



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-04624
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

July 9, 2009

**Decision**

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MASON, Paul J., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his Security Clearance Application (SCA, Item 4), on February 27, 2007, and he was interviewed by an investigator from the Office of Personnel Management (OPM) on July 9, 2007. On August 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on December 12, 2008. He requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on March 3, 2009. Applicant received the FORM on March 19, 2009. His response was received by DOHA on April 5, 2009. The case file was assigned to me on May 29, 2009.

### **Findings of Fact**

The SOR contains 10 allegations under the financial considerations guideline. Applicant admitted subparagraphs 1.a., 1.b., 1.g., and 1.j. He denied subparagraphs 1.c., 1.d., 1.e., 1.f., 1.h., and 1.i. Applicant's admissions are incorporated into the following factual findings.

Applicant is 62 years old, divorced, with three grown children. He received a Bachelors Degree in Public Safety in December 1979. He has been employed as a security guard by a defense contractor since 2006. His previous jobs between 2001 and 2006 were in gun sales or security. From 1972 to 2001, Applicant was a police officer.

Reasons for Applicant's financial problems, included in his response to the FORM, but missing from his answer to the SOR, were mistakes made during his marriage. He stated:

The financial pitfalls I have encountered during the course of my marriage, the most severe of which was the loss of my house due to delinquent mortgage payments, funds for which, as well as other household expenses, I had regularly provided to my ex-wife. My eventual divorce was based on the sole premise "mismanagement of marital assets" by my wife (response to FORM).

In an interview with an OPM investigator in July 2007, Applicant stated that the majority of his debt arose from medical bills associated with his hair transplant surgery, and his daughter's student loan (Item 12).

The delinquent accounts shall be addressed in the order they appear in the SOR.

◇ SOR 1.a. Applicant filed a Chapter 13 petition in April 2005 to keep his house, a common reason for protecting real estate. The petition was dismissed in May 2005 before confirmation. Applicant contends a title company fraudulently convinced him to file this petition. He lost his house and filed a complaint with the state banking commission. No additional information was provided to substantiate his fraud claim. I find against Applicant.

◇ SOR 1.b. Applicant filed a Chapter 7 bankruptcy petition in October 2005. He listed approximately \$19,700 in assets and \$47,368 in liabilities. He was discharged from all dischargeable debts, except for the student loan, in February 2006. I find

against Applicant based on the record that shows a dismissed Chapter 13 petition, then a Chapter 7 bankruptcy discharge, with continuing financial difficulties.

◇ SOR 1.c. \$4,685, credit card. The debt became a judgment in October 2002. It was discharged in Applicant's Chapter 7 bankruptcy in February 2006 (SOR 1.b.). This account is found in Applicant's favor.

◇ SOR 1.d. \$1,917, telephone debt that was placed for collection in 2002. Applicant's credit report dated March 23, 2009, reflects that the account was included in his Chapter 7 petition (SOR 1.b.). This subparagraph is found for Applicant.

◇ SOR 1.e. \$944, medical services. Two government credit reports list this account. Applicant denies this account because he filed all claims with one provider. As Applicant indicated in his response to the FORM, the medical account does not appear in his March 2009, credit report. There is a collection account in Applicant's March 2009 credit report that has similar information to the credit reports in Items 10 and 11 (SOR 1.e.), but the information in the reports is insufficient to find this account is the same. Also, the information in his credit report that reflects similarities to the medical account alleged is reported as included in Applicant's bankruptcy. This account is found in Applicant's favor.

◇ SOR 1.f. \$63, telephone. Applicant was notified by the collection agency on March 27, 2009, his account was paid in full (response to FORM). This account is resolved for Applicant.

◇ SOR 1.g. \$51,586, student loan of Applicant's daughter. From May 2005 to at least July 2007 (July 2007 interview, Item 12), Applicant was living with his daughter. According to his response to the FORM, his claim is that he assumed incorrectly the loan was discharged in his Chapter 7 bankruptcy. On February 11, 2009, Applicant was informed by letter from the student assistance organization that his \$290 payment would be deposited on February 20, 2009. Applicant provided his checking account ledger showing that on February 20, 2009, his account was debited in the amount of \$290. There is no documentation to substantiate the loan was renegotiated or more than one monthly payment was made, as Applicant contends. I find against Applicant under SOR 1.g.

◇ SOR 1.h., \$1,615, state tax lien. On March 25, 2009, Applicant paid \$1,932 in full satisfaction of the lien. This allegation is found for Applicant.

◇ SOR 1.i., \$3,606, utility. In his answer to the SOR, Applicant denied this account, but did not provide an explanation as to why he denied the account. In his response to the FORM, he indicated he called the utility and was given an account number that is not the same as in the correspondence provided in the government credit reports or in his March 2009, credit report. While the account numbers for the account are not the same, there are striking similarities: (1) all three credit reports label the account 'Public Service;' (2) and, all three reports quote the same figure of \$3,606.

Applicant claims he called the collection agency identified by the original creditor. Applicant did not explain why he did not call the collection agency referenced in the SOR. See Item 10. This account is found against Applicant.

◇ SOR 1.j. \$174, debt to Applicant's bankruptcy attorney in October 2005. Applicant paid the debt by check on December 9, 2008 (response to FORM). The account is found in Applicant's favor.

### **Character Evidence**

In his response to the FORM, Applicant identified measures taken to regain good credit. He has no credit card debt. He will be paying off his car loan in May 2009. His daughter's student loan was renegotiated, and is being paid as agreed. He has a savings and a checking account with more than \$5000 in each. Applicant indicated that he has worked diligently to improve his finances over the last several years.

Applicant also included a number of copies of checks to show he has been at his current address for almost two years. The checks, i.e., the check for March 1, 2009, provide a post office box number, and a city, but not an address. According to the February 11, 2009, letter from the student loan association (SOR 1.g.) to Applicant, his post office box and the city are different. Though the checks are labeled for rent, and include a month and year the rent applies to, there is no indication the checks have been processed. Significantly, a third address, different from the other addresses, and with no post office box, appears on the March 27, 2009, collection agency letter (SOR 1.f.) to Applicant (response to the FORM).

Applicant presented no character evidence about his job performance and/or standing in the community. He provided no evidence of financial 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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 to obtain 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 the potential rather than actual risk of compromise of classified information.

## **Analysis**

### **Financial Considerations (FC)**

¶18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

The government has established their case under the financial considerations (FC) guideline. When the SOR was published in August 2008, the government’s documentation showed that Applicant had more than \$59,000 in debt he was unable to repay. FC disqualifying condition (DC) ¶19.a. (*inability or unwillingness to satisfy debts*) applies.

Applicant filed a Chapter 13 petition in April 2005 that was dismissed in May 2005. While filing a Chapter 13 petition is a legitimate procedure to protect real property, Applicant provided no evidence in explanation of how he was defrauded by the title

company into filing the petition. Applicant then filed a Chapter 7 petition in October 2005, and had more than \$47,300 in debt discharged in February 2006. Though he blamed his former wife as the reason for his Chapter 7 filing, he told the investigator in July 2007 that his medical bills for surgery and his daughter's student loan constituted the majority of his debt. Applicant has had continuing financial delinquencies as demonstrated by SOR 1.g., 1.h., 1.i., and 1.j. FC DC ¶19.c. (*a history not meeting financial obligations*) also applies.

Applicant indicated he has worked hard to put his finances back in order. He states he has no credit card debt and his car will be paid off in May 2009. This favorable evidence must be weighed against the passage of 2 ½ years since February 2006 (Applicant's Chapter 7 discharge) showing no action taken to resolve his debt. Even after his interview in July 2007, when he was placed on notice by the government that his debts continued to be a concern, Applicant took no action until December 2008, when he paid his bankruptcy attorney's debt (SOR 1.j.), when he made a \$290 payment on the student loan (SOR 1.g.) in February 2009, and, when he paid the state tax lien (SOR 1.h.) and the telephone account (SOR 1.f.) in March 2009. The fact that these debts were paid after Applicant received the SOR in August or September 2008, combined with the lack of independent character evidence, reduces the limited mitigation he receives under FC mitigating condition (MC) ¶20.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 reliability, trustworthiness, and good judgment*).

The mitigation Applicant receives under FC MC ¶20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and individual acted responsibly under the circumstances*) because of his divorce in April 2005 is substantially decreased by the 2 ½ year period (February 2006 to December 2008) showing Applicant did nothing to address the listed debts.

FC MC ¶20.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*) does not apply as Applicant provided no evidence of financial counseling. Even though six of eight debts have been paid off, the remaining delinquent accounts under SOR 1.g. and 1.i., amounting to more than \$53,000, preclude a finding that Applicant has his financial problems under control.

The weight afforded to Applicant under FC MC ¶20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) is reduced by the fact Applicant did not begin to repay the listed creditors until December 2008, about three months after he received the SOR. Applicant's unexplained Chapter 13 petition, his Chapter 7 discharge of more than \$47,300 in delinquent debt in 2006, followed by continuing financial problems, and the absence of character evidence and financial counseling, has not been mitigated by the FC mitigating conditions.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FC guideline. The case still must be weighed within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant was about 57 years old in 2005 when he filed the Chapter 13 petition and the Chapter 7 bankruptcy discharge petition. He claims he incorrectly assumed the student loan would be discharged in his Chapter 7 petition. I am unable to accept his claim. Even though Applicant may not have known in October 2005 that student loans could not be discharged in bankruptcy, he was living with his daughter when he filed the Chapter 7 petition. He was still living with her at the time of his government interview in July 2007. It seems reasonable that either Applicant or his daughter would have been notified that the student loan was not discharged. The only reason Applicant may not have been notified was because the bankruptcy court did not have the correct address. Based on the multiple addresses Applicant presented to his creditors during the security investigation, it is entirely likely the court did not have the correct address. His claim he was not notified is substantially discredited by the different addresses he provided during the course of the security investigation and this adjudication. Even after being placed on notice in July 2007 that his delinquent debts were a governmental concern, Applicant did not take action until December 2008, after he received the SOR. Considering the evidence as a whole, Applicant's evidence in mitigation is insufficient to carry his ultimate burden of persuasion under the FC guideline.

## **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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge