



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-03845
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 4, 2008

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted and certified an Electronic Questionnaires for Investigations Processing (e-QIP) on December 9, 2005. On July 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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.

On July 30, 2008 Applicant submitted a written notarized Answer to the SOR. On August 12, 2008, Applicant submitted a written notarized supplemental Answer to

the SOR. In both documents, he requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on September 11, 2008. The FORM contained documents identified as Items 1 through 12. By letter dated September 17, 2008, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on September 23, 2008. His response was due on October 23, 2008. He did not submit any additional information within the required time period. On November 19, 2008, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains eight allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.h.) (Item 1.) In his supplemental Answer to the SOR, dated August 12, 2008, Applicant admitted allegations at SOR ¶¶ 1.a, 1.e, and 1.f.<sup>1</sup> He admitted the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d but disagreed with the total amounts of the debts alleged. He denied debts alleged at SOR ¶¶ 1.g and 1.h.<sup>2</sup> He also provided additional information to support his request for a security clearance. Applicant's admissions are admitted herein as findings of fact. (Item 4.)

Applicant is 50 years old, married, and employed as a federal contractor. From August 1976 to March 1995, he served on active duty with the U.S. military. He has held a security clearance since at least 2001. (Item 5.)

In April 1997, Applicant petitioned for Chapter 13 bankruptcy. Applicant and his wife planned to make the Chapter 13 payments from their incomes. Applicant's wife suffered a heart attack and was unable to work. The petition was dismissed in September 1999, when Applicant failed to make required payments. In August 2002 Applicant and his wife filed a motion to convert the Chapter 13 to a Chapter 7 bankruptcy. Applicant's motion was granted, and his Chapter 7 bankruptcy was discharged in December 2002. (SOR ¶ 1.a; Item 2; Item 4; Item 7; Item 8.)

The SOR alleged at ¶¶ 1.b, 1.c, and 1.d that liens were filed against Applicant in March 2007, December 2006, and March 2004. The March 2007 lien was for \$9,330; the December 2006 lien was for \$9,215, and the March 2004 lien was for \$2,394. The three liens were listed as unpaid on Applicant's credit reports of March 13, 2008 and June 19, 2008. The December 2006 lien of \$9,215 and the March 2004 lien of \$2,394 were also listed under Applicant's name on a September 9, 2008 print-out of State A's judiciary judgments and liens. The print-out also listed a lien for \$788.99, filed against Applicant in 2001, as satisfied. (Item 10; Item 11; Item 12.)

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<sup>1</sup> In his supplemental Answer, Applicant listed two responses to SOR ¶ 1.e. When his responses are compared with the language of the SOR itself, they show that Applicant's second response to SOR ¶ 1.e addresses the allegation in SOR ¶ 1.f.

<sup>2</sup> In his supplemental Answer, Applicant listed two responses to SOR ¶ 1.g. When his responses are compared with the language of the SOR itself, they show that Applicant's second response to SOR ¶ 1.g addresses the allegation in SOR ¶ 1.h.

In his Answer of July 30, 2008, and in his supplemental Answer of August 12, 2008, Applicant acknowledged that the liens were for back taxes, and he stated that he was paying them off. He denied he owed the total amounts alleged in the SOR. He provided a document, dated June 23, 2008, from State tax authority A, reporting that he owed \$4,654.78 in unpaid taxes for tax years 2000, 2001, 2002, and 2005. He also provided a document, dated June 26, 2008, from a regional manager of a tax resolution firm, reporting that she had contacted State A on Applicant's behalf and requested that Applicant pay the debt with monthly installments of \$100. Applicant provided no other documents to rebut the amounts owed on the liens or to corroborate his assertion that he was paying the liens identified in the SOR allegations. (Item 2; Item 4)

Applicant admitted he owed \$1,809 on a bad debt that had been placed for collection and remained unpaid as of June 19, 2008. (SOR ¶ 1.e) He further stated he had sent the creditor a payment on the account. He provided no documentation to corroborate his statement that he had sent a payment to the creditor. (Item 1; Item 4; Item 9.)

Applicant also admitted a charged-off medical debt of \$43 that remained unpaid as of June 19, 2008. (SOR ¶ 1.f.) He stated his intent to pay the debt in full after he had identified the creditor. (Item 1; Item 4.)

Applicant denied a debt of approximately \$500 and asserted he had paid it on March 19, 2008. To corroborate his payment of the debt, he provided a photocopy of his bank statement showing a payment of \$500 made to a creditor on March 18, 2008. Applicant's documentation was insufficient to show that he had paid the creditor identified on the SOR. However, his credit report of June 19, 2008, shows the debt identified at SOR ¶ 1.g as settled. (Item 4; Item 11 at 2.)

Applicant also denied a charged-off debt of approximately \$14,078 that had not been paid as of March 15, 2008. (SOR ¶ 1.h.) In his Answer to the SOR and in his supplemental Answer to the SOR, he acknowledged he had financed a vehicle through the creditor identified in the allegation at SOR ¶ 1.h. He stated that the payments on the vehicle were causing him to fall into debt, and he therefore gave the vehicle up to the creditor as a voluntary repossession. (Item 1; Item 2; Item 4.)

Applicant responded to financial interrogatories from DOHA on May 27, 2008. He provided a sworn statement reporting that his annual gross income from salary and military retirement pay was approximately \$91,000. His net monthly income from salary was \$5,210. He reported an additional \$600 in net monthly income from military retirement pay. He listed \$3,185 in fixed monthly expenses. He reported that he was making monthly payments on two current financial obligations which totaled approximately \$669. Additionally, he reported a monthly net remainder of \$1,955. (Item 6 at 7.)

The record does not indicate that Applicant has participated in consumer credit counseling.

### **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, the administrative judge applies these 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 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 admitted a history of financial difficulties. In 1999, he declared Chapter 13 bankruptcy, which was dismissed for non-payment in 2002. Later in 2002, he moved to convert his Chapter 13 to a Chapter 7 bankruptcy. In December 2002, his debts were discharged in a Chapter 7 bankruptcy. Despite the fresh start afforded by his Chapter 7 bankruptcy, Applicant acquired additional financial delinquencies, most notably several tax liens and a deficiency resulting from a voluntary repossession of an automobile. These obligations indicate he has substantial delinquent debt and is unable or unwilling to pay his creditors. This evidence is sufficient to raise the potentially disqualifying conditions identified above, requiring a closer examination.

Guideline F also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person’s control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)) Still other mitigating circumstances that might be

applicable include evidence 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 (AG ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d))

Applicant stated that he was unable to follow through on his Chapter 13 payments in 1999 because his wife suffered a heart attack and was unable to work. While Applicant's wife's health problems were unfortunate and unpredictable, they occurred nine years ago. In his Answer and supplemental Answer to the SOR, Applicant did not report further family health problems. However, his financial problems have continued, even though his annual gross income is over \$90,000 a year and his monthly net remainder is approximately \$1,955.

The record corroborates Applicant's statement that he satisfied the \$500 medical debt alleged at SOR ¶1.g.

Applicant promised to pay the debt alleged at SOR ¶ 1.f at some time in the future, when he had identified the creditor. He failed to provide documentation to corroborate his assertion that he was paying the debt alleged at SOR ¶ 1.e. He also failed to rebut the allegations in SOR ¶¶ 1.b, 1.c, and 1.d that he owed over \$20,000 in liens that had not been satisfied as of June 19, 2008. He failed to establish that he was not responsible for a debt, alleged at SOR ¶ 1.h, of approximately \$14,078 which resulted from a voluntary repossession of an automobile he had purchased on credit.

The record does not show that Applicant has participated in financial counseling. While he admitted some of his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He appears to have sufficient funds remaining at the end of each month to address his financial delinquencies. Even so, he had no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that AG ¶ 20(d) applies in part in mitigation, but that AG ¶ 20(a), AG ¶ 20(b), and AG ¶ 20(c) do not apply in mitigation to the facts of Applicant's case.

### **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. Applicant's financial problems have occurred in his mature adult years. (See AG ¶ 2(a)(4).) Since receiving a fresh financial start after his Chapter 7 bankruptcy in 2002, Applicant has continued to accumulate unpaid debt. He has not taken affirmative action to pay or resolve the majority of his delinquent debts, and this continues to raise security concerns. While he deserves credit for payment his medical debt of \$500, he has not demonstrated that he has used his remaining monthly discretionary income to satisfy his many other remaining old debts. (See AG ¶ 2(a)(6).)

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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
Subparagraphs 1.a through 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h:	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. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge