



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-00378  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace Le'i, Department Counsel  
For Applicant: *Pro Se*

December 17, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On May 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and 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 June 26, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on July 22, 2008. Applicant did not file a response to the FORM. The case was assigned to me on October 2, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 54 year old employee of a defense contractor.

Applicant is indebted to Bank of America and/or its assignees in the approximate amount of \$13,367.00. This debt went delinquent in or before April 2006, and has since been placed for collection.

Applicant was indebted to CitiBank/Dell Financial Services in the approximate amount of \$219.00. This debt, which had gone delinquent in or before April 2006, was satisfied in March 2008.

Applicant is indebted to GEMB/Sams Club in the approximate amount of \$1,688.00. This account went delinquent in or before July 2007, and was charged off by the creditor.

The information applicant has provided concerning his efforts to address the two remaining delinquent debts is, at best, confusing. In his June 2008 response to the SOR, applicant stated he and his wife "sought help and turned over our accounts to Consumer Law Center late August 2007," both debts are with Consumer Law Center (CLC), \$245.00 is deducted from his checking account on the 7<sup>th</sup> of each month, and each account is being paid and will be paid in accordance with the agreement he has with CLC. He attached to his SOR response a March 24, 2008 letter from CLC. The letter from CLC states that the purpose of the letter is to "clarify the scope of representation that this firm is providing" to the applicant, and then states the applicant retained the firm "for the limited purpose of auditing as to whether or not his creditors were in compliance with the Truth in Lending Act, Fair Credit Billing Act, and the Fair Credit Reporting Act." This letter would seem to rule out any type of repayment contract applicant claims he has with CLC.

However, in his March 2008 response to interrogatories sent to him by DOHA, applicant stated that "as you can see [from his attachments to his response] the Consumer Law Firm takes out \$245.25 monthly of [sic] my checking account at Suntrust Bank," and he attached to his response one page of what appears to be a seven page contract with CLC. The part of the contract he attached indicates that he will pay CLC \$245.25 monthly for approximately 48 months, CLC will receive a fee of 25% of the total debt placed with the firm, and applicant's monthly payment will be distributed in accordance with "Exhibit A." This one page, together with the evidence applicant provided showing he made a February 2008 payment to CLC in the amount of \$245.25, indicates there probably is a repayment contract in effect between applicant and CLC. However, because applicant did not provide the rest of the contract, including "Exhibit A," this evidence does not prove that his two remaining delinquent debts are covered by this contract, let alone that the two debts are actually being paid. Furthermore, the fact that applicant presented proof of just one payment to CLC raises substantial doubt that the terms of the agreement are being honored.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on or about August 2, 2007. In response to two questions on the e-QIP, applicant denied that (1) in the prior seven years he had been over 180 days delinquent

on any debt and (2) he was then over 90 days delinquent on any debts. In fact, applicant was over 180 days delinquent on the Bank of America and Citibank debts when he completed the e-QIP. In his response to the SOR, applicant stated he “did not deliberately withhold any knowledge about [his] financial situation since [he] was at that time unaware of said difficulties. My wife disclosed this information to me until [sic] the end of August 2007, shortly after she sought professional guidance to resolve our credit card debt.” I find that applicant’s false answers were not intentional.

## **Policies**

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an "inability or unwillingness to satisfy debts" is potentially disqualifying. Under Paragraph 19.c., "a history of not meeting financial obligations" may raise security concerns. The evidence shows applicant has a history of an inability or unwillingness to pay his debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply where "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." Applicant's failure to honor his financial obligations is ongoing. He failed to establish that his financial irresponsibility will not recur. Accordingly, this mitigation condition is not applicable.

Under Paragraph 20.b., it may be mitigating where "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." In his response to the SOR, applicant stated that his wife was injured at work and underwent two surgeries, and when she returned to work she was unable to work overtime, which decreased her earnings. Although such an injury was undoubtedly beyond applicant's control, he failed to provide the details required to make a finding he acted responsibly under the circumstances. Accordingly, this mitigating condition is not applicable.

Evidence that "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" is potentially mitigating under Paragraph 20.c. There is no evidence of counseling. Applicant retained CLC in August 2007 to deal with his last two debts. Although applicant made at least one payment to CLC, there is no evidence that any money has gone to either creditor. Accordingly, this mitigation condition does not apply.

Paragraph 20.d. applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." This mitigating condition does not apply for the same reason Paragraph 20.c does not apply.

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

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

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.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the "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," may be disqualifying. This disqualifying condition is not applicable because applicant did not deliberately provide the false information on the e-QIP.

### **"Whole Person" Analysis**

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant 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 has a history of not meeting his financial obligations. In August 2007, he and his wife went to CLC for help in resolving their financial problems. It has been about a year since they signed up with CLC, and it appears the only help they received consisted of getting the entries in their credit reports changed. There is no credible evidence that their remaining two creditors, holding past-due debts totaling more than \$15,000.00, have been paid anything. Applicant's inability or unwillingness to address these financial obligations in any meaningful way leaves me no choice but to conclude he failed to mitigate the security concerns arising from Guideline F.

### **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

Paragraph 2, Guideline E: 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.

JOSEPH TESTAN  
Administrative Judge