



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-02246
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole L. Noel, Esquire, Department Counsel  
For Applicant: Pro Se

May 4, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on September 13, 2005. On July 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, for Applicant. 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.

On July 21, 2008, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on February 13, 2009. The FORM was forwarded to Applicant on February 18, 2009. Applicant received the FORM on February 27, 2009. He had 30 days to submit a response to the FORM. He did not submit a response. On April 23, 2009, the FORM was forwarded to the hearing office. The FORM was assigned to me on April 27, 2009.

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admits to the allegations in SOR ¶¶ 1.b – 1.l. He denies the allegations in SOR ¶ 1.a and 1.m. (Item 2)

Applicant is a 71-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as a program manager with the defense contractor since January 2005. He is married and has three adult children. (Item 4)

Applicant's background investigation revealed the following delinquent accounts: a \$23,000 delinquent credit card account placed for collection in October 2002 (SOR ¶ 1.a: Item 7 at 2); a \$3,045 account placed for collection in May 2008 (SOR ¶ 1.b: Item 7 at 2); a \$1,327 credit card account placed for collection in January 2004 (SOR ¶ 1.c: Item 7 at 2; Item 8 at 2); a \$6,818 credit card account that was charged off in January 2004 (SOR ¶ 1.d: Item 7 at 1; Item 8 at 1, 3; Item 9 at 5); a \$7,156 credit card account that was charged off in February 2004 (SOR ¶ 1.e: Item 7 at 2; Item 9 at 5); a \$13,000 account placed for collection in April 2008 (SOR ¶ 1.f); a \$50,000 account placed for collection in July 2003 (SOR ¶ 1.g: Item 7 at 2; Item 8 at 2); a \$8,554 credit card account that was charged off in February 2004 (SOR ¶ 1.h: Item 7 at 2; Item 8 at 2; Item 9 at 4); a \$10,563 account placed for collection in February 2004 (SOR ¶ 1.i: Item 7 at 2; Item 8 at 2; Item 9 at 4); a \$4,352 credit card account charged off in February 2004 (SOR ¶ 1.j: Item 8 at 1; Item 9 at 5); a \$13,218 account placed for collection in February 2004 (SOR ¶ 1.k: Item 8 at 2).

In February 2005, one of Applicant's homes was foreclosed. The mortgage amount was \$456,996. The home was sold in September 2005 and the debt was settled. (SOR ¶ 1.l: Item 6).

There is no record evidence supporting the debt alleged in SOR ¶ 1.f. I find for Applicant with respect to that allegation.

Applicant encountered financial problems after he was fired from a well paying job in April 2003. He was the president of the company. He was unemployed for one year. He is now gainfully employed and is meeting his current expenses. He states he has no means to pay off his older debts. He denies the debt alleged in SOR ¶ 1.a. (Items 5 and 6; Answer to SOR) On April 10, 2006, Applicant was interviewed by an investigator in conjunction with his background investigation. During the interview, they reviewed Applicant's monthly budget. His total net monthly income was \$7,035. His total net monthly expenses were \$4,948. After expenses, he had \$2,087 left over. He stated his debts were too massive to pay off each creditor. (Item 6)

In his response to the SOR, Applicant indicated that he has two additional monthly expenses totaling \$1,367. After expenses, he has approximately \$720 left over each month. Applicant states that he lives within his means. He stated that he does not generate enough income to repay his delinquent debts. (Item 2)

### **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 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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations); apply to Applicant’s case. Between 2002 and 2008, Applicant incurred 11 delinquent debts, totaling \$128,033. He also had a home foreclosure in February 2005.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Applicant continued to incur delinquent accounts as recently as May 2008 (SOR ¶ 1.b). None of the delinquent accounts have been resolved. Applicant claims he is incapable of resolving these delinquent accounts even though he has more than \$700 left over after expenses each month.

FC MC ¶ 20(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) partially applies. Applicant was fired from a job in April 2003 which caused a substantial strain on his finances. However, he took no steps to resolve his delinquent accounts after becoming employed full-time in 2004. This mitigating condition is given less weight considering his failure to take steps to resolve his delinquent accounts. He has not acted responsibly under the circumstances.

FC MC ¶20(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) does not apply. There is no evidence that Applicant attended financial counseling. He has not taken steps to resolve his delinquent accounts. Financial counseling could have assisted Applicant in determining the best approach to resolve these accounts either through repayment or possibly bankruptcy. Although he states he is capable of paying his recent financial accounts, his delinquent accounts remain unresolved. His financial situation is unlikely to be resolved soon.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant took no action towards resolving his delinquent accounts.

FC MC ¶20(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) potentially applies with respect to the \$23,000 debt alleged in SOR ¶ 1.a. Applicant disputes this debt. However, he provided no evidence that he is taking action to formally dispute this debt. There is insufficient proof to apply FC MC ¶20(e).

Although Applicant has been employed since 2004, he took no action towards resolving his delinquent accounts. He claims he does not have the means to repay his older accounts. His failure to take steps to resolve his delinquent accounts remains a security concern. He has not mitigated the security concerns raised under financial considerations.

### **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 significant amount of unresolved delinquent debt. Although his financial problems were aggravated by his employment termination in 2003, his failure to address his delinquent debts remains a

security concern. Applicant has not mitigated the security concerns raised under 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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against 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.

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ERIN C. HOGAN  
Administrative Judge