



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03988  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Department Counsel  
For Applicant: *Pro Se*

October 15, 2008

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**Decision**  
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HARVEY, Mark W., Administrative Judge:

Applicant failed to mitigate the financial considerations security concern because he failed to present information about his efforts to pay or mitigate his ten delinquent debts, totaling about \$22,000. Clearance is denied.

**Statement of the Case**

On August 10, 2007, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP) or Security Clearance Application (SF 86) (Item 5). On May 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,<sup>1</sup> 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

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<sup>1</sup>Item 1 (Statement of Reasons (SOR), dated May 23, 2008). Item I is the source for the facts in the remainder of this paragraph unless stated otherwise.

and revised.<sup>2</sup> The SOR alleges security 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.

On June 30, 2008, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 4). A complete copy of the file of relevant material (FORM), dated July 28, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>3</sup> Applicant did not provide additional documents within the 30 days. On October 10, 2008, the case was assigned to me.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a to 1.j (Item 4). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 46 years old.<sup>4</sup> He has worked for a federal contractor since April 2003 in the area of information technology. He married in 1994 and divorced in 2003. He was previously married from 1982 until 1987. His three children or stepchildren were born in 1985, 1992 and 1994. He is currently divorced. He has not served in the military. He has about two years of college. In the last seven years he has not been fired, quit or left employment under unfavorable circumstances. He has no police record, except for a 1987 incident involving driving under the influence of alcohol, which resulted in probation. He has not used or trafficked in illegal drugs in the last seven years, and has never used illegal drugs while in a sensitive position.

### **Financial Considerations**

The SOR lists ten delinquent debts totaling approximately \$22,000: ¶ 1.a (\$190), ¶ 1.b (\$1,256), ¶ 1.c (\$387), ¶ 1.d (\$7,674), ¶ 1.e (\$6,189), ¶ 1.f (\$405), ¶ 1.g (\$3,091), ¶ 1.h (\$2,174), ¶ 1.i (\$90) and ¶ 1.j (\$910). As indicated previously, he admitted all of

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<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 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. The revised Adjudicative Guidelines are applicable to Applicant's case.

<sup>3</sup>Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated July 28, 2008, and Applicant's receipt is signed and dated August 15, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

<sup>4</sup>Item 5 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

the SOR debts, and did not explain how these debts became delinquent or describe any efforts to repay his creditors. His credit reports show several debts for over \$1,000 became delinquent in mid-2005 (Items 6 and 7).

## 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>5</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, 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>6</sup>

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<sup>5</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).

<sup>6</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

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 one 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 and in his SOR response. He has ten delinquent debts totaling approximately \$22,000. Several large debts became delinquent in 2004 and remain delinquent today. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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;

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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).

(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's conduct does not warrant application of any mitigating conditions. He has not described any actions to resolve his delinquent debts. Because there are ten delinquent debts, the financial problems are not isolated. The ongoing nature of the ten delinquent debts for about \$22,000 debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). There is no evidence supporting a conclusion that his debts "occurred under such circumstances that it is unlikely to recur." Moreover, his delinquent debts do cast doubt on his "current reliability, trustworthiness, or good judgment." Under AG ¶ 20(b), he did not show his delinquent debts were "largely beyond his control." He did not establish that he acted responsibly under the circumstances.<sup>7</sup>

AG ¶¶ 20(c) and 20(d) do not apply. Applicant did not provide evidence of financial counseling. Moreover, there are not "clear indications that the problem is being resolved or is under control." There is insufficient information to establish that Applicant showed good faith<sup>8</sup> in the resolution of his delinquent SOR debts.

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<sup>7</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)).

<sup>8</sup>The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of

AG ¶ 20(e) is not applicable to mitigate any debts because Applicant did not dispute any debts. He did not provide “documented proof to substantiate the basis of the dispute” with respect to any delinquent SOR debts.

Applicant did not provide correspondence with his creditors to establish he acted responsibly and in good faith from 2004 up to the present. He should have been more diligent and made greater efforts to resolve his delinquent debt, especially after receipt of the SOR. His overall conduct with his creditors casts doubt on his current reliability, trustworthiness, and good judgment. He has not carried his burden of proving his financial responsibility. Based on my evaluation of the record evidence as a whole, I conclude no mitigating conditions fully apply.

### **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).

There is some mitigating evidence under the whole person concept. Applicant’s record of good employment weighs in his favor. There is no evidence of any security violation. Aside from the delinquent SOR debt (which is a civil, non-criminal issue) and a DUI in 1987, he is a law-abiding citizen. He does not have any record of involvement with illegal drugs. His other debts are current. The overall amount of his current

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good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

delinquent debt at about \$22,000 is relatively low. He attended college for about two years. His credit reports shows that he has paid numerous debts over the years. These factors show some responsibility, rehabilitation, and mitigation.

There is substantial evidence against mitigating Applicant's conduct. From 2004 to present, he has ten delinquent SOR debts totalling about \$22,000. He did not explain how or why the debts became delinquent. He did not promise to pay or otherwise resolve his delinquent debts. 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 financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

### **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.j: | 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 Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

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Mark W. Harvey  
Administrative Judge