



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



In the matter of: )  
)  
) ISCR Case No. 08-01205  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole Noel, Esq., Department Counsel  
For Applicant: *Pro Se*

August 26, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated personal conduct security concerns, but failed to mitigate security concerns raised by his financial issues. Eligibility for access to classified information is denied.

On April 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. 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 28, 2008, and elected to have the case decided on the written record in lieu of a hearing. On June 18, 2008, Applicant changed his request to a hearing before an Administrative Judge. The case was

assigned to me on July 2, 2008. DOHA issued a notice of hearing on July 17, 2008. I convened the hearing as scheduled on August 12, 2008. The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf but did not submit any documentary evidence. DOHA received the transcript of the hearing (Tr.) on August 21, 2008.

### **Findings of Fact**

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since about January 2007. He attended community college. He is married with three children, ages seven, five, and an infant less than a year old.<sup>1</sup>

The SOR lists 14 debts totaling approximately \$17,817. Applicant admitted to owing all the debts. He attributed his financial difficulties to being laid off work for about two months in 2001, and then his wife was also laid off her job. He was a stay-at-home parent while his wife worked from about October 2005 through December 2006. The cost of day care was so high that it was better financially for him to stay home. His wife was again laid off in June 2008, and she has not yet returned to work.<sup>2</sup>

Applicant indicated that he plans on contacting an attorney and filing for bankruptcy, but he has not done anything yet. He accepted that he could be denied his security clearance based upon his finances and stated that he would reapply if that occurred after he brought his finances in order. He has not received any financial counseling. He does not have a complete grasp of his financial situation because his wife handles their finances.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86), certified as true on June 27, 2007. Question 28a asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 28b asked, "Are you currently over 90 days delinquent on any debt(s)?" He answered "No" to both questions.<sup>4</sup> Applicant denied intentionally falsifying the SF 86:

I knew my credit would be run during the course of this investigation and had no intention of hiding my delinquencies. When I filled out the questionnaire I thought the question asked if I had been delinquent in the last 90 or 180 days in the present. I had been working very hard not to accrue any further debt so I answered "no."<sup>5</sup>

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<sup>1</sup> Tr. at 22; GE 1.

<sup>2</sup> Tr. at 19-20, 23-26; Applicant's response to SOR; GE 1.

<sup>3</sup> Tr. at 20-26; GE 1.

<sup>4</sup> GE 1.

<sup>5</sup> Applicant's response to SOR.

Applicant fully discussed his finances when he was questioned for his background investigation and when he responded to interrogatories. He was open, honest, and candid about them in his testimony at the hearing. His criminal record is clean.<sup>6</sup> After considering all the evidence, I find there is insufficient evidence for a finding that Applicant intentionally falsified his Questionnaire for National Security Positions as alleged in the SOR.

### **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.

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

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<sup>6</sup> Tr. at 15-17; GE 2.

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 *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 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 to pay his obligations for a period of time. The evidence is sufficient to raise both of these potentially 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 the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He attributed his financial difficulties to his and his wife's unemployment. That could qualify under AG ¶ 20(b) as conditions that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant and his wife were unemployed in 2001. He voluntarily did not work for about 14 months in 2005 and 2006, choosing to be a stay-at-home father while his wife worked. His wife was laid off again in June 2006. Applicant did not provide sufficient information about what, if any, actions he took to resolve his finances when he and his wife were not involuntarily unemployed, for a finding that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not received financial counseling and his financial problems are not resolved or under control. There is no evidence of a good-faith effort to repay overdue creditors. He may file bankruptcy in the future, but his debts currently remain unresolved. He has not disputed any of the debts. AG ¶¶ 20(c), (d), and (e) are not applicable.

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

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. The following mitigating condition is potentially applicable:

(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; and

Applicant omitted some information from his Questionnaire for National Security Positions; however, there is insufficient evidence to find that it was a deliberate omission. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

### **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. Applicant has a clean criminal record. He did not intentionally falsify his SF 86. His finances, however, are in disarray and remain a security concern.

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 security concerns arising from his financial issues.

### **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.n:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security 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