



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



In the matter of: ) ) ----- ) SSN:----- ) ) Applicant for Security Clearance )	ISCR Case No. 08-09600
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**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 30, 2009

**Decision**

HOWE, Philip S., Administrative Judge:

On March 17, 2008, Applicant submitted his electronic Security Clearance Application (SF 86)(e-QIP). On November 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 acknowledged receipt of the SOR on December 8, 2008. He answered the SOR in writing on December 27, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 5, 2009, and I received the case assignment on February 25, 2009. DOHA issued a Notice of Hearing on April 27, 2009, and I convened the hearing as scheduled on May 11,

2009. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified and submitted Exhibits A through F, without objection. DOHA received the transcript of the hearing (Tr.) on May 18, 2009. I granted Applicant's request to keep the record open until May 29, 2009, to submit additional information. He did not submit any additional exhibits. The record closed on May 29, 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, dated December 27, 2008, Applicant admitted the factual allegations in ¶¶ 1.c to 1.g, 1.i, 1.k, 1.l, 1.n, and 1.o of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, 1.b, 1.h, 1.j, 1.m, 1.p, and 1.q of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 30 years old, divorced twice, and the father of four sons. His divorces occurred in 2001 and 2007. He works for a defense contractor. He earns \$48,000 a year, and takes home \$2,600 a month after his child support payments of \$900 monthly and other deductions are made. Applicant is an electronics technician. Applicant has three children with his first wife for visitation two weekends a month. His fourth child with his second wife, he has for visitation one week a month. Applicant declared it was very important to him to see his children and be their father. (Tr. 27, 29, 32-35, 40, 41, 90; Exhibit 1)

Applicant served six years in the Air Force, from 1997 to 2003. He received an honorable discharge. During his service, he had a security clearance. He continued to have a security clearance while working in his civilian job. He has not had any security violations while having the clearance. (Tr. 22-25)

Applicant has a roommate, who is also his landlord. He pays \$450 monthly for rent with utilities fully included in that amount. His other monthly expenses are \$400 for food, \$344 for car rentals to drive to see his sons twice a month, \$12 for renters insurance, \$96 monthly for his car insurance, \$100 for clothing purchases, and \$100 monthly paid on the Grange judgment, which is Para. 1.b of the SOR with a balance of \$4,518. These expenses total \$1,502 monthly. After deducting those expenses from his take-home income, he has \$1,100 in discretionary income. Applicant has no money in a savings account. He has no credit cards, and pays cash or uses a pre-paid credit card for his expenses. (Tr. 77-79; Exhibits 2-4, E)

Applicant owes federal and state income taxes for the past two tax years, although he has money deducted by his employer for taxes. He has an extension to file his 2008 federal income tax return, and he owes \$1,000 for 2008. For tax year 2007, he owes \$3,000 on his federal tax debt. Applicant has not filed his 2007 and 2008 state income tax returns. He owes for state income tax for both years, also. He has not

prepared the tax returns himself or hired a professional tax preparer to handle his tax returns. He claims he does not have the money to pay his taxes. (Tr. 79-89, 116)

Applicant owes 17 delinquent debts, for a total of \$31,705. He admits he owes 10 debts, and denies 7 debts. Applicant's financial problems started with his first divorce, and then became aggravated with his second divorce (Tr. 41, 42). Applicant's debts and their current status are as follows, as listed in the SOR:

1.a. A judgment from 2005 for \$4,518 owed to an insurance company resulting from an auto accident. Applicant is paying \$100 monthly to protect his driver's license. (Tr. 16, 17, 45-49; Exhibits 2-4, A, B)

1.b. A judgment owed to a friend from whom Applicant borrowed money. He last paid any money on that judgment in 2005. The amount owed is \$1,553, but Applicant claims only \$703 is the balance, but has no proof of that amount. The debt is unpaid. (Tr. 49-51; Exhibits 2-4, D)

1.c. A cable television debt for \$1,044 is owed, resulting from his failure to return cable equipment when he terminated his service. This debt is unpaid. (Tr. 51, 52; Exhibits 2-4)

1.d. Another debt owed to a cable television company in the amount of \$226. Applicant is not certain about this debt being his debt. This debt is unpaid. (Tr. 52; Exhibits 2-4)

1.e. A utility bill for \$492 owed from 2005 or before that date. It is unpaid. (Tr. 53, 54; Exhibits 2-4)

1.f. Another utility bill for \$359 is owed from 2005 or before that date. It is unpaid. (Tr. 54; Exhibits 2-4)

1.g. This debt is for a satellite television service, and \$144 is owed. It is unpaid. (Tr. 54; Exhibits 2-4)

1.h. Applicant denies this medical debt for \$50. It appears on his credit reports. It is unpaid. (Tr. 54, 55; Exhibits 2-4)

1.i. Applicant owes \$157 on an old credit card debt. It has been owed since 2002. He claims he cannot afford to pay it. It remains unpaid. (Tr. 56; Exhibits 2-4)

1.j. Applicant disputes the debt of \$1,035 resulting from an earlier apartment rental. (Tr. 56-59; Exhibits 2-4)

1.k. One of Applicant's automobiles was repossessed when he could no longer afford it. The debt owed to the lender, a credit union, is \$13,339. It

is unpaid. Applicant declared it was not a priority to pay. (Tr. 59-61; Exhibits 2-4)

1.l. This debt for \$153 is owed to a telephone company. It is unpaid. (Tr. 61; Exhibits 2-4, F)

1.m. Applicant denies this debt for \$190 owed to a video rental company. It remains unpaid. (Tr. 61; Exhibits 2-4)

1.n. Applicant owes \$110 for overdraft fees when his second wife wrote checks not covered by sufficient funds in the bank. It remains unpaid. (Tr. 65, 66; Exhibits 2-4)

1.o. Applicant owes \$140 to a grocery store. He denies this debt. It remains unpaid. (Tr. 66; Exhibits 2-4)

1.p. Applicant owes \$6,588 to an apartment rental company for a lease he broke when he received orders for a transfer while in the Air Force. The plaintiff sued Applicant in 2006, but later that year dismissed the lawsuit without prejudice to file it later. The plaintiff has not filed another complaint against Applicant. The debt remains unpaid. (Tr. 66; Exhibits 2-4, C)

1.q. Applicant owes a debt collector \$1,007 on an account. Applicant denies the debt, claiming he has not heard of the company. This debt remains unpaid. (Tr. 69, 70; Exhibits 2-4)

### **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. 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 applicant or proven by Department Counsel, and 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.

(c) a history of not meeting financial obligations;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and,

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

The evidence is sufficient to raise five potentially disqualifying conditions. Applicant's actions demonstrate poor self-control and serious lack of financial judgment. His unpaid debts extending over several years, and his lack of any reasonable plan to repay them, show these elements of the general security concern under this guideline.

Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Applicant has 17 delinquent debts totaling \$31,705. He has not repaid 16 of them, and is paying \$100 on one judgment. Applicant declared he does not have the money to repay debts. They are not a priority for him. Visiting his four sons monthly is his priority, for which he rents cars and pays expenses, thereby reducing the funds he could use to repay these debts.

AG ¶ 19 (b) states a security concern arises when indebtedness is caused by frivolous or irresponsible spending. Applicant has not evidenced any intent to pay the debts. He does not have a plan, much less a realistic plan under this AG, to repay the

debts. His discretionary monthly income of \$1,100 he spends on travel to see his sons, and other purchases Applicant did not detail at the hearing. The evidence raises this disqualification.

Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debt in the amount of \$31,705. He has not repaid any of it, and the debts go back to 2002.

Applicant consistently spent beyond his means to repay the debt. His debt amount, his declared lack of funds to repay these debts and absence of interest in repaying the debts, coupled with a high debt-to-income ratio, makes AG ¶ 19 (e) applicable.

Next, Applicant has not filed his state income tax for the past two tax years. He owes \$3,000 on his federal income taxes for the past two tax years. He has not filed his federal income tax return for 2008, although he has an extension. He has taken no actions to rectify his failures to file his tax returns. AG ¶ 19 (g) applies.

AG ¶ 20 provides six conditions that could mitigate security concerns arising under this guideline:

(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;

(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; and,

(f) the affluence resulted from a legal source of income.

Of these six mitigating conditions, only AG ¶ 20 (b) has any potential applicability. Applicant's two divorces, in 2001 and 2007, may have affected his financial ability to repay his debts. But 10 of Applicant's debts are under \$1,000, and he could have repaid them over the past four years, if he had managed his money properly. Applicant did not demonstrate in any substantive and specific way that his divorces and marriages adversely affected his financial situation to repay his debts. He merely declares he does not have enough money to repay his debts. He did not present any evidence of any efforts in the past five years to repay his debts. Now he owes federal and state income taxes, which were not caused by his 2001 and 2007 divorces. He did not produce any evidence that he acted responsibly while his debts were accumulating. Hence, AG ¶ 20 (b) does not apply. No other mitigating conditions potentially apply based on the facts Applicant presented at the hearing.

However, Applicant does have an installment payment plan for one debt arising from the auto accident several years ago. A judgment was obtained against him. Being compelled under a judgment to repay a debt is not the same as having initiated a good-faith effort to repay a debt. But Applicant is paying it regularly, so AG ¶ 20 (d) has limited applicability for that one debt.

### **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.

AG ¶ 2(c) requires each case must be judged on its own merits. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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 adult of 30, the father of four children, and has a job. He knew what he was doing when he incurred these debts, yet, he has done nothing over the past four years to repay any debt. He continues to spend money visiting his children and on other items, but has no plan for resolving his debts and managing his money. He has a legal obligation to pay his



income taxes, which he has consistently failed to do over the past two years. He has not taken action to increase his withholding to avoid the recurrence of the yearly delinquencies. He is financially irresponsible, leading me to conclude that he is unreliable and lacks good judgment.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations. I conclude the "whole person" concept against Applicant.

### **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:	For Applicant
Subparagraph 1.b. to 1.q:	Against 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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PHILIP S. HOWE  
Administrative Judge