



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-03498 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro Se*

October 23, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial issues. Eligibility for access to classified information is denied.

On July 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the 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 answered the SOR in writing on August 4, 2008, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on August 21, 2008, and reassigned to me on September 16, 2008. DOHA issued a notice of hearing on September 4, 2008. I convened the hearing

as scheduled on September 24, 2008. The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf but did not submit any documentary evidence. The record was held open until October 10, 2008, for Applicant to submit documentary evidence if he desired to do so. Applicant did not submit any documentary evidence, as verified by Department Counsel's e-mail, which is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on October 8, 2008.

### **Findings of Fact**

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since about September 2007. He served in the U.S. Air Force from 1980 to 1993, and was honorably discharged as a Staff Sergeant (E-5). He earned a degree from a technical institute in 1997. Applicant was married in 1979, and divorced in 1985. He married again in 1985, separated in about 2005, and divorced in July 2008. He recently remarried his first wife. He has three adult children living on their own and two stepchildren, ages 17 and 14, living with him and his wife. He also has a younger stepchild who is living with the child's father.<sup>1</sup>

The SOR lists 12 debts totaling approximately \$19,890. Applicant admitted to owing all the debts in the SOR with the exception of ¶¶ 1.c through 1.e, 1.h, and 1.k, which he denied. He admitted owing seven debts totaling approximately \$10,492.

Applicant attributed his financial problems to unemployment, under-employment, and low-paying jobs after losing a good-paying job in 2002. He stated he has been supporting his current wife and family since 2005, because they were victims of domestic violence.<sup>2</sup> He also stated he was the victim of identity theft by his second wife. On April 11, 2008, Applicant filed a police report in the state where he lives, accusing his second wife of identity theft. He wrote:

Recently became aware that my ex-wife has opened multiple credit accounts and had no authorization from me to do so. She has signed my name & used my statistics. Additionally, several of said accounts were discharged after she initiated Chapter 13 [bankruptcy] in both of our names well after we were separated in 2004.<sup>3</sup>

Applicant was separated but not divorced from his second wife at the time of the police report. He reported that the identity theft occurred in a different state than where he was living at that time. He has never heard back from the police department about the report. Applicant completed an ID Theft Affidavit on May 6, 2008, stating "I believe my

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<sup>1</sup> Tr. at 12, 15, 23-24, 42-43; GE 1.

<sup>2</sup> Tr. at 12-13; Applicant's response to SOR.

<sup>3</sup> GE 2.

estranged wife used my name, SSN # & signature without my knowledge or approval for several years during our marriage.”<sup>4</sup>

The debts in ¶¶ 1.a, 1.b, 1.g, 1.i, and 1.j are medical debts totaling about \$1,341. Applicant admitted responsibility for these debts. Most of the medical bills are the result of an emergency medical procedure when Applicant was unemployed and uninsured.<sup>5</sup>

In his response to interrogatories in May 2008, Applicant stated that he had no knowledge of a debt of \$723 to a jewelry store. He wrote that he believed his “estranged wife opened this account without [his] knowledge or consent-using [his] name, SSN, and signature.” This debt is alleged in SOR ¶ 1.c. He admitted at the hearing that after investigating this debt, he discovered that it is a joint debt and he is responsible for the debt.<sup>6</sup>

Applicant initially denied owing a debt of \$6,721 to a collection company on the deficiency owed on a car loan after the car was involved in an accident, as alleged in SOR ¶ 1.d. He claimed no knowledge of this debt in his response to interrogatories. At the hearing Applicant admitted that he and his ex-wife were living together when the car was purchased and he co-signed for the loan for this car.<sup>7</sup>

SOR ¶ 1.e lists a debt of \$702 to a collection company on behalf of a women’s fitness center. Applicant denied owing this debt. The credit report of September 29, 2007, lists \$702 as the high credit of this debt, but does not list a balance. The June 24, 2008 credit report does not list the debt. There is insufficient evidence for a finding that Applicant is responsible for this debt.<sup>8</sup>

Applicant admitted owing the debt of \$8,976, as alleged in SOR ¶ 1.f, for the deficiency balance owed on a car loan after the vehicle was repossessed and sold at auction.<sup>9</sup>

Applicant denied owing the debt of \$352 to a collection company on behalf of a cellular telephone services company, as alleged in SOR ¶ 1.g. Applicant formally disputed this debt with the collection agency which responded with a letter dated April 14, 2008, asking Applicant for an official police report and a signed and notarized Affidavit of Fraud, which was enclosed. This is apparently the ID Theft Affidavit discussed above. This account was opened in September 2001, and became

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<sup>4</sup> Tr. at 24-25; GE 2.

<sup>5</sup> Tr. at 28, 35-38; Applicant’s response to SOR; GE 2-4.

<sup>6</sup> Tr. at 28-29; GE 2.

<sup>7</sup> Tr. at 30-33; GE 2-4.

<sup>8</sup> Tr. at 33-34; Applicant’s response to SOR; GE 3, 4.

<sup>9</sup> Tr. at 34-35; Applicant’s response to SOR; GE 1-4.

delinquent in February 2002, years before Applicant became separated and divorced from his ex-wife.<sup>10</sup>

SOR ¶ 1.k lists a debt of \$900 to a collection company on behalf of the same jewelry store as alleged in SOR ¶ 1.c. Applicant denied owing this debt. The June 24, 2008 credit report does not list the debt. This debt appears to be a duplicate of the debt in SOR ¶ 1.c. There is insufficient evidence for a finding that there were two debts to the jewelry store. Applicant admitted owing the debt of \$175 to a bank, as alleged in SOR ¶ 1.i.<sup>11</sup>

Applicant has not made any payments on any of the debts in the SOR. Applicant has been paying on a delinquent student loan. His scheduled monthly payments were \$280. The Department of Education has obtained funds from Applicant's income tax refund for 2007, and his economic stimulus payment, for the delinquent student loan. The student loan debt in February 2008 was about \$13,000. It is down to about \$1,600, mostly resulting from the seizure of the tax refund and stimulus payment. He now pays \$177 per month. The IRS also seized part of his tax refund for unpaid taxes from tax year 2002. Applicant stated that he would like to pay his delinquent debts as soon as possible.<sup>12</sup>

Applicant has not received financial counseling. He saw an attorney who advised him to contact the credit reporting agencies and obtain an updated report and then go through the report and contact each creditor to dispute the debts.<sup>13</sup>

Applicant submitted a personal financial statement dated May 6, 2008, in his response to interrogatories. It listed a net monthly remainder of \$1 without payment of delinquent debts. It did not include overtime pay and it did not reflect the reduction in payments on the student loan from \$280 to \$177.<sup>14</sup>

## **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 to be used in evaluating an applicant's eligibility for access to classified information.

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<sup>10</sup> Tr. at 36-37, 41; Applicant's response to SOR; GE 2-4.

<sup>11</sup> Tr. at 38-40; Applicant's response to SOR; GE 2-4.

<sup>12</sup> Tr. at 13-19, 26; Applicant's response to SOR; GE 2. The student loan and tax debts were not alleged in the SOR and are not considered for disqualifying purposes. They are considered for the purposes of mitigation and under the whole person.

<sup>13</sup> Tr. at 40.

<sup>14</sup> Tr. at 26-27; GE 2.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, Administrative Judges apply the guidelines 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 the 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 adverse 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 *a/so* 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 conditions that could raise security concerns under AG ¶ 19. Four are potentially applicable in this case:

- (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; and
- (d) 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.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise AG ¶¶ 19(a) and (c). There is insufficient evidence for a finding that the indebtedness was caused by frivolous or irresponsible spending or that Applicant consistently spent beyond his means. AG ¶¶ 19(b) and (d) are not applicable.

SOR ¶ 1.m alleges that his personal financial statement shows a net monthly remainder of \$1 without payment of delinquent debts. That personal financial statement did not include overtime pay and it did not reflect the reduction in payments on the student loan from \$280 to \$177. It does not raise a disqualifying condition. SOR ¶ 1.m is concluded for Applicant.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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; and

(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.

Applicant has not made any payments on any of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He attributed his financial problems to unemployment, under-employment, and low-paying jobs after losing a good-paying job in 2002. He also had an emergency medical procedure while he was unemployed and did not have medical insurance. These are conditions that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not made any effort to pay any of the debts alleged in the SOR. There is insufficient information for a finding that he has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not received financial counseling. His limited advice from the attorney does not qualify as counseling under AG ¶ 20(c). There are not clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable. Applicant has made payments on his delinquent student loans. That is insufficient to warrant full application of AG ¶ 20(d) as a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant initially disputed owing several debts, claiming he had no knowledge of the debts. He later admitted that the debts were accrued by his ex-wife while they were still married and living together. He admitted that he co-signed on the largest disputed debt for the car loan. AG ¶ 20(e) is not applicable.

### **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. I considered Applicant's military service to our country and that he was honorably discharged from the Air Force. However, his finances have been in bad shape for a number of years with no sign of improvement in the foreseeable future. They remain a security concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial issues.

### **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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.d:    | Against Applicant |
| Subparagraph 1.e:         | For Applicant     |
| Subparagraphs 1.f-1.j:    | Against Applicant |
| Subparagraph 1.k:         | For Applicant     |
| Subparagraph 1.l:         | Against Applicant |
| Subparagraph 1.m:         | For 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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Edward W. Loughran  
Administrative Judge