



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



In the matter of: )  
)  
) ISCR Case No. 08-00439  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: *Pro Se*

February 6, 2009

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

On June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 on August 12, 2008, and requested a hearing before an administrative judge. The case was assigned to me on December 9, 2008. DOHA issued a notice of hearing on December 19, 2008, and the hearing was convened as scheduled on January 6, 2009. The Government offered Exhibits (GE) 1 through 4, which were received without objections. Applicant testified on his own behalf,

called one witness, and submitted Exhibits (AE) A through M, which were received without objections. I granted Applicant's request to keep the record open to submit additional information. Applicant submitted 26 pages of documents, which were marked AE N through R, and admitted without objections. Department Counsel's memo is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on January 26, 2009.

### **Procedural Rulings**

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. He has an associate's degree. He served in the U.S. Army from 1978 until he accepted early retirement in 1995. He was married from 1980 to 1992. He is currently married, having remarried in 1994. He has no children, but has four adult stepchildren, ages 29 to 34.<sup>1</sup>

Applicant has had financial difficulties for a number of years. He was laid off work in 2002, and was unemployed for about a year. His wife also lost her job in 2002, and remained unemployed through 2006. She again lost her job in 2007, and is still unemployed. Applicant attempted to start his own business after he lost his job. He ran the business from 2002 through 2004. He did subcontracting for a larger company, and the company did not pay him the \$40,000 owed to him. Ultimately the business was unsuccessful. He closed the business and sought other employment. He has deployed to Iraq on several occasions for his current employer.<sup>2</sup>

The SOR lists seven delinquent debts. Applicant did not specifically admit or deny the allegations in his response to the SOR, but he discussed his efforts to address his financial problems. Individual debts and Applicant's actions are addressed below. He also received financial counseling through his church.<sup>3</sup>

SOR ¶ 1.a alleges a delinquent debt of \$1,929 to a collection company, collecting on behalf of a cellular telephone services provider. The debt is listed on the two credit reports in evidence. Applicant let his adult stepdaughter use the cell phone and the bills went unpaid. He stated that he went to the services provider to attempt to resolve the debt, but they told him that their record did not show him with an account in their system, apparently because it was transferred or sold to the collection company. The

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<sup>1</sup> Tr. at 61-64; GE 1.

<sup>2</sup> Tr. at 30, 34, 67-68; Applicant's response to SOR; GE 1.

<sup>3</sup> Tr. at 60.

credit reports obtained by the Government and submitted in evidence provide almost no information about the identity of the collection company.<sup>4</sup>

A delinquent debt of \$150 to a medical provider is alleged in SOR ¶ 1.b. The name of the creditor is not provided in the allegation and it is not listed on the credit reports in evidence. Applicant provided documentation that he paid several medical debts. This debt is considered resolved.<sup>5</sup>

Applicant voluntarily returned a car and a truck to the financial institutions that held his loans after he became unemployed. The credit reports in evidence list the balance owed on the loan on the car at \$13,178, as alleged in SOR ¶ 1.c. It is unclear from the reports whether this figure reflects the amount owed on the loan at the time of the voluntary repossession, or if it reflects the deficiency balance owed on the car after it was sold at auction. Applicant testified that the bank sent him a letter some time after the car was returned advising him that he owed about \$13,000. The debt for the truck loan is alleged in SOR ¶ 1.g, as owed to a collection company. Applicant admitted that the holder of the truck loan sent him a bill for \$10,615 after the truck was returned. This debt is not listed on the credit reports in evidence. Applicant stated that he will initiate contact with whoever holds this debt to attempt to resolve the debt.<sup>6</sup>

Applicant fell seriously behind on his mortgage payments, as alleged in SOR ¶ 1.d. In November 2007, he owed \$19,752 in arrears. He entered into a stipulated repayment plan agreement with the mortgage company. He agreed to make payments of \$2,967 every month, starting on December 15, 2007, and ending on February 15, 2009. The payments of \$2,967 included \$1,650 to the loan and \$1,317 to the arrears. Applicant made all the payments to the mortgage company's satisfaction and the mortgage is now considered current.<sup>7</sup>

SOR ¶ 1.e alleges a delinquent debt of \$804 to a credit card company. The debt is not listed on the two credit reports in evidence. Applicant submitted a letter from the company that listed a balance on the account of \$998.38 as of January 6, 2009. Applicant handwrote on the letter the figure \$332.79. This figure represents one third of the amount owed. Applicant paid the creditor \$332.79 on January 8, 2009. Applicant did not submit documentation or otherwise indicate that this was a settlement of the debt.<sup>8</sup>

Applicant admitted to owing the delinquent debt of \$1,133 to a collection company on behalf of a credit card company, as alleged in SOR ¶ 1.e. When Applicant responded to DOHA interrogatories, he submitted a letter dated April 28, 2008, from

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<sup>4</sup> Tr. at 38-40, 45-46; Applicant's response to SOR; GE 2-4; AE G.

<sup>5</sup> Tr. at 47; AE E, F.

<sup>6</sup> Tr. at 31-33, 47-50, 56; Applicant's response to SOR; GE 2-4; AE A.

<sup>7</sup> Tr. at 37-38, 50-53; Applicant's response to SOR; GE 1-4; AE A-C, H, R.

<sup>8</sup> Tr. at 39-44, 53-54; AE P.

another collection company. The letter listed the balance on the debt at \$1,326. The company indicated that it would accept \$828 in settlement of the debt. Applicant handwrote on the document that he called the company to make payment arrangements on the debt. Applicant did not make any payments before the hearing. He entered into a settlement agreement with the company on January 5, 2009, wherein the balance of \$1,373 would be settled by a payment of \$300 by January 10, 2009, followed by a \$798 payment on February 10, 2009. Applicant made the \$300 payment on January 8, 2008.<sup>9</sup>

Applicant has had tax problems for many years. He stated his tax problems resulted from his first marriage. However, that marriage ended in 1994, and he continued to have tax problems for years thereafter. He entered into an agreement with the IRS in August 2007, to pay \$750 per month for his and his current wife's back taxes for tax years 1996, 1997, 1999, 2000, 2001, 2003, and 2005. He attempted to have the IRS remove his wife's name from the tax debt. He submitted documentation that he made all 12 monthly payments in 2008. His monthly IRS statement of April 9, 2008, reflected balances for the joint account of \$14,169 for tax year 1997; \$11,988 for 1999; \$4,023 for 2000; and \$9,580 for other periods. The total amount owed to the IRS from that statement was \$39,760. The IRS applied \$9,229 from his wife's 2007 refund for their 1999 tax debt. The IRS notice of May 12, 2008, reflected a balance of \$2,759 for tax year 1999, after the \$9,229 was applied. Taking into account the amount the IRS applied from the 2007 tax year refund and Applicant's additional payments of \$750 each month, Applicant and his wife's current tax debt to the IRS is estimated at about \$23,781.<sup>10</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 to be used 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, administrative judges apply the guidelines 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.

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<sup>9</sup> Tr. at 39-44, 53-56; GE 2; AE J, O.

<sup>10</sup> Tr. at 62-67, 73-74; GE 2; AE A, K, Q; Applicant's tax debts were not alleged as a basis for the denial of his security clearance in the SOR and will not be used for disqualification purposes. The tax debts will be considered in the application of mitigating conditions and in analyzing the "whole person."

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 the 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 adverse 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 *a/so* 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 under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

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.

Applicant still owes a substantial amount of money on debts alleged in the SOR. His financial problems are recent and ongoing. AG ¶ 20(a) is not applicable. He attributed his financial problems to his and his wife's unemployment. He also lost \$40,000 in income as a subcontractor when his company was not paid on a contract. These are conditions that were largely beyond his control. To be fully applicable, there must be a correlation between the unforeseen circumstances and the person's current financial problems. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant's financial problems started long before he became unemployed in 2002. He stated that his tax problems were related to his first marriage which ended in 1992. IRS documents reflect delinquent taxes for tax years 1996, 1997, 1999, 2000, 2001, 2003, and 2005. To his credit, Applicant has been paying his back taxes for more than a year and has been addressing other debts. However, he still owes the IRS more than \$22,000, in addition to his other unpaid delinquent debts. There is

insufficient information for a finding that he has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has received financial counseling through his church. The payments of some of his debts are indications that the problem is in the process of being resolved. Because of the amount still owed, it has not yet reached the point of being a clear indication that the problem is being resolved or is under control. AG ¶ 20(c) is partially applicable. Under the same rationale, he has not made sufficient payments on all his debts to constitute a good-faith effort to repay all his overdue creditors or otherwise resolve debts. AG ¶ 20(d) is only applicable to his resolved debts.

Applicant may have had difficulty in finding all the creditors holding his delinquent debts, but he did not dispute owing any of the underlying debts. AG ¶ 20(e) is not applicable.

### **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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for 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. I considered Applicant's service to this country in the U.S. Army, and I also considered his deployments to Iraq as a defense contractor. However, his finances have been in disarray for a number of years. His finances were clearly damaged by his and his wife's unemployment from 2002, and the failure of his business. However, that does not explain his tax problems. He stated that his tax problems resulted from his first marriage, but that marriage ended in 1994. IRS documents reflect delinquent taxes for seven tax years between 1996 and 2005. His tax liability at one point was more than \$40,000. After his regular payments and the withholding of his wife's refund for tax year 2007, the current federal tax debt is still more than \$22,000. He also still owes a large amount on the debts in the SOR, as

addressed above. His ongoing financial issues cause me to question his judgment, reliability, and trustworthiness

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

### **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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

### **Conclusion**

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

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Edward W. Loughran  
Administrative Judge