



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-02578
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: Pro Se

April 9, 2009

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86, on September 6, 2007. On October 31, 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 January 23, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on February 9, 2009. On February 10, 2009, a Notice of Hearing was issued, scheduling the hearing for March 4, 2009. The case was heard on that date. The Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. Applicant testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A - D. The record was held open until March 18, 2009, to allow Applicant to submit additional documents. He timely

submitted a nine-page document which was admitted as AE E. The transcript was received on March 23, 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 the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, , 1.i, 1.j, 1.k, 1.l, 1.m, 1.o, 1.p, 1.q, 1.s, 1.t, 1.u, 1.v, and 1.w. He denies the allegations in SOR ¶¶ 1.d, 1.n, and 1.r.

Applicant is a 40-year-old equipment specialist employed with a Department of Defense contractor seeking a security clearance. He has worked for his company since October 2006. He is a Desert Storm veteran. He served on active duty in the United States Navy from November 6, 1997, to October 6, 1991. He separated at the rank of Q-M 3 with an honorable discharge. He held a security clearance in the past. He is engaged to be married and lives with his fiancé. He has two children from a prior marriage, a daughter age 7, and a son age 13. (Tr at 6-8, 47; Gov 1; AE C; AE E at 9)

On September 6, 2007, Applicant completed a questionnaire for sensitive positions (SF-86), in order to apply for a security clearance. (Gov 1) A subsequent background investigation revealed that Applicant had 23 delinquent accounts, an approximate total balance of \$16,625. The delinquent accounts include: a \$189 medical debt placed for collection in June 2001 (SOR ¶ 1.a: Gov 2 at 5; Gov 4 at 5; Gov 7 at 10); a \$392.99 deficiency balance after an automobile repossession in May 2002 (SOR ¶ 1.b: Gov 2 at 4; Gov 4 at 3; Gov 5 at 3; Gov 6 at 3; Gov 7 at 5); a \$1,961 deficiency balance owed after an automobile repossession in August 2002 (SOR ¶ 1.c: Gov 2 at 4; Gov 4 at 3; Gov 5 at 3; Gov 6 at 3; Gov 7 at 6); a \$261 mail order catalogue account placed for collection in September 2002 (SOR ¶ 1.d: Gov 2 at 5; Gov 4 at 4; Gov 5 at 2; Gov 6 at 2-3; Gov 7 at 7, 9, 11); a \$1,158 telephone account placed for collection in October 2002 (SOR ¶ 1.e: Gov 2 at 4; Gov 4 at 2; Gov 5 at 2; Gov 6 at 2-3; Gov 7 at 4); and a \$20 medical account placed for collection in January 2003 (SOR ¶ 1.f: Gov 2 at 4; Gov 4 at 3; Gov 7 at 7).

Additional delinquent accounts include: a \$228 medical debt placed for collection in January 2003 (SOR ¶ 1.g: Gov 2 at 6; Gov 4 at 6; Gov 7 at 11); a \$253 telephone account placed for collection in April 2003 (SOR ¶ 1.h: Gov 2 at 5; Gov 4 at 4; Gov 5 at 2; Gov 6 at 2; Gov 7 at 7, 11); a \$738 credit card account placed for collection in May 2003 (SOR ¶ 1.i: Gov 2 at 4; Gov 4 at 2; Gov 5 at 2; Gov 6 at 2; Gov 7 at 4); a \$510 account placed for collection in January 2005 (SOR ¶ 1.j: Gov 2 at 6; Gov 4 at 6); a \$1,684 medical account placed for collection in October 2005 (SOR ¶ 1.k: Gov 2 at 5; Gov 4 at 4; Gov 6 at 2; Gov 7 at 8, 11); and a \$118 cable bill placed for collection in January 2007 (SOR ¶ 1.l: Gov 2 at 6; Gov 4 at 2; Gov 5 at 2; Gov 6 at 2; Gov 7 at 7).

Additional delinquent accounts include: a \$164 Direct TV account placed for collection in July 2007 (SOR ¶ 1.m: Gov 5 at 1; Gov 6 at 1); an \$81 account that was 120 days delinquent since August 2007 (SOR ¶ 1.n: Gov 5 at 2); a \$636 overdrawn

checking account placed for collection in September 2007 (SOR ¶ 1.o: Gov 2 at 5; Gov 4 at 5; Gov 7 at 9); a \$486 cell phone account placed for collection in October 2007 (SOR ¶ 1.p: Gov 5 at 1; Gov 6 at 2); a \$3,800 loan charged off as a bad debt in November 2007 (SOR ¶ 1.q: Gov 5 at 3; Gov 6 at 3); and a \$1,974 account charged off as a bad debt in April 2008 (SOR ¶ 1.r: Gov 5 at 3; Gov 6 at 3).

Additional delinquent accounts include: a \$73 delinquent medical account placed for collection in December 2004 (SOR ¶ 1.s: Gov 2 at 5; Gov 4 at 4; Gov 5 at 2; Gov 6 at 2; Gov 7 at 8); a \$53 medical account placed for collection in March 2007 (SOR ¶ 1.t: Gov 5 at 1; Gov 6 at 1); a \$100 medical account placed for collection in January 2004 (SOR ¶ 1.u: Gov 5 at 2; Gov 6 at 2; Gov 7 at 8); a \$1,429 medical account placed for collection in October 2006 (SOR ¶ 1.v: Gov 5 at 2; Gov 6 at 2); and a \$317 medical account placed for collection in August 2007 (SOR ¶ 1.w: Gov 5 at 2; Gov 6 at 2).

Applicant's financial problems began around 2002. In December 2002, he injured his knee on the job. He underwent three knee surgeries. He and his wife agreed that he would stay at home and look after the children and she would work. This allowed time for his knee to be rehabilitated. He and his wife divorced in October 2004. (Tr at 38-40)

In 2004, Applicant moved in with his brother. He was unemployed between December 2002 to February 2005. In February 2005, he moved to where he currently resides and got a job driving a truck. In March 2005, he was in a serious car accident while on the job. Two people died in the accident and Applicant suffered significant injuries. He was unable to work from March 2005 until June 2006. During that time, he received workmen's compensation in the amount of \$1,000 per month. (Tr at 40-43; Gov 1, section 22)

Applicant is involved in a custody battle with his ex-wife. She took the children and moved across the country without notifying Applicant or the court. He has not seen his children in two years. So far, he has spent approximately \$2,400 in legal expenses pursuing custody of his children. (Tr at 20, 48; Gov 4 at 7)

At hearing, Applicant claimed a lot of the debts alleged in the SOR belong to his ex-wife. He claims they were supposed to be equally responsible for the debts of the marriage. (Tr at 35) In a prior interview with an investigator conducting his background investigation on October 31, 2007, he said that he was responsible for 90% of the debt after the divorce. (Gov 2 at 6) He claims the debt alleged in SOR ¶ 1.d is solely his wife's responsibility. (Tr at 37) He paid the debt alleged in SOR ¶ 1.n. It is listed as paid in the March 3, 2009 credit report. (Tr at 34; Gov 5 at 2) SOR ¶ 1.n is found for Applicant. All of the other debts remain outstanding. (Tr at 38.)

Applicant recently was promoted. He earns \$17.40 an hour. (AE A) His net monthly income is approximately \$1,634. Child support is deducted automatically from his paycheck each month. He lives with his fiancé who works part-time and goes to school. He pays her \$300 a month which covers rent and other related bills. In addition, he has the following monthly bills: \$365 for car and insurance, \$100 for cell phone; \$300

for groceries; \$50 for clothes; \$75 for entertainment. He has no credit cards and no savings. He estimates he has \$75 left over after expenses each paycheck. He hopes to begin making payments towards his delinquent accounts. (Tr at 27-34; AE D) He is current on federal and state income taxes. (Tr at 49)

He works a part-time job as a bouncer. He estimates he earns approximately \$400 per month in this job. (Tr at 53-54) He owes his sister \$500 and his brother \$500. (Tr at 55) He has never attended financial counseling. (Tr at 56)

Applicant loves his job. It is the best job that he has ever had. (Tr at 19) His program manager states that he is a “dependable, loyal, and hardworking employee.” He states Applicant’s integrity, truthfulness, and work ethic are above reproach. (AE E at 1) The CEO of another company states Applicant has worked for his company since June 2006, working in various departments, He states Applicant’s ethics, integrity and dedication to his job has made him the company’s “go-to” guy. (AE E at 2: Note: The record is unclear as to whether this company and the Applicant’s full-time employer are connected.)

Applicant provided an unsigned copy of a performance report which rates him as a “5” which indicates his performance level is well above the expectations of the job. This performance report is given less weight because it is unsigned and the names of Applicant’s evaluators are not listed on the report. (AE E at 3-8) He has completed several training courses in conjunction with his job. (AE B)

## **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. Since 2001, Applicant accumulated 23 delinquent accounts, totaling approximately \$16,625.

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. All but one of Applicant's delinquent accounts remain unresolved. Although employed full-time since October 2006, he has not established a plan to resolve these accounts. Applicant continues to have financial problems. His failure to establish a plan to resolve his delinquent accounts raises questions about his judgment, trustworthiness, and reliability.

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's medical issues, his divorce in 2004, his custody issues, and his March 2005 automobile accident aggravated his financial problems. He was unable to work for more than a year after the accident. However, Applicant has been employed full-time since July 2006. He continued to incur delinquent accounts even though fully employed. In addition, he has no plan to resolve his delinquent accounts. This mitigating condition is given less weight because Applicant 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. Applicant has not consulted a credit counselor. It is unlikely his financial problems will be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to SOR ¶ 1.n. It does not apply toward the remaining delinquent accounts. A promise to pay in the future is not sufficient to mitigate the 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) 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 previous military service. I considered his periods of unemployment as a result of on-the-job injuries. I considered the additional expenses related to Applicant's divorce and child custody issues. While all of these matters mitigate the reasons for Applicant's financial situation, he has been employed full-time for over two and a half years. During this timeframe, he incurred additional delinquent accounts but established no plan towards resolving his delinquent accounts. A security risk remains because of Applicant's history of financial irresponsibility and the lack of action taken towards resolving his delinquent accounts. He has not met his burden to mitigate the 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:	Against 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
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	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