



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| XXXXXXXXXX, XXXXX                | ) | ISCR Case No. 08-03628 |
| SSN: XXX-XX-XXXX                 | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Julie R. Mendez, Department Counsel  
For Applicant: *Pro Se*

April 29, 2009

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate Guideline F (Financial Considerations) security concerns. Clearance is denied.

**Statement of the Case**

On September 10, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP).<sup>1</sup> On October 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security

<sup>1</sup> Item 4.

<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made

concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant's undated Response to SOR allegations was received by DOHA, on December 29, 2008, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 26, 2009, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>3</sup> The case was assigned to me on March 23, 2009.

## **Procedural Rulings**

### **Motion to Amend SOR**

In the Government's FORM and pursuant to Items 10 and 17 of the Additional Procedural Guidance of the Directive, Department Counsel moved to amend the SOR by adding:

1.t. You are indebted to CNAC/TX on an account that is delinquent in the approximate amount of \$6,781. As of July 10, 2008, this debt had not been paid.

1.u. You are indebted to MAC on an account that is in collection in the approximate amount of \$4,545. As of July 10, 2008, this debt had not been paid.

1.v. You are indebted to Military A on an account that is charged off in the approximate amount of \$3,627. As of July 10, 2008, this debt had not been paid.

1.w. You are indebted to Pioneer Milit on an account that is charged off in the approximate amount of \$7,700. As of July 10, 2008, this debt has not been paid.

Applicant did not respond to Department Counsel's amendment and FORM and did not admit or deny the additional allegations as requested. I view Applicant's failure to respond as a waiver and grant Department Counsel's Motion to Amend the SOR.

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under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

<sup>3</sup> The DOHA transmittal letter is dated January 26, 2009. Applicant signed the receipt for the DOHA transmittal letter on February 2, 2009. The DOHA transmittal letter informed Applicant that he had 30 days after receipt of the FORM to submit information.

## Findings of Fact

In his responses to the SOR, Applicant admitted SOR ¶¶ 1.d., 1.h., 1.j., 1.o., and 1.p. He denied SOR ¶¶ 1.a. – 1.b., 1.e. – 1.g., 1.i., 1.k. – 1.m., and 1.q. – 1.s. He did not answer ¶¶ 1.c. and 1.n. Additionally, he did not answer the allegations included in ¶¶ 1.t. – 1.w. in the Motion to Amend SOR, *supra*. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 37-year-old defense contractor employee, who has worked for his company since February 2007.<sup>4</sup> The only information the FORM contains regarding his educational background is that he attended a graduate school of theology from September 2002 to June 2005. He was married in September 1992 and separated in July 2001. He refers to “going through a divorce” in his Answer, but does not mention a final divorce date.<sup>5</sup> He served in the U.S. Army from September 1992 to December 2004 and was discharged as an E-5. He held a security clearance at the secret level while in the Army.

Applicant’s background investigation addressed his financial problems and included the review of his September 2007 and April 2008 credit reports.<sup>6</sup> Additionally, it considered Applicant’s two July 2008 Responses to DOHA interrogatories.<sup>7</sup>

Applicant has delinquent SOR debts approximating \$60,700. In addition to the admissions contained in his Answer to the SOR, the debts are independently supported by Applicant’s eQIP, and his November 2007 and August 2008 credit reports.<sup>8</sup> As noted above, Applicant’s Answer denied he owes the debts listed *supra*; however, he has provided no credible evidence to prove or support his assertions.

The DOHA interrogatories asked Applicant (in part) to explain and/or document the status of delinquent accounts alleged in SOR ¶¶ 1.a. – 1.w. Applicant either did not provide a response or indicated the debt was an “error.” He concluded:

While being interviewed by your Agent, I found out my credit history is very incorrect. I have hired an attorney to investigate and correct the above credit inquiries. There are many duplicate entries on my credit report. Most are not valid entries. I have included phone numbers to [credit

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<sup>4</sup> Item 4 (e-QIP) is the source for the facts in this paragraph, unless stated otherwise.

<sup>5</sup> Item 3.

<sup>6</sup> Items 5 and 6.

<sup>7</sup> Items 7 and 8.

<sup>8</sup> Items 7 and 8.

repair company]. The company I hired to fix my credit. Also, I'm still in process of a divorce.<sup>9</sup>

Applicant did not provide any documentation to substantiate his claim. Applicant's response to the FORM failed to address any of his delinquent debts. He failed to provide any information as to how he acquired the debts, why they became delinquent, what efforts he took, if any, to resolve his debts, and what measures he has taken to avoid similar financial problems in the future.

### **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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>10</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition,

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<sup>9</sup> Item 7.

<sup>10</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>11</sup>

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, his answers to DOHA interrogatories, and his SOR response.

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<sup>11</sup> “The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Applicant has submitted no documentation to show he has a reasonable basis to dispute the legitimacy of the debts alleged in SOR, that he has attempted to contact those or other creditors to settle or resolve the debts alleged in the SOR, or that he is receiving counseling or has ever received financial counseling to assist him with his financial difficulties.

Applicant also has not produced convincing evidence showing that he acted responsibly or prudently in managing his financial affairs over several years, and it is clear from the record evidence that Applicant's financial problems are not recent, are not isolated, and appear likely to be a continuing concern in the future.

The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Considering the record as a whole, and absent any mitigating evidence from the Applicant, I conclude his SOR debts, totaling about \$60,700 are still valid, delinquent debts, and that Applicant is responsible for them.

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.

Considering the record evidence as a whole,<sup>12</sup> I conclude that none of the mitigating conditions apply. Applicant's sparse favorable information fails to establish the applicability of any of the mitigating conditions.

Applicant's evidence is not sufficient to show he has dealt responsibly with his financial obligations before, or especially after receipt of the SOR. Based on his security clearance application, Applicant has held his present job as a contractor since February 2007.

Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. Based on the available evidence, his financial problems are recent, not isolated, and are likely to be a concern in the future. He has not carried his burden of proving his financial responsibility. His overall financial behavior casts doubt on his current reliability, trustworthiness, and good judgment.

### **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.

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. AG ¶ 2(c).

Applicant's record of employment as a Government contract employee weighs in his favor. Aside from his delinquent debt (which is a civil, non-criminal issue), he is a law-abiding citizen. These factors show some responsibility and mitigation.

The evidence against mitigating Applicant's conduct is more substantial. He has a significant history of delinquent debt that has been ongoing. Applicant has submitted

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<sup>12</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

no documentation to show he has a reasonable basis to dispute the legitimacy of the debts, that he has attempted to contact those or other creditors to settle or resolve debts alleged in the SOR, or that he is receiving or has ever received financial counseling to assist him with his financial difficulties. Applicant has not produced convincing evidence showing that he has acted responsibly or prudently in managing his financial affairs over several years, and it is clear from the record that Applicant's financial problems are not recent isolated, and appear likely to be a continuing concern in the future. Accordingly, Applicant has not mitigated the security concerns caused by the financial considerations in his case.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to 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:

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|-----------------------------|-------------------|
| Paragraph 1, Guideline F:   | AGAINST APPLICANT |
| Subparagraphs 1.a. to 1.w.: | Against Applicant |

### **Conclusion**

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

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ROBERT J. TUIDER  
Administrative Judge