



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03804  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Pro Se

October 31, 2008

**Decision**

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations), and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his Security Clearance Application (SF 86), on October 4, 2007. On June 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant 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 in writing on July 3, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on July 17, 2008. I received the case assignment on July 22, 2008. DOHA issued a notice of hearing on July 24, 2008, for a hearing on August 25, 2008. I convened the hearing as scheduled.

At the hearing, the government offered four exhibits (Exhs 1-4) that were admitted in evidence without objection. Applicant submitted three exhibits (Exhs. A-C) that were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on September 4, 2008. I granted Applicant's request to keep the record open until September 25, 2008, to submit additional evidence. Nothing was submitted and the record was closed.

### **Findings of Fact**

Applicant is a 38-year-old employee of a government contractor working as a contracts manager supervising seven employees since November 2006. He has been continuously employed in industry since he was honorably discharged from the Air Force as a senior airman (E-6) in 1996 after seven years of active duty (Tr. 37).

In his Answer, Applicant admitted the two financial allegations in the SOR relating to approximately \$11,000 in delinquent debts arising from two credit card debts accumulated primarily during the latter years of his former marriage between 1991 and 1996. This was a result of bad financial management (Tr. 20). The debts were for \$720 (SOR ¶ 1.a.) and \$10,335 (SOR ¶ 1.b.). In 2006 and 2007 he used a credit repair service that filed objections to these debts and others with credit reporting agencies. Both were charged off at some point but he engaged the services of a credit counseling service, and, on their advice, had them re-instated (Tr. 24-29). He has now settled the first for \$500 (Exh. A) and has negotiated a payment plan for the second (Exh. B). These arrangements were done in July 2008, a month before the hearing in this matter (Tr. 14-15). The voluntary plan provides that the creditor will receive \$500 every two weeks withdrawn from Applicant's bank account. This arrangement was made possible by canceling a contribution of \$1,000 per month to his 401(k) plan with his employer. No withdrawals had been made at the time of the hearing.

Applicant denied the personal conduct allegation relating to his failure to report the delinquent debts at Question 28 (a) and (b) of the SF 86. He testified that he believed the debts had been deleted from his credit reports because of the efforts of his credit repair service in 2007. That had not happened (Exh. 3) and he did not obtain a credit report before filing his SF 86 to determine if it had occurred. He had reason to know that the debts existed and were his responsibility. He also did not take the financial issues raised in the security process as seriously as he knows he should have (Tr. 48).

Applicant's annual salary from his employment is approximately \$110,000. He has a 401 (k) account valued at \$22,000 to which he was contributing \$1,000 a month before making the arrangement to pay the larger SOR debt.

Applicant re-married in 2001 and has three children. The oldest is a step-daughter age 13. The other two are sons ages 7 and 10. The older one is his nephew whom he took into his home when Applicant's sister, the mother of the child, recently died. He is saving in a college fund for all three children. His wife had worked but is not now, and devotes her time to raising their children and work at the school that the children attend.

Applicant does not have a college degree but has over 100 hours of credits in aerospace management. He is highly regarded by his employer for his dedication, skills, and handling of classified materials (Exh. A). He first held a security clearance during his military service when he worked with nuclear materials (Tr. 47). He did not hold one with his former employer, and received an interim clearance with his present employer. It was withdrawn in May 2008 when this matter arose.(Tr. 47).

### **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. . . ." 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 conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations may raise security concerns." Applicant accumulated the delinquent debts cited in the SOR several years ago and has not made payments to the creditors even though he was earning a salary that clearly made payments possible. Thus, the evidence clearly raises these potentially disqualifying conditions.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Most of Applicant’s financial problems arose over ten years ago but very little was done to resolve them until after the SOR was issued despite having a good job with a salary of over \$100,00 a year.

Evidence that 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 is a potentially mitigating condition under AG ¶ 20(c). Applicant engaged a credit repair service and now is in a counseling service that is approaching the debts in a sound way so the MC is partially applicable.

AG ¶ 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary that all of the delinquent debts be resolved for mitigation to apply, it is necessary that a significant portion of the debts be settled or paid. The smaller of two debts has been resolved and is mitigated. The larger one can be paid under an agreement, but no evidence was offered to show that payments had begun as scheduled despite having given the Applicant a month to supply such information.

Under AG ¶ 20(e) the security concern may be mitigated when the individual has a reasonable basis to dispute the legitimacy of the past-due debt that 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. He disputed both debts through his credit repair service but later acknowledged their existence and has taken steps to pay or settle them.

Applicant has not been sufficiently diligent in pursuing the problem until recently. The mitigating conditions are not applicable.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations can raise questions about and an individual's reliability, trustworthiness and ability to protect classified information (AG ¶ 15).

Conditions that could raise a security concern and be disqualifying include the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire (AG ¶ 16 (a)). Applicant's failure to report his two financial delinquencies (SOR ¶¶ 1.a.-b.) at Question 28 a (Delinquent debts of over 180 days), and at Question 28 b (Delinquent debts of over 90 days) on his SF 86, prompted security concerns under Guideline E (Personal Conduct).

The requirement of the guideline is that the omissions be deliberately false. I conclude that they were since the testimony at the hearing by Applicant indicated only that at the time he filed his SF 86 he was working with an agency to have debts removed from his credit reports, and thought they would be deleted. Yet he knew of the debts and that the agency was working on in a limited manner and not charged with working out payments such as his new counseling service is doing. He also admitted that he did not

take the debt issues as seriously as he should have in regard to the security clearance process

### **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. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. I recognize his expressed interest to resolve these financial issues to restore his credit rating and keep a security clearance. However, these delinquent debts have been his for several years. Even though he has been employed at a good salary over the past three years with his present employer, very little was done to resolve these debts until the SOR was issued. Applicant has not mitigated the security concerns arising from these financial considerations. Applicant has begun to receive effective debt counseling, and was impressive in his testimony about his family and work. Thus, there is no reason that he should not receive a security clearance at some future time. However, it is premature at this time to grant a security clearance.

### **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.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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. Access to classified information is denied.

CHARLES D. ABLARD  
Administrative Judge