



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



In the matter of:

ISCR Case No. 08-04464

Applicant for Security Clearance

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel

For Applicant: *Pro Se*

February 27, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, 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 his Electronic Questionnaire for Investigations Processing (e-QIP) on May 21, 2008. On November 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 December 5, 2008, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on

December 30, 2008. I convened a hearing on February 4, 2009 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced six exhibits, which were marked Ex. 1 through 6. Exs. 1, 2, and 3 were admitted to the record without objection. Exs. 4, 5, and 6 were admitted to the record over Applicant's objections. Applicant testified on his own behalf and called no witnesses. He introduced 15 exhibits, which were identified and marked as Applicant's Exs. A through O and admitted to the record without objection. Applicant prepared two binders of hearing materials for the administrative judge. With the exception of a letter, dated December 16, 2008, from Department Counsel to Applicant, the materials in the two binders duplicated evidence admitted at the hearing. The first binder contained the SOR, Answer to the SOR, along with documents identified as Applicant's 15 exhibits (*supra*), and Exs. 1, 2, and 3. The second binder contained the index of Government exhibits and Exs. 1 through 6. The second binder also contained the December 16, 2008 letter from Department Counsel to Applicant. The two binders were admitted to the record. DOHA received the transcript (Tr.) of the hearing on February 11, 2009.

### **Findings of Fact**

The SOR contains 14 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.n.) In his Answer to the SOR, Applicant denied all 14 allegations.

Applicant is 41 years old, married, and the father of four children. He enlisted in the United States military in 1992 and served for eight years. He received an honorable discharge in 2000. He earned an Associate's degree in 1996. He also holds a diploma from a business college. Since March 2005, he has worked as a government contractor for his current employer. His gross annual salary for 2008 was in excess of \$115,000. (Ex. 1; Tr. 112-114, 120-121.)

After his discharge from the military, Applicant worked as a contractor for an employer for about 2 ½ years. Then, in May 2003, Applicant's wife, who was expecting their fourth child, experienced pregnancy complications and was placed on bed rest. Applicant tried to find a family member to help him care for his wife and three other young children, but no one in his family or his wife's family was able to assist him. Applicant quit his job and stayed at home to care for his family. He used his savings to support his family. (Ex. 3, at 7; Tr. 98-100.)

During the early summer of 2003, Applicant's wife accused him of domestic abuse. He was arrested, incarcerated, and arraigned. He received unemployment benefits for a short time, but had no steady source of income. During this time of unemployment and domestic difficulties, Applicant relied on his savings to pay his family's living expenses. He acquired a number of additional delinquent debts, and he began to receive foreclosure notices from the holder of the first mortgage on his house. One of his brothers came to his assistance and helped him. He was able to sell his

home. He used all the proceeds from the sale of his home to pay off his first and second mortgages. (Tr. 100-108.)

From April 2004 to August 2004, Applicant worked overseas as an independent consultant for a U.S. company. During this period, he also attempted to create a small business. He used a software program he had purchased earlier to begin to trade in stock options and stock futures. After a few months time, he lost nearly all of his equity and could no longer trade. He fell further behind in his debts. He returned to the United States and was unemployed from August 2004 until March 2005. (Ex. 3 at 7-8; Tr. 98-99.)

In March 2005, Applicant accepted employment with his current employer and was assigned as a contractor overseas. He worked overseas in a war zone for about a year. He saved about \$80,000 to \$90,000 from his overseas employment. When he returned, his employer assigned him to a position in the United States. (Tr. 116-118, 130.)

The SOR alleged that Applicant was responsible for a debt of \$1,878 which had not been satisfied as of September 27, 2008. (SOR ¶ 1.a.) In his answer to the SOR and at his hearing, Applicant admitted the debt was his. He said he incurred the debt when he purchased, on credit, a sewing cabinet for his wife. When his unemployment in 2003 and 2004 made it impossible for him to pay the debt, he notified the creditor that he was contemplating bankruptcy and requested that the creditor take back the item. The creditor did not repossess the sewing cabinet; instead, it reported Applicant's debt as delinquent. Applicant denied responsibility for the payment of the debt and noted that the creditor had not made any demands for repayment. (SOR; Answer to SOR; Ex. 4; Ex. 6; Tr. 76-77.)

The SOR alleged that Applicant was responsible for a \$677 debt which remained unpaid and which had been placed for collection. (SOR ¶ 1.b.) In his answer to the SOR, Applicant denied responsibility for the debt. However, he admitted the debt was owed to a dentist who cared for his children. He stated that the dentist failed to file insurance claims timely before Applicant's health insurance was terminated by his unemployment. He stated that he had contacted the dentist and informed him he was unable to pay and contemplating bankruptcy. Applicant stated that the dentist had not made an attempt to collect the debt. Further, Applicant denied a responsibility to pay the debt. He stated his belief that the debt was "closed and otherwise resolved." (SOR; Answer to SOR; Ex. 6; Tr. 77.)

The SOR alleged Applicant owed a credit card debt of approximately \$1,834, which was in charged-off status and which had not been paid. (SOR ¶ 1.c.) The debt was listed on Applicant's credit reports, including the credit report he submitted in response to interrogatories. In his answer to the SOR, Applicant said the debt belonged to his brother. He also stated that he had requested that his brother add his name as an authorized user of the account in order to boost his credit score, and the brother had done so. He stated that his brother had recently filed for bankruptcy. Applicant denied

responsibility for the debt. Applicant's credit report of May 15, 2008 identified the delinquent account as an individual account. Two other credit card accounts listed for the same credit card company on Applicant's credit report of May 15, 2008 identify Applicant as an authorized user. (SOR; Answer to SOR; Ex. 5; Ex. 3 at 43-44; Tr. 78.)

The SOR alleged Applicant owed a creditor approximately \$345 on an account placed for collection, and the account had not been satisfied as of September 27, 2008. (SOR ¶ 1.d.) In his answer to the SOR, Applicant identified the debt as a department store credit card with a \$300 limit which he had used to buy basic necessities when he was unemployed. He stated he informed the creditor of his unemployment and intention to file for bankruptcy. He stated he had not received any notices of payment from the creditor and considered the "debt closed and otherwise resolved." (SOR; Answer to SOR; Ex. 4; Tr. 78-79.)

The SOR alleged that Applicant owed a creditor approximately \$597 on an account placed for collection and that, as of September 27, 2008, the account had not been paid. (SOR ¶ 1.e.) In his answer to the SOR Applicant identified the account as a credit card debt incurred when he was unemployed. He stated he had informed the creditor of his unemployment, inability to pay, and plan to file for bankruptcy. He denied receiving notices of payment due from the creditor. He stated that he considered the debt "closed and otherwise resolved." (SOR; Answer to SOR; Ex. 6; Tr. 79-80.)

The SOR alleged that Applicant owed a creditor \$206 on a medical debt which had not been paid as of May 15, 2008. (SOR ¶ 1.f.) In his answer to the SOR and at his hearing, Applicant identified the debt as his. He stated that the debt was incurred when a medical provider determined it was necessary for his wife to be hospitalized for a required time of 48-72 hours after the birth of their fourth child in 2003. Applicant objected to the provider's decision not to release his wife sooner because it triggered a copayment charge. He informed the provider of his unemployment, inability to pay, and his consideration to file bankruptcy. He stated that he considered the debt "closed and otherwise resolved." (SOR; Answer to SOR; Ex. 3 at 24; Ex. 4; Tr. 80-81.)

The SOR alleged that Applicant owed a utility company a delinquent debt of approximately \$308 and the debt had not been satisfied as of May 15, 2008. (SOR ¶ 1.g.) In his answer to the SOR and at his hearing, Applicant identified the debt as a water bill. He acknowledged the debt had not been paid. He stated he had informed the creditor that he was unemployed, unable to pay and considering bankruptcy. He stated the creditor had not presented him with notices of payment due. He further stated that he considered the debt to be "closed and otherwise resolved." (SOR; Answer to SOR; Ex.3 at 27; Ex. 4; Tr. 81-82.)

The SOR alleged Applicant was responsible for a credit card debt of approximately \$400 that was 120 days past due and had not been satisfied as of May 15, 2008. (SOR ¶ 1.h.) Applicant acknowledged the debt and stated it had been incurred when he purchased basic necessities for his family when he was unemployed. He stated he had informed the creditor of his unemployment, inability to pay, and

consideration of bankruptcy. He further stated he considered the debt “closed and otherwise resolved.” (SOR; Answer to SOR; Ex. 3 at 42; Tr. 82-83.)

The SOR alleged Applicant owed a debt of approximately \$141 to a creditor, and the debt was 120 days past due and had not been paid as of September 27, 2008. (SOR ¶ 1.i.) Applicant identified the debt as owed to a credit card company for basic necessities purchased for his family when he was unemployed. He stated he informed the creditor of his unemployment, inability to pay, and consideration of bankruptcy. He further stated that he considered the debt “closed and otherwise resolved.” (SOR; Answer to SOR; Ex. 6; Tr. 83-84.)

The SOR alleged Applicant owed \$4,460 to a creditor on a debt that had been charged-off and which had not been paid as of May 15, 2008. (SOR ¶ 1.j.) Applicant acknowledged the debt and said it resulted from the purchase and installation of an air conditioning unit in his home. He stated that he had informed the creditor of his unemployment, inability to pay, and consideration of bankruptcy. He invited the creditor to repossess the air conditioning unit. The creditor did not repossess the unit but charged off the debt. Applicant stated that he had received no further demands for payment from the creditor and considered the debt “closed and otherwise resolved.” (SOR; Answer to SOR; Ex. 3 at 25; Tr. 84-85.)

The SOR alleged Applicant owed a creditor \$1,468 on a bad debt which had not been paid as of May 15, 2008. (SOR ¶ 1.k.) Applicant denied the debt and speculated that it was a duplicate of the debt alleged at SOR ¶ 1.a. Applicant’s credit report of May 15, 2008 shows different account numbers for the debts alleged at SOR ¶ 1.a and ¶ 1.k. Additionally, the credit report shows that the debt alleged at SOR ¶ 1.a. had been sold to a successor creditor by another name. Applicant failed to provide documentation to corroborate his speculation. (SOR; Answer to SOR; Ex. 3 at 43-44; Tr. 85.)

The SOR alleged that Applicant owed a municipal garbage collection facility \$118 for an account in collection status, and, as of May 15, 2008, the account had not been paid. (SOR ¶ 1.l.) Applicant admitted this debt and attributed it to his period of unemployment. He stated he had informed the creditor of his unemployment, his inability to pay, and consideration of bankruptcy. He stated he considered the debt “closed and otherwise resolved.” (SOR; Answer to SOR; Ex. 3 at 27; Tr. 86.)

The SOR alleged that Applicant was 120 days past due on a home equity account which had a remaining balance of \$38,000. (SOR ¶ 1.m.) Applicant provided documentation to show that the debt had been satisfied in full and the account closed. (SOR; Answer to SOR; Ex. A; Tr. 86-87.)

The SOR alleged that after paying his recurring monthly expenses, Applicant had a net negative remainder of approximately \$1,450. (SOR ¶ 1.n.) In framing this allegation, DOHA relied on budget figures provided by Applicant in May 2008, in response to interrogatories. In his May 2008 response to interrogatories from DOHA, Applicant reported \$29,000 in savings and provided the following budget: Total Net

monthly income: \$6,595. Total monthly expenses, as follows: rent: \$1,925; groceries: \$1,500; clothing: \$200; utilities: \$510; car expenses: \$550; life or other insurance: \$0; medical expenses: \$200; miscellaneous: \$2,071. He noted that these figures were rough estimates that varied from month to month. In his response to the SOR, he changed his monthly estimate for groceries from \$1,500 to \$800. (Answer to SOR; Ex. 3 at 6.)

When Applicant was asked why he didn't keep track of his monthly expenses so that he could list actual expenses instead of estimates, he responded that he elected not to keep track of and list actual monthly expenses because he had enough money, felt comfortable, and didn't need to "keep track of every nickel and dime." (Tr. 132-133.)

In his answer to the SOR, Applicant stated that his circumstances had changed since he reported the net negative remainder in May 2008. He stated he had received pay increases and bonuses that raised his current income to approximately \$117,300. He reported a positive net monthly remainder of \$1,231, which he stated he intended to save "to eventually buy a house some day, begin some retirement contributions and supplement other expenses that may arise." He further stated that was purchasing an automobile on credit and considered that purchase to be his only "legally obligated or otherwise financial debt." (Answer to SOR at 7; Ex. O; Tr. 87-95, 118-119, 123.)

Applicant did not file for bankruptcy. He has not notified the creditors identified on the SOR that he did not file for bankruptcy, and he has not notified them of his change in financial circumstances. (Tr. 128-129.)

Nothing in the record suggests Applicant has had credit counseling.

### **Policies**

When evaluating an Applicant's suitability for a security clearance, an 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 accumulated substantial delinquent debt and was unable

or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline 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, (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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that spanned the period from at least 2003, when he surrendered his employment to care for his pregnant wife and three young children. He was unemployed from May 2003 until April 2004 and from August 2004 until March 2005. Since March 2005, Applicant has been steadily employed. His present salary is approximately \$115,000 per year. He has approximately \$29,000 in savings and reports a net monthly remainder of \$1,231.

Applicant provided documentation to corroborate that he had satisfied a home equity mortgage of \$38,000, alleged at SOR ¶1.m. While he acknowledged that the debts alleged at SOR ¶¶ 1.a through 1.i were his, he did not acknowledge an obligation to pay those debts. He argued that his periodic unemployment in 2003, 2004, and 2005 excused repayment. While he was unemployed, he contacted the creditors to tell them he was not working, was unable to pay his debts, and contemplating bankruptcy. Later, when he had a job, he did not inform them of his decision not to file bankruptcy. He did not let them know he had a steady and well-paying job that would permit him to begin to satisfy his old debts. He did not act responsibly in dealing with a financial condition that was initially beyond his control.

Applicant has not received financial counseling. While he admitted his financial delinquencies, it was not clear that he understood his financial responsibilities or how to resolve them. He appeared not to understand the basics of keeping track of expenses and budgeting, leading to a conclusion that he could experience financial delinquencies in the future. Additionally, he had no plan in place to systematically resolve his delinquent debt and prepare for future contingencies. While his unemployment caused



unexpected hardships, he failed to deal responsibly with them. I conclude that AG ¶ 20(b) applies in part. No other Financial Consideration mitigating conditions apply 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 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 adult of 41 years. His financial problems began in 2003, when he found it necessary to leave his job and care for his wife and young children. This decision led to financial delinquencies, which he has not addressed. Despite an annual income of at least \$115,000 and savings of \$29,000, he has not taken affirmative action to pay or resolve his delinquent debts, several of which are for relatively small amounts of money. His deliberate failure to address his financial delinquencies continues to raise security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's judgment and 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	For Applicant
Subparagraph 1.n.:	For 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