) In 1998, his employer laid him off and he was unemployed for six months. (Tr at 57, 64-65.) From March 2006 to October 2006, he was unemployed for six months after being injured by the spider bite in Iraq. He has a pending workmen's compensation claim with the company. (Tr at 35.) His periods of unemployment contributed to his financial problems but he also admits some of his financial problems were due to mismanagement. (Tr at 56; Gov 1, Additional Comments section.)

In 1995, Applicant filed for Chapter 13 bankruptcy. He claims that he completed the wage earner plan in 1998. (Tr at 38.) He claims the debts alleged in SOR ¶¶ 1.e, and 1.i were included in the bankruptcy. Applicant testified that he would obtain a copy of his bankruptcy and submit it post-hearing. (Tr at 40-41, 50.) No documents were submitted after the hearing. He also claimed the debts alleged in SOR ¶¶ 1.e and 1.i were the responsibility of his first ex-wife, who is now deceased. He provided a copy of the automobile title pertaining to the debt alleged in SOR ¶ 1.i indicating no liens on the automobile. He has provided sufficient evidence to indicate these debts belonged to his first ex-wife. SOR ¶¶ 1.e and 1.i are found for Applicant. (TR at 17, 38-40; AE A; Answer to SOR.)

Applicant claims the debts alleged in SOR ¶¶ 1.a, and 1.b are medical accounts incurred by his current wife prior to their marriage. (Tr at 29-31.) SOR ¶¶ 1.a and 1.b are found for Applicant.

He is waiting for a settlement offer related to the \$4,629 medical debt alleged in SOR ¶ 1.c. In October 2002, he injured his ankle and had no medical insurance. The company was contacted in November 2007 to inquire about a settlement. His wife allegedly made a couple of phone calls since that time about a potential settlement. Applicant has not heard anything about a possible settlement. He has not made any payments towards the account because he is waiting for a settlement offer. (Tr at 32-33.)

Applicant admits that he owes the \$1,072 medical debt alleged in SOR ¶ 1.d. He has made no contact with the creditor. (Tr at 33.)

Applicant disputes the \$3,476 credit card account alleged in SOR ¶ 1.f. He claims that it was a company credit card and a previous employer is responsible for the account. He is trying to contact the previous employer in order to get the account removed from his credit report. The last time he contacted them was in early 2008. (Tr at 42-25.)

The \$12,718 debt alleged in SOR ¶ 1.g was a truck loan. Applicant could not make the truck payments after he was laid off. He arranged to have a friend take over the truck payments. His friend did not make the truck payments and the truck was repossessed. The loan was in Applicant's name. He is trying to locate the company collecting on the debt. (Tr at 46-48.)

The \$28,221 debt alleged in SOR ¶ 1.h was an automobile loan. The car was repossessed in 2004. Applicant is not sure who is currently collecting on the debt.

Applicant is currently waiting for a settlement offer related to the \$3,770 amount owed on an apartment lease (SOR ¶ 1.j). He has made no payments on the debt. He and his wife moved out of the apartment before their lease was up after his wife slipped on the stairs while pregnant. They had complained to the landlord several times about problems with the entry way but the landlord did not correct the problem. (Tr at 50.)

Applicant denies the \$253 telephone account alleged in SOR ¶ 1.k. He has no knowledge of the account. (Tr at 52; Answer to SOR.)

Applicant claims the \$484 telephone debt alleged in SOR ¶ 1.l and the \$723 utility account alleged in SOR ¶ 1.m was opened by his second ex-wife. He admits that the accounts were joint accounts and accepted responsibility for the accounts at hearing. (Tr at 53-54.) No payments have been made towards either account.

Applicant claims the \$621 satellite television account alleged in SOR ¶ 1.n is paid but provided no receipts at the close of the record. (Tr at 55; Answer to SOR.)

Applicant denies the \$496 Direct TV account alleged in SOR ¶ 1.o. He claims he never had a Direct TV account. (Tr at 55.)

In late 2006/early 2007, Applicant contracted a law firm to dispute several of the accounts listed on his credit reports, including SOR ¶¶ 1.k and 1.o. He contacted them four days prior to the hearing but has not heard anything about the status of the firm's progress. (Tr at 52, 59.) He provided no documentation after the hearing pertaining to his agreement with the law firm.

Applicant is taking an online financial credit counseling course. He intends to take a money management class when he returns to Iraq. (Tr at 60.) He recently

consulted consumer credit counseling. He intends to allocate \$1,500 out of his paycheck towards his delinquent accounts. He claims he was too busy to resolve his financial situation while in Iraq. (Tr at 66-67; AE D.) No documentation was provided to indicate that an agreement has been created or when it will take effect.

Applicant and his wife were concerned about a letter they received which they believe was an attempt to steal his identity. It was addressed to a bank located in a country that is a US territory. The letter asked that his credit rating be reconsidered and has his social security number on the account. Neither Applicant or his wife mailed the letter. It was returned to their address because there was no such address for the bank. They took actions to monitor their credit reports and it appears no unauthorized accounts had been opened. (Tr at 24; AE E.)

In response to interrogatories, dated October 22, 2007, Applicant completed a personal financial statement. His net monthly take home pay was \$7,000. He listed approximately \$4,283 in monthly expenses. He has approximately \$2,717 in discretionary income left over each month after expenses. (Gov 2.) At hearing, Applicant testified these numbers are no longer accurate. He was given the option to provide an updated statement with his post-hearing submissions. No updated budget was provided. His wife is a full-time student and does not work. (Tr at 61-62, 70.)

Applicant submitted numerous letters of recommendation commending his service while working in Iraq and his overall character. (AE B at 1-7.)

### **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. Applicant has accumulated a significant amount of delinquent debt since 2000. Previous financial problems resulted in a 1995 Chapter 13 bankruptcy filing. The SOR alleges 15 debts, an approximate total balance of \$63,739.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

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) does not apply. While Applicant states he retained a law firm to assist him in removing disputed debts off his credit report in late 2006/early 2007, he provided no indication of the law firm's progress. The majority of the accounts remain unresolved. While he has made sporadic attempts to resolve his financial situation, he has not established a plan to resolve his debts.

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. Applicant had several periods of unemployment which contributed to his financial problems. However, he has been continuously employed in Iraq since October 2006, earning enough income to be able to begin to resolve his financial situation. At the close of the record, no proof was provided that any of the delinquent accounts which were Applicant's responsibility were resolved. I cannot conclude Applicant has acted responsibly under the circumstances.

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. When he returned from Iraq on leave, Applicant consulted consumer credit counseling. He intends to allocate \$1,500 out of his paycheck to pay towards his delinquent debts. He provided no proof at the close of the record that this action was completed. Even if it were completed, it is too soon to conclude Applicant's financial situation has stabilized due to his history of financial irresponsibility and no proof that any payments have been made towards his delinquent accounts. Given the extent of the debt it will take some time for the delinquent debts to be resolved.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant presented sufficient evidence that the debts alleged in SOR ¶¶ 1.a, 1.b, 1.e, and 1.i were not his responsibility. Aside from these debts, approximately \$50,410 of unresolved delinquent debt remains. Applicant testified that he is beginning to resolve his delinquent accounts. The record was held open to allow him to submit documentation to corroborate his efforts. Nothing was submitted. I cannot conclude Applicant initiated a good-faith effort to resolve his delinquent accounts based on a lack of documentation.

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) applies with respect SOR ¶¶ 1.a, 1.b, 1.e, and 1.i. Applicant provided sufficient documentary evidence to support that these debts were not his responsibility. He did not provide sufficient evidence to support his disputes with the debts alleged in SOR ¶¶ 1.f, 1.k, 1.l, 1.m, and 1.o.

**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. I considered the favorable comments of Applicant’s friends and co-workers. I considered Applicant’s periods of unemployment. However, Applicant’s financial situation has been relatively stable since October 2006. Although Applicant intends to pay off his delinquent accounts, he provided insufficient evidence to establish that he has taken action to resolve his delinquent accounts. A promise to pay in the future does not mitigate the security concerns raised based on Applicant’s past financial history. Applicant has not 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:	For Applicant
Subparagraph 1.b:	For 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:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against 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

### **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