



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-02269  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Department Counsel  
For Applicant: *Pro Se*

January 27, 2009

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On June 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E, F and J. 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 August 5, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on September 8, 2008. Applicant filed a response to the FORM on October 15, 2008. The case was assigned to me on October 23, 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 29 year old employee of a defense contractor.

Applicant is indebted to The Flamborough Group in the approximate amount of \$507.00 as a result of a judgment entered against him in 2000 for non-payment of rent. In his responses to the SOR and FORM, applicant stated he hired a lawyer to get the judgment set aside but the lawyer did nothing but tell him lies. In his response to the SOR, he said because he "just want[s] this matter to be solved," he will satisfy the \$507.00 debt by making two payments, the first in August 2008 and the second in September 2008. In his response to the FORM, he stated he will satisfy this debt by making two payments, the first in October 2008 and the second in November 2008.

Applicant has six defaulted student loan debts totaling approximately \$8,798.00. These debts have been delinquent for over five years. In his response to the SOR, applicant stated all of these debts were consolidated and that he and the creditor agreed he would make monthly payments of \$105.00 to the creditor beginning June 15, 2008. In response to the FORM, he reiterated that he had an agreement with the creditor to pay \$105.00 a month, and added that he has made eight payments to date. As proof, he attached a copy of a bank debit in the amount of \$105.00 dated August 26, 2008 and an October letter from the creditor reminding him that his post dated check will be deposited later that month. Since only five months had elapsed from the time of the due date of the first payment and the time he responded to the FORM, it is difficult to accept his statement that he made eight payments. Although it is possible he made additional payments not required by the repayment agreement, in all likelihood if he had done so he would have stated so. Adding doubts to applicant's statements is the fact he provided no documentary evidence of a loan consolidation or repayment agreement.

Two credit reports in the FORM indicate applicant is indebted to Dealers Financial for a car loan in the approximate amount of \$3,465.14. In his responses to the SOR and FORM, applicant stated he returned the car in 2002 and that he is working with the creditor to get the debt "off his credit report."

Applicant is indebted to Arbys in the approximate amount of \$47.00 as a result of a returned check in 2002. In Exhibit 6, dated April 2008, applicant stated he intended to pay the debt in full in May 2008. In his response to the SOR, applicant stated he will satisfy the debt in August 2008. In response to the FORM, he stated he satisfied the debt in October 2008, but provided no proof.

Applicant is indebted to Southwestern Bell in the approximate amount of \$586.00. This debt was referred to Portfolio for collection in 2002. In his response to the SOR, applicant stated he settled this debt for \$409.00 and will make the required payment in February 2009.

Applicant is indebted to LVNV Funding in the approximate amount of \$2,387.00. This debt originated from Sears and was referred to LVNV Funding for collection. The account was then transferred to Allied. In his responses to the SOR and FORM, applicant stated he accepted an offer from Allied to settle the debt for \$635.00, and will make the payment on October 17, 2008. He attached to his response to the FORM a

copy of a letter from Allied offering to settle the debt for \$635.33. Since the letter is dated April 11, 2007 and the offer was contingent on Allied receiving applicant's payment by April 21, 2007, this letter hardly corroborates applicant's statements.

Applicant is indebted to MCI in the approximate amount of \$244.00. This debt was referred to Park Dansan for collection in 2003. In April 2008, applicant stated he planned on calling Park Dansan "and paying the debt in full" in May 2008. In his responses to the SOR and FORM, he stated the debt was now being handled by Resurgent and they offered to settle the debt with him for \$119.00. He further stated that he accepted the offer and will make the required payment in November 2008.

Applicant is indebted to Oklahoma Community College in the approximate amount of \$653.00. This debt has been delinquent since 2004. In April 2008, applicant stated he planned on calling the creditor in May 2008 and setting up payment arrangements. In his responses to the SOR and FORM, he stated he has "made arrangements to pay the debt off in three payments," which will be made in December 2008, January 2009 and February 2009.

Applicant is indebted to Certergy in the approximate amount of \$46.00. In April 2008, he said he will contact the creditor and make the payment in full in May 2008. In his response to the SOR, he stated he has made arrangements to make a \$46.00 payment in August 2008. In his response to the FORM, he stated he "paid Certergy the \$71.00 that was owed on October 9, 2008."

Applicant is indebted to Goodyear in the approximate amount of \$357.82. This debt was the result of a returned check. In April 2008, applicant stated he will contact the collection agency, Rab Inc., to set up payment arrangements. In his response to the SOR, he stated he accepted Rab Inc.'s offer to settle the debt for \$215.00 and will make the payment in November 2008.

In February 2007, applicant was charged with and convicted of obtaining cash or merchandise by bogus check and fined \$100.00.

Applicant is indebted to Sprint PCS in the approximate amount of \$389.00. This debt has been placed for collection with Cavalry. In April 2008, he stated he planned on calling Cavalry in May 2008 and setting up payment arrangements. In his response to the SOR, he stated he accepted a settlement offer of \$190.00 and will make the payment in December 2008. He attached a letter to his response to the FORM from Cavalry dated June 2008 in which an offer to settle the debt for \$233.59 is extended.

Applicant was indebted to MRS Associates in the approximate amount of \$3,602.00. This debt is past-due. In his response to the SOR, applicant stated he "made payment arrangement in the amount of \$75.00 until the payment is satisfied. These payments begin in June 15, 2008." He attached to his response to the FORM a copy of a letter from the creditor confirming the agreement.

Applicant is indebted to Vesta in the approximate amount of \$325.00. This account is past-due and was referred to Active Coll for collection in 2007. In April 2008, applicant stated he planned on contacting the creditor in May 2008 to make payment

arrangements. In his responses to the SOR and FORM, he stated he accepted an offer to settle the debt for \$195.00 and will make the payment in January 2009.

Applicant is indebted to Associates/Citi Bank in the approximate amount of \$2,659.52. This past-due debt was referred to Midland for collection. In his responses to the SOR and FORM, applicant stated he accepted a June 2008 offer from Midland to settle the debt for \$1,650.00 and will make the payment in February 2009 when he gets his tax refund. He attached to his response to the FORM a copy of a letter from Midland offering to settle the debt for \$1,602.40 if the payment was made by August 30, 2008.

Applicant is indebted to Helig Meyers in the approximate amount of \$1,092.25. This delinquent debt was referred to Paragon Way for collection. In his responses to the SOR and FORM, applicant stated he accepted an offer to settle the debt for \$546.13 and will make the payment in February 2009.

Applicant is indebted to Cameron University in the approximate amount of \$835.00. This debt is delinquent and was referred to Lawton RM for collection. In his responses to the SOR and FORM, applicant stated he made payment arrangements with the creditor requiring him to make monthly payments of \$75.00 until the debt is paid. He provided proof that he made payments in June and August 2008.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in May 2007. He provided false material information in response to three questions. In response to Question 23, which in essence asked if applicant had been "arrested for, charged with, or convicted of any offense(s)" during the previous seven years, applicant disclosed a 2005 Contempt of Court charge, but failed to disclose his February 2007 charge and conviction for passing a bogus check. In his response to the SOR, applicant stated he did not list this offense because he was not arrested. In response to Questions 28a and 28b 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 most of the debts discussed above. Applicant's false answers were clearly intentional.

In his response to the FORM, applicant stated his financial problems were caused in large part by an improper eviction for nonpayment of rent from his apartment in 2000. He stated he lost everything he owned at the time (e.g., furniture, clothes) when he could not get back into the apartment. He hired an attorney to vacate the eviction notice, but after four years nothing came of it because his "lawyer did not do anything but tell [him] lies and let the case sit." (The landlord in this case was The Flamborough Group, which not only successfully evicted applicant, but as noted above, also obtained a judgment against him for unpaid rent).

Applicant further stated that after the eviction he tried getting his finances back in order by getting a job at a paper mill, but after working there about two years, he was "wrongfully terminated." (He stated he sued the company, but provided no further information.) He further stated that his mother became ill about this time and he paid some of her bills. After looking for employment for four months, he found his current job in January 2005.

Applicant provided proof that he completed a money management course in March 2008.

## **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. Applicant has a long history of conduct indicating 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 FORM, applicant stated his financial delinquencies were caused by an improper eviction, his mother’s illness, and a period of unemployment caused by a wrongful termination. As evidenced by the judgment entered against him, applicant’s eviction was caused by his failure to pay his rent. Thus, this event was not beyond his control. His mother’s illness and his period of unemployment may have been factors beyond his control; however, applicant failed to provide sufficient credible evidence to establish 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. Because applicant provided proof that he completed a money management course in 2008, this mitigation condition applies.

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 because, although applicant has made a lot of statements and representations about what he has done to address his financial delinquencies, he provided little credible evidence of actually accomplishing anything. And, in light of his (1) failure to follow through with his stated intentions to make payments to various creditors (e.g., Arbys, Certergy), and (2) intentional misrepresentations about his finances on the e-QIP, his uncorroborated statements about repayment agreements, and what he intends to do to address his financial delinquencies, can be given very little weight.

## **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 clearly applicable.

I reviewed the potentially mitigating factors under Guideline E and conclude none apply.

## **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set forth in Paragraph 30 of the AG, and is as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Paragraph 31 describes conditions that could raise a security concern and may be disqualifying: Under Paragraph 31.a., "a single serious crime or multiple lesser offenses" may be disqualifying. Applicant's multiple falsifications of material facts on the e-QIP, which are felonies under 18 U.S.C. 1001, raise this disqualifying condition.

Paragraph 32 of the AG sets forth conditions that could mitigate security concerns. I considered each of them and conclude none apply.

## **"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 is a mature man who has a long history of not honoring his financial obligations. Although he provided credible evidence that he recently made a few payments to a few of his creditors, most of the evidence he provided consisted of uncorroborated statements about repayment agreements he reached and what he intends to do in the future. In view of his failure to follow through with earlier promises to pay off certain debts, and his falsification of material facts about his financial delinquencies on the e-QIP, his uncorroborated statements are not credible. Based on the foregoing, I conclude applicant failed to mitigate the security concerns arising from Guidelines E, F and J.

### **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: AGAINST APPLICANT  
Paragraph 3, Guideline J: 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.

JOSEPH TESTAN  
Administrative Judge