



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



In the matter of: )  
)  
) ISCR Case No. 07-18338  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Paul Delaney, Esquire, Department Counsel  
For Applicant: Monica Michelle Yates, Personal Representative

September 17, 2008

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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant has a history of failing to meet his financial obligations. As of the date of the hearing, he had 11 delinquent accounts, owing approximately \$19,500 which had been delinquent for many years. His evidence is insufficient to mitigate security concerns under Guideline F (Financial Considerations). Clearance is denied.

**Statement of the Case**

On April 5, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP).<sup>1</sup> On April 23, 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),

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<sup>1</sup> GE 1.

dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleged security concerns under 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.

Applicant answered the SOR on May 13, 2008, and requested a hearing before an administrative judge. The case was assigned to me on June 16, 2008. DOHA issued a notice of hearing on June 23, 2008. The hearing was convened as scheduled on July 11, 2008. The government offered Government Exhibits (GE) 1 through 5, which were admitted without objection (Tr. 30). Applicant testified on his own behalf, and presented one witnesses and Applicant Exhibits (AE) 1 through 4, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 21, 2008.

### **Findings of Fact**

Applicant denied the allegations in SOR ¶¶ 1.a; 1.b; 1.e; 1.f; 1.j; and 1.k. He admitted SOR ¶¶ 1.c; 1.d; and 1.g - 1.1. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 25-year-old man working as a security police officer for a Government contractor (Tr. 66). He graduated from high school in 2001. He has never been married and has no children (Tr. 68). Although he lives with his mother, Applicant testified he has been supporting himself since age 18. He has been continuously employed since high school, except for two short periods of unemployment in between jobs. He was unemployed in 2002 and 2005 on each occasion for an approximately two month period (Tr. 67-68). He has worked for his current employer, a Government contractor, since October 2007 (Tr. 75). He received interim access to classified information when he was hired.

### **Financial Considerations**

Applicant's background investigation addressed his financial situation and included the review of his 2007 e-QIP, his response to DOHA interrogatories (GE 3) and two credit bureau reports (CBRs) from July 2007 (GE 5), and January 2008 (GE 4). The SOR alleges 11 delinquent/charged off accounts totaling approximately \$20,000.

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<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made 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. The revised Adjudicative Guidelines are applicable to Applicant's case.

In his response to the SOR, Applicant denied the debts alleged in SOR ¶¶ 1.a (\$1,008), 1.b (\$900), 1.e (\$177), 1.f (\$5,943), 1.j, (\$508), and 1.k (\$172). He explained that he did not recognize the creditors or purchasing anything with the alleged value. In September 2007, Applicant was interviewed by a Government investigator concerning all of these delinquent debts. At that time, Applicant indicated he would investigate and resolve his debts. During his cross-examination, Applicant's memory was refreshed with respect to the following SOR allegations:

SOR ¶ 1.a - Applicant explained that in 2000-2001, he signed a family plan telephone service contract which included five telephones (Tr. 69-71). He claimed he had problems with the phones and cancelled the service. He never returned the five telephones. Applicant claimed the month before his hearing he contacted the creditor and asked for an up-to-date bill, which he did not receive. This was his first contact with the creditor since he cancelled the phone service. Applicant no longer disputes he owes this debt, but only the total of the debt (late fees, penalty charges, and high interest rates).

SOR ¶ 1.b - Applicant claimed to have no knowledge of this debt, which he discussed in September 2007 with the Government investigator (Tr. 61). He never contacted the creditor or investigated this debt. He presented no documentary evidence to show he disputed the debt (Tr. 80-81).

SOR ¶ 1.c – Applicant recalled that in 2002, he purchased jewelry for his ex-girlfriend (Tr. 81-85). He claimed he contacted the creditor after his 2007 interview with the Government investigator. He presented no evidence to support his claim.

SOR ¶ 1.d – Applicant acknowledged this was his credit card account (Tr. 63).

SOR ¶ 1.e – Applicant admitted this was his son's medical bill incurred in 2003 (Tr. 63, 87).

SOR ¶ 1.f – Applicant opened this account when he was 18. He disputes only the total of the debt (Tr. 63, 88).

SOR ¶ 1.g – This was one of the debts discussed in September 2007 with the Government investigator. He never contacted the creditor or investigated the debt. He presented no documentary evidence to show he disputed the debt (Tr. 92).

SOR ¶ 1.h - Applicant admitted this debt in his answer to the SOR. He denied it at his hearing and claimed to have no recollection of this debt (Tr. 61). This was one of the debts discussed in September 2007 with the Government investigator. He never contacted the creditor or investigated the debt. He presented no documentary evidence to show he disputed the debt (Tr. 95).

SOR ¶ 1.i - Applicant admitted he owes \$1,000 (Tr. 95). He claimed he disputed the excessive charges with the creditor, and asked for the basis for the additional

charges. The creditor never responded and Applicant has chosen to ignore the debt until the creditor justifies the additional charges. He presented no documentary evidence to show he disputed the debt (Tr. 96).

SOR ¶¶ 1.j and 1.k - Applicant admitted these were his delinquent debts (Tr. 65, 98-99).

Applicant's take home pay is around \$2,600 a month (Tr. 101-107). His monthly expenses are as follows: \$500 rent (to his mother); \$200 cable TV; utilities vary based on what he can contribute (gas and electricity); \$590 car payment; \$130 car insurance; and cell phone \$60-\$100. When his mother was laid off for two months during late 2007-early 2008, Applicant had to pay approximately \$1,700 rent in addition to other household expenses (Tr. 113). He bought a brand new 2007 Ford F-150 in 2007. He also bought a \$350 leather helmet to use as a volunteer firefighter. He has been a volunteer firefighter since 2001 (Tr. 39, 126). He was issued a helmet by the fire department, but that helmet does not have the same safety rating as the one he purchased (Tr. 115).

Applicant has not participated in any financial counseling. He thought about it, but decided against it because it requires the payment of a fee and he would end up paying more (Tr. 111). He has never used a budget to guide his expenditures. He claimed his financial problems were aggravated by his two periods of unemployment, and his mother's two month period of unemployment (Tr. 65). He assisted his mother with her household expenses (day-to-day living expenses, mortgage and utilities) while she was unemployed. He could not afford to take care of his mother's and his expenses and was unable to pay his debts (Tr. 59).

Applicant explained he acquired most of his debts when he was 18, young, careless, and immature (Tr. 86). He received credit card applications in the mail, and he took the offers and charged up the credit cards. At the time, he did not believe he would have to pay the debts or did not care. He believes he has matured with age and experience. He understands he must pay for his legal obligations, but he cannot afford to pay his delinquent debts and take care of his day-to-day living expenses. His plan is to pay one-by-one his delinquent debts (Tr. 36-37).

Around June 2008, Applicant entered into a settlement agreement with the creditor of SOR ¶ 1.h (\$2,596) in which he agreed to make three payments of \$500 (Tr. 36-37, AE 2). As of the hearing day, he had made his first payment (AE 3). He promised to resolve all his delinquent debts one at a time, but acknowledged it will take him time. Applicant wants to improve his life and credit situation to purchase a home in the future (Tr. 36).

### **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>3</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>4</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

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<sup>3</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>4</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).

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, 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 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 applicable to these facts which 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 well documented in his credit reports, answer to the SOR and DOHA interrogatories, and his testimony. As of the hearing date, he had 11 outstanding debts totaling approximately \$19,500. 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>5</sup> I conclude that none of the mitigating conditions apply. Applicant presented little evidence of good-faith efforts taken to contact creditors or to resolve his debts since he acquired them. Although there is evidence that in June 2008 he entered into a settlement agreement with one of his creditors, I find that isolated settlement does not establish “a good-faith effort” to repay creditors. Applicant has participated in no financial counseling and there are no indications that Applicant’s financial problems are being resolved or are under control.

I specifically considered Financial Considerations Mitigating Condition AG ¶ 20(b) and conclude it applies, but only to a limited extent. Applicant’s testimony established factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts, i.e., his two two-month periods of unemployment; his mother’s two month period of unemployment and his having to support his mother’s household; and the bad decision to purchase a brand new 2007 Ford F-150 and a firefighter’s helmet that were unaffordable.

Applicant’s evidence is not sufficient to show he has dealt responsibly with his financial obligations before, or especially after receipt of the SOR. Applicant has been consistently employed, except for two two-month periods three years apart and three years ago. Since October 2007, he has worked for his current employer. He presented little evidence to show paid debts, settlements (only one), documented negotiations, payment plans, budgets, or financial assistance/counseling. 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, he is overextended financially because of his failure or inability to live within his means. His financial problems are recent, not isolated, and are likely to be a concern in the future.

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<sup>5</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.

## **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 seven years working as a volunteer firefighter and his period of work for a Government contractor weigh in his favor. He is considered a valued employee. Moreover, as a firefighter, he risked his life to help others in need. Aside from his delinquent debts (which are a civil, non-criminal issue), he is a good son and takes care of his mother. He expressed regrets for his financial mistakes and claimed he is trying to correct them.

Considering the totality of the circumstances in his case, including Applicant's age, education, maturity, his years working as a firefighter and for the Government contractor, he demonstrated a lack of judgment and trustworthiness in the handling of his financial affairs. He failed to deal responsibly with his financial obligations, especially after receipt of the SOR. His failure or inability to live within his means and to meet his financial obligations indicates poor self-control or an unwillingness to abide by rules and regulations. His behavior raises questions about his reliability, and ability to protect classified information.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has failed to mitigate 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 - 1.g; and 1.-l -1.k:	Against Applicant
Subparagraph 1.h:	For 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