



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



In the matter of: )  
 )  
----- ) ISCR Case No. 08-04252  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 16, 2009

**Decision**

HOWE, Philip S., Administrative Judge:

On December 17, 2007, Applicant submitted his Security Clearance Application (SF 86). On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 September 24, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 1, 2008, and I received the case assignment on December 15, 2008. DOHA issued a Notice of Hearing on January 12, 2009, and I convened the hearing as scheduled on January 28, 2009. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibits A through G,

without objection. DOHA received the transcript of the hearing (Tr.) on February 6, 2009. I granted Applicant's request to keep the record open until February 10, 2009, to submit additional matters. On February 10, 2009, he submitted two large sets of documents without objection. I marked them as Exhibit H, which included a diverse collection of documents, and Exhibit I, which consisted of at least 193 pages of documents pertaining to Applicant's divorce from his former second wife. The record closed on February 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, dated September 24, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d to 1.f, 1.h to 1.j of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b, 1.c and 1.g of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 65 years old, currently married to his third wife, and employed by a defense contractor as a systems engineer. He has a bachelor's degree in engineering. He has one son by his first wife, three children by his second wife, and no children by his third wife. Applicant has had a security clearance for about 40 years with no negative incidents. He went through an acrimonious divorce from his second wife. (Tr. 12, 32, 33, 38, 46, 49-51, 116; Exhibits 1, F)

Applicant has nine delinquent debts listed in the SOR totaling about \$65,000. Eight of the nine debts are less than \$1,000 each. The ninth debt is \$62,567 for child or family support ordered to be paid by a court order in Applicant's divorce. The divorce from his second wife was final in 2004. He contends the acrimonious divorce contributed to his financial delinquencies because he had to spend money on legal representation and an appeal to reduce the child support ordered. Applicant accused his former wife of various criminal activities involving illegal immigration and fraud. Applicant also asserts that his unemployment from 2001 to 2002 for about 12 months restricted his ability to pay his delinquent debts. His final reason for not paying his debts was his illness in 2006. He claims food poisoning and continued problems resulting from that poisoning added medical bills not covered by insurance to his list of delinquent debts. Applicant also lived in hotels and corporate apartments, paying \$3,000 to \$4,000 monthly. He now rents a home for himself, his wife, and daughter for \$850 monthly. He claims that these living expenses, including eating in restaurants a great many times each month, prevented him from having enough money to pay his delinquent debts. Applicant now earns \$2,000 weekly on his employment contract. (Tr. 11, 49, 55-58, 72, 78, 80-83, 89, 104; Exhibits 2-4, 6, A-D, G-I)

The eight smaller debts listed in the SOR Applicant paid over the past two years. They total \$2,640. Most were paid after the June 2008 issuance of the SOR. Applicant admitted in Exhibit G that he purposely selected debts that would not be paid because he had his three children to take care of and the child custody battle with his former wife

to fight, needing his income for those matters more than for the payment of these debts. The following information explains those debts and their repayment.

1. The car payment debt of \$439 (Subparagraph 1.c) was paid and the account is current. The car is a new 2008 model purchased by Applicant for his 17-year-old daughter so she can drive herself to her private school. Applicant has been tardy in making those payments in the past, and caught up on them. His daughter lives with Applicant, and is enrolled in a private school with a \$600 monthly tuition. His daughter also receives from Applicant \$200 weekly for her expenses. He pays her car insurance premium. Applicant paid his daughter's speeding ticket and hired an attorney to represent her in 2008. Applicant claims his other children did not progress past junior year in high school, obtaining their high school equivalence diplomas later, and his \$1,200 or more monthly expenses for his daughter are designed to keep her in school until she graduates in May 2009. (Tr. 22-24, 37, 73, 85, 96-99; Exhibits 2-6, E (pps.2-5))

2. The medical debt of \$335 (Subparagraph 1.d) was paid in September 2008. (Tr. 24, 73; Exhibits 2-6, E (pps. 6-8))

3. The next debt is for medical services in the amount of \$189 (Subparagraph 1.e). It was paid January 22, 2009, after being delinquent since 2007. (Tr. 24, 25, 73; Exhibits 2-6, E (p. 9))

4. Applicant paid a \$27 debt for another medical procedure (Subparagraph 1.f). It was paid on September 23, 2008. It was delinquent from 2007. (Tr. 25, 73; Exhibits 2-6, E (pps. 10, 11))

5. There were several telephone company bills Applicant owed since 2006. He disputed some of them, but eventually paid all of them, including the \$728 debt listed in Subparagraph 1.g. This debt was paid in April 2008. (Tr. 26, 27, 73; Exhibits 2-6, E (pps. 12-26))

6. Applicant paid a collection agency for his satellite television debt of \$318 (Subparagraph 1.h) on January 20, 2009. The debt became delinquent in 2006. (Tr. 28, 73; Exhibits 2-6, E (pps. 27, 28))

7. Applicant paid a collection agency \$196.66 on a \$162 debt owed to a medical provider who tested him for a sleeping disorder (Subparagraph 1. i). The debt became delinquent in 2007. This debt was paid on January 14, 2009. (Tr. 29, 73; Exhibits 2-6, E (pps. 30, 31))

8. The final debt Applicant paid was for \$442 to a medical provider (Subparagraph 1.j). Applicant paid the debt on January 20, 2009. (Tr. 29, 73; Exhibits 2-6, E (pps. 29-32))

Applicant filed Chapter 7 bankruptcy on September 23, 2004, seeking discharge of \$204,666.24 in financial obligations. He listed various debts, including attorneys' fees, private school tuition of \$4,765 owed, and state income taxes for 1999 (\$1,180.38). He filed because of the divorce expenses. For the debts which could be discharged under the Federal Bankruptcy Law, Applicant was given a discharge on January 3, 2005. Applicant's income in 2006 was shown on his W2 Form as \$43,712. His 2007 income tax return showed an income of \$24,800. (Tr. 17, 60; Exhibits 1, 5, H)

Applicant's largest delinquent debt is the \$62,567 in unpaid child support. Applicant contends it is properly labeled family support, but regardless of the title, this money was ordered paid by valid state court judgments against Applicant between 2001 and 2004. He was ordered to make payments to his former second wife. In December 2008, the state agency collecting the money listed \$20,693.19 as interest, and \$44,128.77 as the principal balance owed. Applicant claims this debt is not valid because it is not one he incurred, nor did he have the income at the time periods the court order states he had on which the court based its payment calculations. He also contends that he was the custodial parent when his former wife claimed she was, and that he was owed child support as a result. Applicant described the local district attorney as prejudiced against men and him in particular, and that the lawyers in that office falsified the court order. Next, Applicant asserts his former wife was the leader of a "crime family," which put pressure on the district attorney to falsify the court order to get more money from him. Finally, Applicant also claims that because he is 65 years old, he should not pay the debt. (Tr. 62, 68-72, 91, 92, 106, 107; Exhibits 2-4, 6, B, D, H and I)

Applicant admitted he is not current on his state and federal income taxes. He has not filed state income taxes in the state from which he originally worked and lived for many years. He claims he is not a resident of the state in which he is currently working, though he has been there since 2008. He admitted he last filed a Federal income tax return in 2005. He does file income tax returns because any refund he would receive would be seized by the state court for payment of his past due child support obligations. Applicant contends that money would fund his former wife's criminal activities, and he does not want the money used for that purpose. Applicant's current \$2,000 weekly contractual income does not have tax withholding subtracted. He does not escrow any money to pay his income taxes. He has no savings or investments. He has a small checking account. (Tr. 49, 91, 92, 103, 104, 131; Exhibits 2-4, 6, G-I)

Applicant submitted a character letter, and two letters about his contract from his employer. The employer has no complains about his work. It is aware of Applicant's financial, marital and health problems in the past. The employer recommends Applicant retain his security clearance. (Exhibits F and H)

## 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, and 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 delinquent debt and was unable and unwilling to pay these obligations for the past five years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. An examination of the evidence as applied to each mitigating condition shows which ones might be applicable in Applicant's case.

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." Applicant's financial debts arose between about 2001 and 2006. He accumulated some delinquent debt due to his calculated decisions not to pay certain debts, and his contesting of the divorce child support payments. His financial decisions led to his 2004 Chapter 7 bankruptcy. His income for the past two years appears sufficient to have allowed him to pay the eight small debts sooner than he did, and his year-long unemployment in 2002 has not had any effect on his ability to pay his debts. He continued to work while having some medical issues several years ago, and they did not affect his ability to repay his debts. His refusal to pay his income taxes and continued refusal to pay his court-ordered child support are extant and serious issues. Applicant's behavior did not occur under such unusual circumstances that it is unlikely to recur, but in fact continues. His decisions on his taxes and child support obligations do raise concerns about his current reliability, trustworthiness, or good judgment. The evidence does not raise this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where "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.” As noted above, some of the financial problems arose from his acrimonious divorce, but the decision to contest the divorce and object to paying child support, from the exhibits Applicant submitted, are clearly his own decisions. He could have resolved these issues years ago, but continues to fight his former wife. He has not acted responsibly under these circumstances, particularly in his willful refusal and failure to file any state income tax returns and his Federal income tax return. The only tax he pays now is the sales tax for any purchase he makes anywhere. He is not paying his income taxes, while expecting to continue to receive an income from a federal contract funded by other persons’ income tax payments. I find this potentially mitigating condition is not a factor for consideration in this case.

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 potentially mitigating under AG ¶ 20(c). There is no evidence Applicant received financial counseling from any one. In fact, he spends every dollar he earns, resulting in no savings or investments for his future. He spends an excessive amount of money on hotel living accommodations while on his current job, eating in restaurants, and paying nearly \$2,000 monthly to cajole his daughter into finishing high school. All this money could have been spent on the debts listed in the SOR. Applicant’s financial decisions caused his problems, and reflect adversely on his judgment. His finances are not under control. This potentially mitigating condition is not a factor for consideration.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant resolved eight of the delinquent debts, either by payment or settlement, only after he realized he could lose his security clearance if he failed to take any action. Despite that knowledge, he deliberately failed to take any action on his two largest financial problems, his past-due child support and income taxes. He is not financially sound and is unprepared for future contingencies. I conclude this potentially mitigating condition has limited applicability to the eight debts Applicant paid.

AG ¶ 20 (e) requires “the individual to have 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 disputes his child support obligations. He submitted voluminous documents to show the basis for his dispute. However, this forum cannot retry the state court’s determination that the child support is due and owing. The state court’s order is presumed valid and binding. Applicant’s accusations against his former wife of criminal actions and his claims of bias by the state prosecutorial agencies cannot be adjudicated in a security clearance proceeding. I read the documents submitted by Applicant, and am not persuaded that he has no basis upon which to pay his financial obligations and his income taxes. I conclude this potentially mitigating condition has no applicability in Applicant’s case here.

Finally, AG ¶ 20 (f), requiring “the affluence resulted from a legal source of income,” is not applicable because there is no affluence offered as a mitigating condition.

### **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.

AG ¶ 2(b) requires each case must be judged on its own merits. Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature professional who has been married three times, and fathered four children. He started in the workforce nearly 40 years ago. He knew he was willfully not paying his income taxes for his own selfish reasons. He also deliberately decided not to pay his child support as ordered by a valid court. He admitted he purposefully chose not to pay certain debts, while claiming he needed the money to support his children and himself. His divorce documents demonstrate a contentious discussion on various expenses he charged to a company he owned, and his housing expenses during the 2001 to 2004 period. Applicant spent a lot of money on housing and attorneys in that period. There are no behavioral changes evident, and his actions are voluntary and selfish based on his own view of the divorce situation. His motivations for his conduct were retaliation against his second wife, and his personal decisions to keep his income for his own needs. There is clearly great potential for pressure, coercion, exploitation, or duress in this type of situation. The situation will continue, as declared by Applicant himself. He will not pay the child support because he considers it a debt he did not incur. He will not pay income taxes because he does not want any refund to go to his former wife. If he is not making periodic installment payments on his tax obligations, there will be no refunds to pay to him. It is also significant that after his bankruptcy discharge in 2005, he incurred more delinquent debt.



Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. His judgment on his financial obligations is seriously flawed. His deliberate refusal to pay income taxes is criminal. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations. I conclude the "whole person" concept against Applicant.

### **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
Subparagraphs 1.c to 1.j:	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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PHILIP S. HOWE  
Administrative Judge