



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13884
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

September 25, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 23, 2007. On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. 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 as of September 1, 2006.

Applicant acknowledged receipt of the SOR on March 25, 2008. He answered the SOR on April 10, 2008, and requested a decision without a hearing. On June 30, 2008, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant and instructed

him to respond within 30 days of receipt. No response was received by the August 8, 2008, due date. On September 15, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 4), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes 13 delinquent debts totaling \$7,513 (SOR ¶¶ 1.a through 1.m). Applicant admitted the allegations, and provided documentation of a settlement offer of a \$2,600.15 debt that was not alleged. After considering the evidence of record, I make the following findings of fact.

Applicant is a 37-year-old "14t" instructor, who has worked for his present employer, a defense contractor, since about June 2007. The record does not reflect that he currently holds a security clearance. He served in the U.S. Army from August 1990 to August 1998, where he held a secret clearance (Item 5).

Applicant denied any financial delinquencies when he completed his e-QIP on May 23, 2007. He responded negatively to both question 28.a, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and question 28.b, "Are you currently over 90 days delinquent on any debt(s)?" (Item 5). A check of Applicant's credit on June 16, 2007 (Item 7), revealed several past due balances charged off and/or in collection.

DOHA submitted interrogatories to Applicant in or before November 2007, asking him to document the current status of the debts listed in the June 2007 credit report. Applicant provided a debt negotiation agreement signed by him on November 15, 2007. In return for a monthly payment of \$176.04, the debt resolution firm was to negotiate with the creditors listed under the plan, including those in SOR ¶¶ 1.a-1.d and 1.f-1.m,¹ as well as with some creditors not listed in the SOR. The amount of total debt to be resolved in the plan was \$9,992.15, although the debt in SOR ¶ 1.d was listed twice, as a \$987 balance owed the collection agency and a \$970 debt owed the original creditor. Applicant authorized the debt resolution firm to deduct \$176.04 from his checking account on a monthly basis starting December 15, 2007. Applicant had \$375.84 in a checking account as of October 26, 2007 (Item 6).

¹In the enrolled creditor list, Applicant included an account number for the debt in SOR ¶ 1.d held by the collection agency but not for the original creditor alleged in SOR ¶ 1.m. His credit report of June 2007 shows that the creditor in SOR ¶ 1.d is the assignee collecting the debt in SOR ¶ 1.m.

Applicant's history of financial delinquency is reflected in the following table.

Debt	Delinquency history	Repayment Status
SOR ¶ 1.a \$379 telephone debt, in collection	\$379 for collection Sep 06 (Items 7, 8)	Debt repayment plan (Item 6), Feb 08 credit report as unpaid (Item 8), no proof of payment
SOR ¶ 1.b \$225 satellite television debt, in collection	\$225 for collection as of Aug 06 (Items 7, 8)	Debt repayment plan (Item 6), Feb 08 credit report as unpaid (Item 8), no proof of payment
SOR ¶ 1.c \$221 satellite television debt, in collection	\$221 for collection as of Dec 03, no activity since Sep 02 (Items 7, 8)	Debt repayment plan (Item 6), Feb 08 credit report as unpaid (Item 8), no proof of payment
SOR ¶ 1.d \$1,004 debt, in collection	Updated balance of SOR ¶ 1.m (Items 7, 8)	Debt repayment plan as \$987 (Item 6), Feb 08 credit report as \$1004 balance (Item 8), no proof of payment
SOR ¶ 1.e \$404 telephone services debt, in collection	\$404 for collection Jun 06, last activity Feb 04 (Items 7, 8)	On Feb 08 credit report as unpaid as of Oct 07 (Item 8), no proof of payment
SOR ¶ 1.f \$312 communications services debt, in collection	\$312 for collection as of Jul 05 (Items 7, 8)	Debt repayment plan (Item 6), Feb 08 credit report as unpaid (Item 8), no proof of payment
SOR ¶ 1.g \$848 debt, charged off	Revolving charge opened Apr 01, \$350 credit limit, \$848 in collection, no activity since Jun 01 (Items 7, 8)	Debt repayment plan (Item 6), Feb 08 credit report as unpaid (Item 8), no proof of payment
SOR ¶ 1.h \$137 debt, charged off	\$127 past due balance owed since Nov 04, charged off Mar 05, for collection (Items 7, 8)	Debt repayment plan as \$127 (Item 6), Feb 08 credit report as charge off (Item 8), no proof of payment

SOR ¶ 1.i \$763 debt, charged off	Installment sales contract opened Sep 06, high credit \$863, \$763 balance transferred Jan 07 (Item 8)	Debt repayment plan (Item 6), Feb 08 credit report as charge off (Item 8), no proof of payment
SOR ¶ 1.j \$480 debt, charged off	\$780 loan taken out Apr 06, \$480 charged off balance in collection Sep 06 (Items 7, 8)	Debt repayment plan as \$544.15 (Item 6), Feb 08 credit report as \$499 past due (Item 8), no proof of payment
SOR ¶ 1.k \$944 utility services debt, in collection	Last activity Mar 05, for collection Apr 05, \$944 charged off by assignee May 07 (Item 7)	Debt repayment plan (Item 6), no proof of payments
SOR ¶ 1.l \$826 debt, in collection	\$710 debt charged off May 06, \$826 bal May 07 (Item 7)	Debt repayment plan (Item 6), no proof of payments
SOR ¶ 1.m \$970 debt, in collection	Revolving charge opened Sep 03, \$845 high credit, charged off balance. For collection to assignee in ¶ 1.d, \$970 past due balance as of May 07 (Items 7, 8)	See SOR ¶ 1.d
\$1,398 collection debt (not alleged)	Wireless phone services, \$1,398 past due balance for collection Jul 06 (Item 7)	Debt repayment plan (Item 6), no proof of payments
\$97 collection debt (not alleged)	\$97 balance in collection Mar 07, last activity Apr 04 (Items 7, 8)	Paid as of Jan 08 (Item 8)
\$442 collection debt (not alleged)	Installment loan opened Feb 01, \$442 balance past due May 07 (Item 7)	Debt repayment plan as \$902 (Item 6), no proof of payments
\$166 balance 120 days past due	home furnishings installment contract opened Mar 06 for \$299, \$166 past due 120 days as of Jan 07 (Item 7)	Debt repayment plan (Item 6), no proof of payments
\$380 collection debt	Opened June 06, \$380 in collection as of Mar 07	Debt repayment plan (Item 6), no proof of payments

On January 11, 2008, an agency collecting for a \$2,600.15 debt (not alleged) offered to conditionally release Applicant from any further responsibility for that debt on payment of \$1,800.10 (Item 4).² The record does not contain any evidence that he paid the settlement amount.³

A subsequent check of Applicant's credit on February 7, 2008, showed that a \$97 debt (not alleged) had been paid after collection, but that no progress had been made on the debts in SOR ¶¶ 1.a-1.j. Applicant had been late twice since May 2007 on his car loan taken out in January 2006 (Item 8). The \$1,398 delinquent cellular phone debt (not alleged), and those debts in SOR ¶¶ 1.k. and 1.l, all undisputed by Applicant, did not appear on the credit report.

Following his discharge from the Army, Applicant attended a technical institute from which he received an "AOS" degree in microcomputers in December 1999. From May 2000 to May 2007, he was employed as a technical services representative for a satellite television provider. He began his present employment in early June 2007 (Item 5). The available record contains no information about his income or expenses. He has been married since July 1992 (Item 5). There is no indication that he and his spouse have any children.

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 overarching 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

²There was no debt in that amount or under the name of the creditor or collection agency on his June 2007 credit report.

³Those debts not alleged in the SOR are relevant to assessing Applicant's overall financial situation under the "whole person" concept.

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 that 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 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.

Applicant admits financial delinquency in excess of the \$7,513 alleged in the SOR. His credit reports and other financial records (the debt repayment plan and recent settlement offer) reflect past due balances totaling about \$12,140 as of late 2007. Significant security concerns are raised by “inability or unwillingness to satisfy debts” (AG ¶ 19(a)) and by “a history of not meeting financial obligations” (AG ¶ 19(c)).

Many of the debts in the SOR were referred for collection within the past three years. Applicant's financial problems are therefore too recent to satisfy mitigating condition 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"). His e-QIP shows that he has been steadily employed since May 2000. There is no indication that his debts were due to an unexpected expense or other factor, such as low income, that could negate the reasonable inference of financial mismanagement generated by several delinquent accounts. AG ¶ 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 based on the facts presented for review.

In response to DOHA interrogatories, Applicant provided documentation of a debt repayment plan under which the debts alleged in the SOR, and about \$2,846 in additional debt not alleged, would be eventually settled and/or satisfied in return for his monthly payments of \$176.04. While this qualifies as a good-faith effort to resolve the debts under AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"), it amounts to at best a promise to pay in the absence of any evidence that the repayment plan had been accepted by his creditors and put into effect by the debt resolution firm. Applicant presented no proof of any payments on the debts even after he had been apprised of the government's concerns about the premature nature of the debt resolution plan. Similarly, it is unclear whether he settled the \$2,600.15 debt owed on an account in collection that was neither alleged in the SOR nor included in the debt repayment plan (Item 4). AG ¶ 20(d) does not fully apply, even though he is credited with satisfying the \$97 debt (not alleged) and seeking the assistance of a debt negotiation firm. In the absence of a documented track record of repayment, either directly to the creditors or through the debt resolution firm, AG ¶ 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"), also does not apply. He had \$375.84 on deposit in a checking account as of late October 2007 (Item 4). While this would be sufficient to cover a couple of monthly payments under the debt repayment plan, it is unclear whether he can afford to keep up with the payments.

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 his 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant made no effort to address his delinquent debt until November 2007, when he was apparently prompted by the clearance investigation and/or by interrogatories from DOHA. He then sought the assistance of a debt resolution firm. His failure to address his debts in a timely manner raises considerable doubts about his financial judgment. His February 2008 credit report shows he was making his payments on his automobile loan, but also that he had been late twice since May 2007. While he is not required to satisfy or settle all his delinquent debts before he can be granted access to classified information, he has yet to demonstrate that he can handle his financial obligations responsibly.

Formal Findings

Formal findings 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:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge