



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



In the matter of: )  
)  
) ISCR Case No. 07-18698  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se.*

September 5, 2008

---

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has mitigated the government’s security concerns under Guideline E, Personal Conduct, but failed to mitigate them under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On May 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E. 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 June 11, 2008, denied all the allegations and requested a hearing before an Administrative Judge. The case was assigned to me on July 23, 2008. DOHA issued a notice of hearing on July 24, 2008, and I convened the hearing as scheduled on August 20, 2008. The government offered

Exhibits (GE) 1 through 5 which admitted without objection. Applicant testified and submitted Exhibits (AE) A through N which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 2, 2008.

### **Findings of Fact**

Applicant's statements made as to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 40 years old. He came to the U.S. in 1995 after he was exiled from his native country of Cameroon and was a refugee from Nigeria. He was a pro-democracy student leader and the U.S. offered him the opportunity to immigrate. Applicant immediately enrolled in college to learn English. He received a database software certificate at a community college and a master's in business administration in 2000.<sup>1</sup> He became a naturalized U.S. citizen in 2001. Applicant married in 2000 and separated from his wife in March 2006. Their divorce was final on June 28, 2008. He has a six-year-old son from the marriage.

In 2003, Applicant set up an information technology consulting corporation where he was the President and its only employee. This corporation had its own business credit card which Applicant used to make purchases such as furniture, office supplies, and computer equipment. He did not use this credit card for personal use. Applicant operated the corporation out of his home. He stated he relied on the money made through the corporation to pay the corporation's bills. When asked "did you give any thought to if you couldn't pay the bills, how they were going to get paid? His response was "not really." He presently is working as employee of a government contractor.<sup>2</sup>

In June 2006 Applicant bought a house for \$647,000. He used \$20,000 cash for a down payment. His monthly mortgage payments were \$5,600. At the time his corporation had a contract where he was being paid approximately \$18,000 a month. He lost the contract and was unemployed from August 2006 to October 23, 2006. He continued to make his mortgage payments. Although he was separated from his wife and child when he purchased the house, he explained he purchased the large house to use as an investment, hoping to sell it in the future for a profit. He also purchased it to help other Cameroon immigrants, by providing them a temporary residence. He would provide his home as temporary shelter. None of the temporary residents contributed to the expenses associated with the house. Applicant estimated that he donates approximately \$500 to \$1,000 a month to assist the residents. This money is a gift and not a loan, so it is not repaid.<sup>3</sup>

---

<sup>1</sup> It is unknown if Applicant earned a bachelor's degree in Cameroon or from another institution.

<sup>2</sup> Tr. 40-46, 51-55, 72-75.

<sup>3</sup> Tr. 59-62,106-114-117, 132-139.

Applicant's taxes increased on the house, increasing his escrow account and his monthly mortgage payment by about \$500. He resumed employment in October 2006 until November 2007, earning approximately \$12,000 net income a month. Applicant began falling behind on his mortgage payments in June 2007. He changed jobs and was employed for a few weeks before he realized the job was not as described. He was unemployed approximately three months from December 2007 to February 2008 and began working full time in March 2008. His current net income per month is approximately \$12,000. His house was foreclosed on August 28, 2007. Appellant owes the mortgage company \$11,289 as alleged in SOR ¶1.d. He has not made any payments on this debt, but stated he intends to file for bankruptcy to discharge this debt after he pays other delinquent debts.<sup>4</sup>

Appellant made payments to settle the delinquent debts in SOR ¶¶1.c, 1.e. and 1.f. They have been resolved and satisfied.<sup>5</sup>

The delinquent debt in SOR ¶1.a is for a credit card account. Applicant has made one \$50 payment toward this charged off debt of \$3,607. He stated he has a verbal agreement with the credit card company to begin making \$50 monthly payments in September 2008. He bought a laptop computer, software and other computer hardware with this credit card.<sup>6</sup>

The delinquent debt in SOR ¶1.b is a credit card debt that was charged off for \$12,531. Applicant stated that it was a business credit card for his corporation. Furniture and office supplies were charged to the account in 2006. Applicant admitted he is responsible for paying the debt. No information was provided to show that the debt was a business account loss or that Applicant is not responsible for this debt. It is unclear why Applicant did not pay this debt in 2006 when he was employed or since then. Applicant has not made any payments on this debt, but stated he intended to pay it off. He stated he had a verbal agreement with the company to pay the debt. His corporation has not done any work since 2006.<sup>7</sup>

Applicant stated that he intended to pay both delinquent debts in SOR ¶¶1.a and 1.b and intended to file for bankruptcy to resolve the foreclosure debt in SOR ¶1.d. He has not contacted the creditor regarding this debt. These three debts total approximately \$27,370. He stated he expected to pay off the two credit card debts in approximately 16 months by paying \$1,000 a month. Applicant spoke to an attorney while his house was being foreclosed, but never retained one. He did not seek financial

---

<sup>4</sup> Tr. 35-37, 59-62, 76-82, 106-109.

<sup>5</sup> Tr. 18-26; 56-59, 70; GE 4; AE B, E and I reflect payments on SOR 1.c. AE F, G, H, J, L, M reflect payments on SOR 1.f. One final payment is due on August 30, 2008. Applicant pays this debt by automatic deduction from his bank account. AE D, K, and N reflect payments for SOR 1.e.

<sup>6</sup> Tr. 28-30, 55-56.

<sup>7</sup> Tr. 30-35, 72-74.

counseling. He has an accountant that prepares his tax returns who advised him against filing for bankruptcy and that he should only do it as a last resort.<sup>8</sup>

Applicant's present net monthly income is approximately \$12,000. He rents a house for \$3,000 a month. He has about \$900 in savings. His other monthly expenses are: car payment, \$867; student loan, \$258 (balance approximately \$53,000); alimony, \$1,000; child support, \$1,200; electricity, \$200; car insurance, \$235; telephone, \$200;<sup>9</sup> cable services, \$200; gas, \$400; lawn service, \$50; and food/restaurants, \$1,500.<sup>10</sup> In addition, he sends \$1,000 a month to his family in Cameroon. He donates at least \$2,000 to \$3,000 a year to a charity that he runs for helping Cameroon citizens. He stated that in 2006 he donated approximately \$10,000 to this charity. In 2007, he estimated he donated \$2,000 to \$3,000. In 2008, he estimated he donated approximately \$2,000 to date. He donates another \$500 to \$1,000 to help friends and Cameroon countrymen if they have a financial need. He recently (two weeks ago) gave his girlfriend \$500 to help with her school expenses. In addition, in the last eight weeks he spent an additional \$200 a week to pay for his son's swimming camp. He owes his wife's lawyer \$10,000 for the cost of the divorce. Applicant has already paid his divorce attorney, but has decided to appeal the settlement and has made an initial payment of \$1,000 toward a retainer for an appellate attorney. It is not known how much more the fees will entail. He has no retirement accounts or investments. Applicant does not have a budget.<sup>11</sup>

Appellant credibly testified that when he completed his security clearance application (SCA) he was told to only list government debts. He believed the debt listed in SOR ¶1.b was the responsibility of the corporation and did not need to be listed. Although he was aware of the debt in SOR ¶1.a he did not believe he had to list it. I find Applicant did not intentionally fail to divulge the requested information on his SCA. English is not his native language and he credibly testified that he misunderstood what he was to divulge.<sup>12</sup>

## 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.

---

<sup>8</sup> Tr. 26, 30-39, 82-86.

<sup>9</sup> He pays for his girlfriend's telephone service by allowing her to be on a family plan.

<sup>10</sup> Applicant stated he does not cook so he eats at restaurants a lot.

<sup>11</sup> Tr. 87-106-127, 132-136.

<sup>12</sup> Tr. 40-48.

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 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 and especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”); (c) (“a history of not meeting financial obligations”); and (e) (“consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis”). Despite having the income and assets to resolve his delinquent debts Applicant has not done so and they remain unpaid. Applicant earns a significant income and although he has paid some of his smaller debts since his security clearance became an issue, he has not addressed the three largest debts. Applicant has not made an effort to reflect on his expenditures and create a budget. He donates a great deal of money for worthy causes, but does so to the detriment of his creditors. Based on his discretionary income it does not appear Applicant is willing to make lifestyle changes and prioritize paying his delinquent debts. I find all three disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and 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 individual 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’s behavior is recent because his three largest delinquent debts remain unpaid and it does not appear he has made budget or lifestyle changes to pay them in a timely manner. Applicant has the ability to pay his delinquent debts, but he has made choices on how he is spending his money. Paying his delinquent debts is not his top priority. His conduct casts doubt on his reliability, trustworthiness, and good judgment. I find (a) does not apply.

Applicant did have periods of unemployment and went through a divorce. In order for (b) to apply Applicant must have acted responsibly under the circumstances. Applicant was earning a significant income of \$18,000 a month when he lost the contract and was unemployed for three months. When he returned to work he was earning less, but enough, if he budgeted his money to pay his bills. I cannot find Applicant acted responsibly under the circumstances. Therefore, I find (b) only partially applies.

Applicant has paid three of his creditors. He hopes to pay two others in the future and file for bankruptcy to discharge the deficiency amount on his foreclosed mortgage. I do not find that he has exercised a good faith effort to resolve all of his delinquent debts. Applicant has the financial ability to pay his creditors, but he needs to budget his income and make some lifestyle changes. He has not done so. There is no evidence Applicant has received any financial counseling to help him resolve his financial problems. Therefore I cannot find (c) or (d) apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct. Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered (a) ("deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities"). I have considered all of the facts and find Applicant did not deliberately omit, conceal, or intentionally mislead and falsify information on his SCA. Applicant was advised to only list his government debts and he believed he did not have to list such debts. Applicant's native language is not English and communicating and understanding the intricacies of the SCA was confusing. I found his testimony was credible and do not believe he intentionally omitted pertinent information. I find none of the disqualifying 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 is obviously a very benevolent person. He contributes to a charity to help his former countrymen. He provides temporary residence for them and gives them money when they need it. He also sends money to his family back in Cameroon. These are all admirable acts of generosity. However, Applicant also has financial obligations to creditors that he promised to pay and is obligated to pay. He has not adjusted his budget to ensure they receive payments. He does not have a working budget. He has expendable income that if budgeted properly he could responsibly pay his creditors. He has not done this. Rather he intends to file bankruptcy to satisfy the foreclosure debt on his house and he plans to start paying \$50 a month on a debt that is more than \$12,000. He also stated he planned on paying \$1,000 on these debts, but had not begun making regular payments, regardless of the amount promised. Applicant has the means to resolve his financial problems, but has not changed his priorities. His nominal effort raises questions about his judgment and reliability. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from personal conduct, but 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Paragraph, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For 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