



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



In the matter of: )  
)  
) ISCR Case No. 07-17920  
)  
)  
Applicant for Security Clearance )

**REMAND DECISION OF ADMINISTRATIVE JUDGE  
CAROL G. RICCIARDELLO**

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: Fred Grafstein, Esquire

October 29, 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 March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 April 7, 2008, and elected to have his case decided on the written record. Department Counsel submitted the government's

file of relevant material (FORM) on May 1, 2008. The FORM was mailed to Applicant on May 7, 2008, and it was received on May 19, 2008. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant's case was assigned to me on July 7, 2008, and the file was forwarded to me on the same day. The file indicated Applicant did not object to the FORM and did not submit additional information. I issued my decision on July 28, 2008. On August 27, 2008, Applicant filed a motion for expedited remand for the Administrative Judge to consider Applicant's original response to the FORM which "apparently had not been taken into account." The evidence was never provided to me. On September 4, 2008, Department Counsel filed a response to Applicant's motion stating he had no objection to the request for an expedited remand. The case was remanded to me on October 3, 2008, ordering the case to be remanded "for further processing."

On October 6, 2008, I ordered Department Counsel to provide me by October 9, 2008, the complete copy of the "Response to Form and accompanying documents" that were dated May 20, 2008, as were referred to by Applicant. On October 7, 2008, Department Counsel complied with my order, providing me the documents, his response that he did not object to the documents and a written argument. The letter and emails from Department Counsel are marked as Hearing Exhibit (HE) I. The evidence provided is marked as Applicant's Exhibits (AE) 1 through 11. Additional correspondence and Department Counsel's response to the evidence was marked as HE II. On October 8, 2008, a conference call was conducted with Department Counsel, Applicant's Counsel and myself. Applicant's Counsel requested he be permitted to provide additional evidence based on Department Counsel's response in HE II. Although I did not rule that Department Counsel's submission constituted new evidence, I reopened the case to allow Applicant to provide additional evidence. He was ordered to provide to Department Counsel any additional relevant evidence not later than October 20, 2008. Department Counsel was ordered to provide the documents and his response to me not later than October 22, 2008. I received additional evidence from Applicant that is marked as AE 12. Department Counsel did not object and reiterated his prior argument. His response was marked as HE III.

I have considered all of Applicant's submissions in addition to all of the evidence previously provided. To ensure completeness I have listed below all of the exhibits, AE 1 through 12 that I have considered. I have also considered all of the evidence previously provided in the FORM.

1. Facsimile cover sheet, dated August 4, 2008 (1 page).
2. Letter from Applicant's Counsel, dated March 20, 2008 (5 pages).
3. Judgment of Divorce, X County, X Court, dated September 3, 2003 (3 pages).
4. Letter from Attorney A, Esq. to Applicant, dated September 2, 2004 (1 page).
5. Notice of Entry, Case No. xx-xxxxx, dated August 25, 2005 (1 page).

6. Letter from Attorney A, Esq. to Applicant, dated November 1, 2004 (1 page).
7. Consent to Change Attorney, Case no. xx-xxxxx, dated August 25, 2005 (1 page).
8. Invoice for Attorneys Fees, dated August 22, 2005 (1 page).
9. Letter from Attorney B, Esq. to Attorney A, Esq., dated October 1, 2007 (1 page).
10. Information Subpoena with Restraining Notice, Case No. xx-xxxxx, dated December 13, 2004, (5 pages).
11. Letter from State A, dated December 24, 2004 (1 page).
12. Fax cover sheet dated October 17, 2008, from Attorney B; Fax letter from Attorney B to Department Counsel dated October 17, 2008; Sworn Affidavit from Applicant dated October 16, 2008 (total of 5 pages).

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. They are incorporated herein. In addition, I have thoroughly and carefully reviewed all of the pleadings and exhibits submitted. I make the following findings of fact.

Applicant is 59 years old and served as a police officer for 20 years attaining the rank of Detective. He retired in 1993 and has held various jobs since then. He experienced periods of unemployment from May 1999 to September 1999 and May 2006 to December 2006. He has been employed as a contract investigator with a Department of Defense contractor since December 2006. Applicant was married from 1970 to 2003. He has three adult children.

A judgment was entered against Applicant in favor of his ex-wife as alleged in SOR ¶1.a in the approximate amount of \$23,348. The judgment has been owed since August 2004. It is a debt for a portion of Applicant's pension to be paid to his ex-wife pursuant to a divorce decree. Applicant's response to the SOR regarding the debt is as follows:

The monies in question were the result of a default judgment found against me while I lived in [Place A]. She was and has been receiving 47 percent of my law enforcement pension and I was to receive 47 percent of her teaching pension when she retired which to date has not happened. I had been under the assumption that any monies owed would be resolved

at that time. These money equations were to be worked out by our corresponding attorneys.<sup>1</sup>

Applicant admitted the debt of \$1,739 owed in SOR ¶ 1.b and claimed it was in the process of being paid off by monthly payments when the payments were halted due to the default judgment listed in SOR ¶ 1.a, that froze his funds and payments. He stated in his affidavit that that account is now a problem.<sup>2</sup>

Applicant provided documentation that shows automatic deductions are taken from his pension and paid to his ex-wife as of December 24, 2004, pursuant to their divorce settlement.<sup>3</sup> However the amount alleged in SOR ¶ 1.a is for arrearages owed from February 28, 2003 to May 14, 2004, plus an additional amount awarded for counsel fees. This judgment was entered in default. Applicant's original divorce attorney, Attorney A, sent Applicant a letter on September 2, 2004, advising him that a money judgment in the amount of \$20,848 representing the arrearage and attorney fees was entered against him on August 25, 2004.<sup>4</sup> The letter dated September 2, 2004 to Applicant stated the following:

The decision indicates that you did not respond to the motion for the money judgment. My office was never served with any motion as the procedure requires that you be served since your divorce judgment has already been entered by the Court and any new application is considered to be post-judgment and requires service upon you and not this office as your former attorney.

If you were not served with the motion seeking the money judgment then you should contact my office to discuss whether or not you wish to make application to modify or reverse the judgment. Of course you will need to be able to substantiate that you have made payments to your ex-wife or that the amount that you owe is less than the amount granted in the decision of the Court.

If you have any further questions regarding this matter please do not hesitate to contact my office.<sup>5</sup>

Applicant changed Attorneys in 2005 and hired Attorney B.<sup>6</sup> Applicant provided an Invoice from Attorney B dated August 22, 2005, that states:

---

<sup>1</sup> Item 2.

<sup>2</sup> AE 12.

<sup>3</sup> AE 10.

<sup>4</sup> AE 5.

<sup>5</sup> AE 4.

7/29/2005-Telephone: Finally made contact with attorney for ex-wife will not settle for [just] a mere offset [wants] money to settle judgments-also has counsel fee awards-doesn't know exact amount-will provide me with documentation once I send letter of representation.

On October 7, 2007, Attorney B again contacted Attorney A and stated he was trying to resolve for Applicant the open arrears to his ex-wife. He acknowledged he was unsuccessful in doing so in 2005.<sup>7</sup>

In Applicant's affidavit dated October 16, 2008, he stated:

[M]y pension that I received as a retired [X] County Police Officer[r] went into payout status before the divorce became final. My wife's pension did not go into payout status and is still not in payout status and has not be[en] evaluated. I bring this to the attention of this court because of the fact that there are set offs that still have to be negotiated with regard to my wife's entitlement to the money she is claiming and the monies I would be entitled to by virtue of my long term employment as a police officer.

Appellant went on to say in his affidavit the following:

After the sale of our home, I relocated to the State of [Y] and left everything in the hands of my then divorce counsel. My attorney was to bring to a conclusion the open issues involving the distribution of my property resulting from my marriage. Unbeknownst to me, an application was made to the court for a money judgment to be entered against me for arrears that had accrued under a temporary order directing that my wife was to receive a specified sum each month from the pension that was in payout status to me directly. I was unaware that these monies continued to accrue or that a judgment had been entered. My pension check, was received by direct deposit into an account held at the [County] Federal Credit Union. A restraining notice was served on the [County] Federal Credit Union and my account was frozen. When I submitted my copy of the restraining notice with the other exhibits, it was for the express purpose of showing that the issuance of the restraint interrupted the repayment of an indebtedness to the credit union. An execution apparently was never served on the credit union and the account is still restrained. Meanwhile the loan that I had with the [c]redit [u]nion has defaulted and is a problem for me as well. I authorize my current attorney to address that problem while also attempting to juggle other expenses I was incurring with my current income.<sup>8</sup>

---

<sup>6</sup> AE 7.

<sup>7</sup> AE 9.

<sup>8</sup> AE 12.

The debt of \$323 in SOR ¶ 1.c is for telephone services. Applicant claimed in his answer that the telephone debt was the result of an ongoing dispute he had with the telephone company because of “improper services I received from them, improper equipment I received and a lack of concern on their part over the quality of service I was receiving from them.”<sup>9</sup> In documentation provided he noted that his attorney told him to pay the debt to resolve it.<sup>10</sup> He offered no evidence that he has done so.

Applicant originally stated he had no knowledge about the debt of \$197 listed in SOR ¶ 1.d.<sup>11</sup> He claimed his account records indicate his prompt payment to this creditor until he moved and closed the account. In his affidavit he stated he had resolved the utility debt, but did not offer any documentation to support his claim.<sup>12</sup>

Applicant stated he provided the aforementioned documentation to show he was being responsive to creditors and he is “generally a responsible individual.”<sup>13</sup> He further stated that his period of divorce and the short time after was extremely difficult and hard for him and their children. He and his ex-wife have reconciled their problems with the children and with each other

### **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

---

<sup>9</sup> Answer to SOR.

<sup>10</sup> AE 2.

<sup>11</sup> Answer to SOR.

<sup>12</sup> AE 12.

<sup>13</sup> *Id.*

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 a default judgment against him that despite being aware of it and its effect on his other debts he has not resolved. The default judgment is four years old. He also has other debts and he has not provided documentation that he paid or resolved 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”); (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”).

Applicant is aware that he has a legally binding default judgment entered against him for approximately \$23,348. He is aware of his responsibility toward paying this judgment. He apparently believes that somehow this dispute will be resolved at a later date. No evidence was provided to show this matter will be resolved later. Although he stated he was unaware of the default judgment, he also provided a letter from his divorce attorney advising him of the judgment and to contact him if he wanted to dispute it. No evidence was provided to show he has legally disputed the judgment in court. He apparently was attempting some type of off-set with his ex-wife’s pension, a proposal that was refused. Applicant’s proposal was declined three years ago. He failed to provide any documented evidence to show he does not owe the debt or is paying the debt. The debt is for arrearages owed. According to Applicant’s statements, his ex-wife’s pension is not yet being paid out. Therefore, it is unclear how he would be in a position to off-set the pensions.

Applicant also claimed that because of the judgment entered against him his payments on another debt were frozen. Again he did not offer any evidence to show that since the debt was frozen he has done anything to resolve either of the debts. He has failed to offer any substantive evidence to show he is resolving his debts. He has not provided any documents to support he paid or resolved the remaining debts or is formally disputing them. I find (a) does not apply because the debts remain delinquent. I have considered (b), but find it does not apply because Applicant has been aware of the court ordered judgment and has not complied with it. Although the circumstances of some of the debts were the result of his divorce, he has had several years to resolve them and has not addressed them in the proper forum. There has not been sufficient evidence presented to confirm there has been a good-faith effort to pay his creditors, resolve the debts, or provide documented proof to substantiate his disputes. 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 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 acknowledged and admitted his delinquent debts. He has not provided substantive evidence of efforts he has made to resolve or pay the debts. I have considered all of the evidence presented. 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-1.d:	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.

---

Carol G. Ricciardello  
Administrative Judge