



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



In the matter of: )  
)  
) ISCR Case No. 07-17825  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 5, 2008

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate Guideline F (Financial Considerations) security concerns. Clearance is denied.

**Statement of the Case**

On July 10, 2006, Applicant submitted a Questionnaire for Sensitive Positions or Standard Form (SF 86).<sup>1</sup> In July 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under

<sup>1</sup> Form Item 5.

<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made

Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 21 and September 26, 2008, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Items 2,3, and 4). A complete copy of the file of relevant material (FORM), dated September 30, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>3</sup> Applicant's response to the FORM, notarized on November 10, 2008, was another answer to the SOR in which he again admitted all the allegations. Otherwise, he did not provide any additional comments or response to the FORM. The case was assigned to me on November 19, 2008.

### **Findings of Fact**

In his responses to the SOR, Applicant admitted all the allegations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 48-year-old ship builder, "pumper," and "cleaner" working for a defense contractor.<sup>4</sup> He graduated from high school in 1979. He has never been married, but has two children, ages 26 and 17. He did not serve in the military. He disclosed no police record; no use of illegal drugs in the last seven years; and no alcohol-related problems, counseling or treatment in the last seven years. He has worked for the same employer, a government contractor, since August 1980. Applicant indicated he received access to classified information at the secret level in 1981. Apparently, his access has never been suspended or revoked.

In his 2006 security clearance application, Applicant disclosed he filed for Chapter 7 bankruptcy protection in October 1999. He was discharged of his debts in January 2000. He also disclosed a garnishment of wages in 2003, and a repossession of property, date unknown (Item 6).<sup>5</sup> He failed to disclose, however, two judgments

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under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

<sup>3</sup> The DOHA transmittal letter is dated October 1, 2008. Applicant signed the receipt for the DOHA transmittal letter on October 15, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after receipt of the FORM to submit information.

<sup>4</sup> Item 5 (2006 SF 86) is the source for the facts in this paragraph, unless stated otherwise.

<sup>5</sup> August 2006 credit report.

awarded against him in 2000 for \$325 and \$1,319. Applicant also failed to disclose that in the last seven years he had numerous debts over 180 days delinquent, and that at the time he filed his security clearance application he had numerous debts that had been delinquent over 90 days (Items 6, 7, & 8).

Applicant's background investigation addressed his financial problems and included the review of credit reports from 2006 (Item 6), 2007 (Item 7), and 2008 (Item 8). Additionally, it considered Applicant's answer to DOHA interrogatories (Item 9), which included his financial statement, a copy of his weekly pay stub, and an April 2008 credit report.

The DOHA interrogatories asked Applicant (in part) to explain and/or document the status of 13 delinquent accounts, including eight that were alleged in the SOR. Applicant's only response with respect to the alleged debts was to indicate: "I plan to make arrangements in May."

Applicant's response to the FORM failed to address any of his delinquent debts. He failed to provide any information as to how he acquired the debts, why they became delinquent, what efforts he took, if any, to resolve his debts, and what measures he has taken to avoid similar financial problems in the future.

### **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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”<sup>6</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>7</sup>

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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

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<sup>6</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>7</sup> “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, his answers to DOHA interrogatories, and his SOR response.

Applicant provided no information as to why he had to file for Chapter 7 bankruptcy protection in 1999 or the amount of the debts that were discharged. He admitted responsibility for nine unpaid delinquent debts which he acquired after his bankruptcy discharge (SOR ¶¶ 1.b to 1.j), totaling over \$10,000. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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; and

(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.

Considering the record evidence as a whole,<sup>8</sup> I conclude that none of the mitigating conditions apply. Applicant's sparse favorable information fails to raise the applicability of any of the mitigating conditions.

Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations before, or especially after receipt of the SOR. Based on his security clearance application, Applicant has continuously worked for his current employer since 1980. He presented no evidence to show paid debts, settlements, documented negotiations, payment plans, budgets, or financial assistance/counseling. It is unclear when his last payments were made on any of these nine delinquent debts. Considering the record as a whole, I conclude these nine debts, totaling about \$10,000 are still valid, delinquent debts, and that Applicant is responsible for them.

Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. Based on the available evidence, his financial problems are recent, not isolated, and are likely to be a concern in the future. He has not carried his burden of proving his financial responsibility. His overall financial behavior casts doubt on his current reliability, trustworthiness, and good judgment.

### **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) 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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. AG ¶ 2(c).

Applicant's 28 year record of employment for a government contractor weighs in his favor. He has had access to classified information at the secret level since 1981.

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<sup>8</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

There is no evidence of any security violation. Aside from his delinquent debts (which is a civil, non-criminal issue), he is a law-abiding citizen. These factors show some responsibility and mitigation. The overall amount of his delinquent debt at about \$10,000 is relatively low.

The evidence against mitigating Applicant's conduct is more substantial. He has a significant history of delinquent debt as shown by his 2000 Chapter 7 bankruptcy. Applicant has had access to classified information since 2001. As such, he was or should have been well aware of his financial responsibilities, and that his failure to be financially responsible would raise security clearance concerns.

Aside from his 2000 bankruptcy, he failed to show any effort whatsoever to resolve his delinquent debts prior to or after receipt of the SOR. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to 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
Subparagraphs 1.a to 1.j:	Against Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge