



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-15619
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 8, 2008

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On November 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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 December 18, 2007, and elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on February 19, 2008. The FORM was mailed to Applicant on February 27, 2008, and it was received on March 4, 2008.

Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit any additional information. The case was assigned to me on May 2, 2008.

### **Findings of Fact**

Applicant admitted allegations 1.a and 1.c in the SOR. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 42 years old and has worked for a federal contractor since January 2006. He is presently married and twice divorced. He has two children, one who is an adult and the other is 13 years old.

Applicant admits he owed the debt in SOR 1.a for a car repossession incurred in April 2001, in the amount of \$11,501. He has not provided any information or documents to show he has paid this debt or has been paying this debt. In response to question 27 on Applicant's security clearance application (SCA) (dated June 19, 2007), referencing this debt Applicant stated:

When I checked my credit this showing 3 times. This is due to come off my credit in 4/2008 because of lack of work and pay I had to make a decision to either eat or pay for a car I couldn't afford to drive [so I] gave the car back and made arrangements with the finance company.<sup>1</sup>

He did not provide any information about his payment arrangements or provide any proof that he has paid the debt.

Applicant admits he owes the debt in SOR 1.c to a collection agency for \$673. As of July 7, 2007, this debt is still owed. Applicant stated on his SCA in reference to this debt the following:

This will show up on my report at least 2 more times because passing from one collection agency to another. This is due to come off my credit report by 3-2008. Again it was a [choice] between eating or paying this bill and [I] tried to make arrangements but the finance company was not willing to work with me.<sup>2</sup>

Applicant has not provided any information or documents to show he has paid this debt or has been paying this debt.

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<sup>1</sup> Item 4 at p. 32.

<sup>2</sup> *Id.* at p. 33.

Applicant denies he owes the debts in SOR 1.b, 1.d. and 1.e. The debts listed in 1.d and 1. e are judgments. The judgment for debt 1.d was entered on October 19, 2000, in the amount of \$962. This debt is accruing interest at 9%, so balance owed will obviously be greater.<sup>3</sup> The judgment for debt 1.e was entered on April 15, 1999, in the amount of \$341. This debt is accruing interest at 9%, so the balance owed will be greater.<sup>4</sup> Applicant's response to these debts that he denied in the SOR is the following: "I am providing a credit report showing that I don't owe or have paid off the following: [1.b, 1.d, and 1.e]." This statement contradicts the judgment documents.<sup>5</sup> Applicant did not provide any documents to show he has paid both judgments or paid the debt listed in 1.b (\$1,142).

Applicant's answer to the SOR stated:

It is a fact that I didn't use my credit wisely in the past. I fully accept responsibility for not making wise decisions. This, however, shouldn't reflect on my character or what kind of person I am. If you look at my credit history from 2002 until the present you will see that I have been much more responsible in regard to making monetary decisions.<sup>6</sup>

On his SCA Applicant lists he was unemployed from January 2004 to January 2006. He provided no other information regarding his financial or employment issues.

### **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.

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<sup>3</sup> Item 7.

<sup>4</sup> Item 8.

<sup>5</sup> Items 7 and 8.

<sup>6</sup> Answer.

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 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 conditions that could raise security concerns. I have considered all of them, especially AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has three delinquent debts and two judgments that remain unpaid. Despite being aware of them

they have been unpaid for many years. He did not provide any proof that he has paid any of them. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions. I especially considered 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”), (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”), and (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”).

Applicant has numerous delinquent debts. He alluded to the debts being incurred during a period of unemployment, but he did not elaborate on the specifics of why he has not taken any action on them since then. At least some of them were incurred while he was employed. He has been employed at his present job since January 2006. There is no evidence that despite his employment issues he has acted responsibly under the circumstances. Therefore I find (a) and (b) are not applicable. There is no evidence Applicant received counseling to assist him in resolving his financial problems. There are no indications the problems are being resolved or that he has initiated a good-faith effort to repay his creditors. It appears Applicant’s attitude is that because some debts were due to drop off his credit report, or have since dropped off, then he is not responsible for paying them. Despite the legal implication of debts being removed from a credit report after seven years, it does not show Applicant has acted responsibly toward his just debts. He stated in his answer that certain debts were paid or no longer owed, but provided no proof as to this claim. In fact two of the debts are judgments that were entered in 1999 and 2000 and continue to accrue interest. I find none of the remaining mitigating conditions apply.

### **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 incurred debts that became delinquent. Two of the debts have judgments that were entered prior to his period of unemployment. He has not provided any proof that he has paid any of the debts in the SOR. Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from 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

### **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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Carol G. Ricciardello  
Administrative Judge