



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03218  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

February 17, 2009

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**Decision**

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CURRY, Marc E., Administrative Judge:

On April 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and 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, admitting SOR subparagraphs 1.a, 1.c, and 1.d, and denying the remainder. He requested an administrative determination. On November 6, 2008, department counsel prepared a File of Relevant Material (FORM). In the FORM, department counsel withdrew the personal conduct guideline allegations.

Applicant did not reply to the FORM. On January 21, 2009, the case was assigned to me. I have reviewed the FORM and have concluded that it is not clearly consistent with the national interest to grant him access to classified information. Clearance is denied.

### **Findings of Fact**

Applicant is a 36-year-old single man with no children. An earlier marriage ended in divorce 11 years ago. He has a high school degree, and served in the U.S. Army from 1993 to 2000. His discharge was honorable. The record contains no job description.

The SOR lists six delinquent debts in the approximate amount of \$13,000. SOR subparagraph 1.a is a \$2,180 credit card bill. A judgment was entered on this account in 2003 (Item 4). Applicant asserts that he has been paying \$15 per week toward its satisfaction, consistent with the court order (Item 6 at 5). He provided no supporting documentary evidence.

SOR subparagraph 1.b is a \$150 tax lien that the state department of motor vehicles filed against his property in 1995. He satisfied it in 1997 (Item 4 at 4).

SOR subparagraphs 1.c and 1.d are delinquent credit card accounts equal to \$7,550 and \$2,540, respectively. He has not contacted these creditors, and intends to satisfy them one at a time (Item 6 at 5). In February 2008, he satisfied an unlisted delinquency through monthly payments of approximately \$525 (Item 6 at 11).

The creditor listed in SOR subparagraph 1.e is a collection agent for an electronics company from which Applicant purchased a computer several years ago. The alleged amount delinquent (\$64) is a late fee. Applicant denies SOR subparagraph 1.e, asserting that he satisfied it. He provided no supporting documentary evidence.

SOR subparagraph 1.f alleges a retail store account with a \$662 delinquency. The allegation is not supported by any documentation, and Applicant denies it.

### **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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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.

## Analysis

### Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Applicant’s financial delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” Applicant contends that a period of unemployment contributed to his financial difficulties. His security clearance application indicates steady employment since leaving the military. AG ¶ 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,” does not apply.

The government failed to produce evidence supporting the existence of a debt owed to the creditor listed in SOR subparagraph 1.f, and Applicant denied it. I resolve this SOR subparagraph in Applicant’s favor.

As for SOR subparagraph 1.e, Applicant did not produce evidence establishing a reasonable basis for his dispute. AG ¶ 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,” does not apply.

Applicant provided evidence that he has satisfied an unlisted debt. This demonstrates that he is sincere about confronting his financial delinquencies. However, he provided no payment plan, no budget, nor any evidence of steady, past payments

toward the satisfaction of the delinquent SOR debts. Consequently, neither AG ¶¶ 20 (c), “. . . there are clear indications that the problem is being resolved or is under control,” nor 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Applicant has not mitigated the financial considerations security concern.

### **Whole Person Concept**

Under the whole person concept, the administrative judge must evaluate an applicant’s eligibility to occupy a sensitive position 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). They are as follows:

- (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 must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

The record contains scant evidence detailing the cause of Applicant’s financial problems or his efforts at financial rehabilitation. Consequently, the likelihood of continuation remains unacceptably high. Upon considering the disqualifying and mitigating conditions in the context of the whole person concept, I conclude Applicant has not mitigated the financial considerations security concern. Clearance is denied.

### **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:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant

Subparagraph 1.f:

For Applicant

Paragraph 2, Guideline E:

WITHDRAWN

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge