



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-04907
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: Kenneth A. Leary, Esquire

January 15, 2010

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes about \$29,228 in delinquent debt from the 2003/04 time frame. While the debts were incurred in part because of a divorce, financial concerns persist because of his failure to timely address his past due obligations. Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on November 27, 2007. On April 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, financial considerations, that provided the basis for its preliminary decision to deny him a security clearance and to refer the matter to an administrative judge. 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) effective within the Department of Defense as of September 1, 2006.

On May 19, 2009, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 26, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 11, 2009, I scheduled a hearing for September 16, 2009. With the agreement of the parties, on August 20, 2009, I rescheduled the hearing for September 15, 2009.

I convened the hearing as rescheduled. Six government exhibits (Exs. 1-6) were admitted into evidence without any objections. Applicant submitted three exhibits (Exs. A-C), which were entered into the record without any objections, and he testified, as reflected in a transcript (Tr.) received on September 24, 2009.

### **Findings of Fact**

DOHA alleged under Guideline F, financial considerations, that Applicant owed \$35,800 in delinquent debt (SOR 1.a-1.f). In his Answer, Applicant explained that the debt in SOR 1.a was a disputed fee from his divorce attorney, whom he felt he had overpaid. He expressed his intent to resolve that debt within the next 90 days, and also to pay the \$86 debt in SOR 1.b within 60 days. Applicant denied owing the debts in SOR 1.c, 1.d, 1.e, and 1.f, on the basis that they had been paid. Applicant attributed the delinquencies to a divorce and costly vehicle repairs.

After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 50-year-old senior test engineer (Ex. 1), who served in the United States military from April 1979 to April 1985. He has held a Department of Defense security clearance for over the past 25 plus years for his work in the defense contract sector (Tr. 21), including the defense contractor for which he has worked since November 1999 (Ex. 1, Tr. 109).

Applicant married in June 1985. He and his spouse had two daughters, who were born in 1989 and 1991 (Exs. 1, A). Around late 2002 (Answer) or early 2003 (Tr. 22), he and his spouse separated. In late October 2004, Applicant was granted a divorce from his spouse (Ex. A). He was ordered to pay child support of between \$350 and \$360 per month (Tr. 68). Unhappy with his legal representation, he fired his divorce attorney after incurring about \$4,000 in legal costs (Answer, Tr. 66). In April 2005, his divorce attorney obtained a small claims judgment against him in the amount of \$775 (SOR 1.a) (Ex. 6), for unpaid billed charges (Tr. 67). Applicant disputed the fee as unjustified (Tr. 33).

When his divorce was pending, Applicant fell behind in some consumer credit obligations because he could not afford to pay them while maintaining a separate residence suitable for his daughters' visits (Tr. 25). He also incurred unexpected vehicle repair costs (Answer), including about \$2,500 to \$3,000 each for two vehicle transmissions (Tr. 64, 77). Some accounts were charged off or placed for collection or both as follows:

- A revolving charge account debt of \$10,037 was placed for collection after no activity since March 2003 (SOR 1.c).
- A credit card account held since August 2002 (Exs. 4, 5), was charged off in October 2004 and placed for collection in about November 2004 (SOR 1.f) with about \$5,431 owed. In August 2007, a subsequent assignee filed a lawsuit to recover an alleged balance of about \$5,711.31 (Exs. 2, 3, B). Applicant contested the debt in court on the basis that he had paid it in late 2004 (Ex. 3). In April 2009, the plaintiff withdrew its lawsuit (Ex. B).
- In October 2004, a bank placed a delinquent credit card balance for collection in the amount of \$8,508 (SOR 1.e) after no activity since January 2003. As of November 2007, the assignee claimed a balance due of \$15,584 (Ex. 5).
- Applicant stopped paying his telephone bill after May 2003, and in October 2003, the creditor charged off a \$1,683 balance (SOR 1.d) (Exs. 4, 5).
- A cable television debt of \$86 from July 2005 remained unpaid as of January 2006 (SOR 1.b) (Ex. 4).

Applicant moved in 2006, and he did not notify his creditors of his new address (Tr. 119). In renewal of his secret clearance, Applicant executed an e-QIP on November 27, 2007. He responded affirmatively to question 28.a concerning whether he had been more than 180 days delinquent on any debts in the last seven years, and he listed one disputed debt of \$15,000 held by the lender in SOR 1.f that he maintained he satisfied in June 2003. Applicant responded “No” to question 28.b inquiring about any debts currently delinquent over 90 days (Ex. 1).

Applicant’s credit report of December 11, 2007, listed delinquent balances totaling \$28,330 (SOR 1.a-1.e) (Ex. 5). On February 4, 2008, Applicant was interviewed by a government investigator about his delinquent debt. He discussed the lawsuit pending over the debt in SOR 1.f, which he claimed he had paid. He also claimed to have satisfied the telephone debt (SOR 1.d) in 2005, and the credit card debt in SOR 1.e with a bank check in late 2004 or early 2005.<sup>1</sup> Applicant also averred that he had paid the debt in 1.c in full by transferring the amount to a different credit card in 2003.

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<sup>1</sup>Applicant indicated that the creditor in SOR 1.f was attempting to collect a delinquent balance on an account ending in x3737. As of December 2008 (Ex. 4), there was no outstanding balance reported for the credit card account ending in x3737. This is likely the account covered in 1.f, given Applicant’s claimed satisfaction and the recent withdrawal of the lawsuit by the assignee. Yet, Applicant also made unsubstantiated claims during his February 2008 interview suggesting that the debts in SOR 1.f and 1.e pertained to a different account ending in x6032; that a balance of \$7,599 was sold to the creditor in SOR 1.e (balance \$13,890), and then to a subsequent assignee (balance \$14,807), before it was bought by the lender in SOR 1.f (balance \$5,711.31). His December 2008 credit report (Ex.4) shows an outstanding balance of \$16,178 owed to the assignee in SOR 1.e.

Concerning the \$775 judgment debt to his divorce attorney, Applicant claimed to have made payments to reduce the balance to \$500 and he expressed his intent to resolve it when he had the funds. Applicant denied any knowledge of the \$86 debt in SOR 1.b. He indicated he was current on all his bills and that no one could question his ability to live within his means (Ex. 3).

Applicant worked a second job in retail about 7 to 14 hours weekly from September 2007 (Ex. 1, Tr. 111) until August 2008 (Tr. 111) to supplement his income when his defense contractor employer eliminated overtime for his project (Tr. 110).

In response to DOHA inquiries about any payments on the delinquent debts on his credit report, Applicant no longer claimed as of August 2008 that the debt in SOR 1.e had been sold to the assignee in 1.f. However, he continued to assert that the debt, which had a balance of \$13,890 when it was placed for collection with the assignee in 1.e, had been paid. As for his \$1,683 telephone debt, Applicant denied receiving any collection notices since 2004, and he expressed his belief the debt too had been paid. Applicant did not deny that his divorce attorney was continuing to claim a delinquent balance of \$775. He would make repayment of the debt a priority "if pressed" by the law firm. Concerning the credit card debt in SOR 1.c, Applicant claimed it was transferred "in a debt consolidation maneuver" to the original creditor of SOR 1.e and it had been paid in or around 2004. Again, he denied any knowledge of the \$86 collection debt (SOR 1.b). He reported that he was continuing to contest in court the debt in SOR 1.f on the basis that it had been paid. He provided documentation showing that the creditor had been willing to settle on receipt of half of the \$5,711 balance by July 25, 2008 (Ex. 2).

In October 2008, Applicant informed DOHA that he had recently consulted with an attorney about resolving the financial matters listed on his credit report, and that he intended to be proactive in addressing the issues of financial delinquency listed on his credit report (Ex. 3). On December 18, 2008, Equifax Information Services reported delinquencies totaling \$30,089 (SOR 1.a-1.e) in Applicant's name, including the debts in SOR 1.c and 1.e that he maintains are the same debt, and SOR 1.b, all of which he claims to have paid<sup>2</sup> but provided no proof (Tr. 25-28, 32, 38, 56). He was current in his \$691 monthly payments on an automobile loan with a high interest rate taken out in August 2007 for \$32,497 (Tr. 73-74). Applicant's 2004 Ford Explorer had serious mechanical problems that "forced [him] to jump into [his] present car." The lender rolled a portion of the balance owed on the loan for that car and added it to the purchase of a new 2007 model-year vehicle (Tr. 74-75). The balance of his automobile loan was \$28,385 as of November 2008 (Ex. 4). His car insurance costs him about \$340 per month because he covers his two daughters as well as himself (Tr. 75). Applicant was also current on a credit card account opened in August 2007 that had a balance of \$1,732 (Ex. 4, Tr. 79). He bought a computer for his daughter entering college (Tr. 79).

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<sup>2</sup>Applicant testified that he paid the \$86 by personal check on September 14, 2009 (Tr. 56). Given the small amount of the debt, his testimony is considered credible as to that debt.

On June 19, 2009, Applicant obtained a money order of \$400, which was forwarded on September 15, 2009, to the creditor to settle the judgment debt in SOR 1.a (Ex. C, Tr. 33-34). Applicant continues to dispute that he owes the telephone company \$1,683, which was for cell phone service he incurred during his divorce (Tr. 34-35). Sometime in 2008, a collection agency for the telephone company wrote to him about setting up a payment plan to repay the debt (Tr. 39-40). Applicant refuses to pay the debt until he receives a full accounting of the charges (Tr. 35). The telephone company wants his social security number to respond to his inquiry and he is not willing to provide the information over the phone. He has made no effort to contact the creditor in writing (Tr. 117). With the assistance of his attorney, he intends to determine the extent of his liability with regard to the credit card debts in SOR 1.c and 1.e and to arrange for repayment if the creditors continue to hold him responsible (Tr. 46, 84, 96).

Applicant was no longer legally obligated to pay child support as of August 9, 2009 (Tr. 69). He paid child support until his elder daughter moved in with him in 2008. With his ex-wife's agreement, they called it "a wash" (Tr. 70-71) and he stopped paying child support after 2007. Applicant pays his rent of \$825 per month and his car loan on time (Tr. 41, 73-74, 78). As of mid-September 2009, Applicant had no money in his savings account. He had about \$1,000 on deposit in his checking account, although he had not yet paid all his bills for the month (Tr. 78). Applicant has a budget that he follows but he has not had any credit counseling (Tr. 82). His annual salary from his defense contractor employment is "roughly \$70,000 a year." (Tr. 108), and he estimates he has \$300 to \$500 remaining at the end of each month after he pays his expenses and gives his daughter in college between \$100 and \$150 per month for college expenses (Tr. 71, 113). The funds go to pay down credit cards or everyday household expenses (Tr. 114).

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overarching adjudicative goal is a fair, impartial, and commonsense 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 that 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 about finances 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.

After he and his ex-wife separated, Applicant stopped paying on some consumer credit card accounts and on his cellular telephone account. By 2005, three delinquent credit card accounts had been referred for collection in the approximate aggregate amount of \$23,976, and his cellular telephone provider had charged off an unpaid balance of \$1,683. Furthermore, while he had paid his divorce attorney about \$4,000, the attorney had to resort to a court judgment when he refused to pay the \$775 remaining fee balance. In addition, an \$86 cable debt from late 2005/early 2006 was referred for collection. AG ¶ 19(c), “a history of not meeting financial obligations,” applies. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” is implicated to the extent that he did not have the funds to make timely payments on those obligations.

Concerning potential factors in mitigation, the timing of the delinquencies supports Applicant's contention that he fell behind because of his divorce. He incurred expenses for a separate residence (although he provided no detail as to their extent) and for legal representation that took priority over his consumer credit obligations. Divorce is a circumstance that is unlikely to recur. See AG ¶ 20(a) (stating, "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"). Similarly, the breakdown in the marital relationship was neither reasonably foreseeable nor completely within his control. See AG ¶ 20(b) (stating, "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 circumstance"). Yet, neither AG ¶ 20(a) nor ¶ 20(b) can be fully applied. While he is paying his current obligations (e.g., living expenses, car loan) on time, he has failed to act responsibly with regard to resolving the larger debts in his SOR.

As of early February 2008, Applicant had a copy of his credit report listing his delinquent accounts. He told a government investigator that he had paid his consumer credit card and wireless phone debts, and that he would pay the \$775 judgment awarded his divorce attorney when he had the funds to do so. He made no payments and did not contact his creditors that summer, even though he was no longer paying any child support. It was only after Applicant received interrogatories from DOHA that he consulted with an attorney for assistance in verifying his liability and resolving any outstanding debts. Through his attorney, he was successful in getting the creditor in SOR 1.f to withdraw its lawsuit in April 2009 (Ex. B), but no progress had been made toward resolving the sizeable delinquent credit card debts in SOR 1.c and 1.e as of the hearing on his clearance eligibility, despite a reported annual salary of around \$70,000 from his defense contractor employment. Applicant's testimony that he was "pretty sure" that he had moved all his debt to one credit card account which he then paid off (Tr. 64, 105) is not enough to meet his burden, especially where his December 2008 credit report shows unpaid collection balances of \$11,367 on SOR 1.c and \$16,178 on SOR 1.e. Furthermore, Applicant had not resolved his wireless phone debt in part because of his unwillingness to provide the creditor with requested personal information.

Under the circumstances, it would be premature to apply AG ¶ 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." Although Applicant has a budget that he follows, he has received no credit counseling despite evidence showing that he could benefit from sound financial advice. He testified that he has between \$300 and \$400 in discretionary income each month, yet he had no savings. While he had \$1,000 in checking deposits, he had outstanding bills to be paid. He claimed that he had paid all his debts by moving some credit lines around based on interest (Tr. 57) but he was unable to recall which credit cards were involved in debt consolidation efforts. The absence of any new delinquency is some evidence that he has a better handle on his current obligations. However, his failure to timely investigate and attend to his delinquent debts, especially knowing that they were of concern to the

Department of Defense, raises considerable doubts about his financial judgment and about his commitment to resolving the remaining delinquencies in the near future.

AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies in limited part. He paid the \$86 cable debt (SOR 1.b) and settled the judgment debt (SOR 1.a), although the timing of those payments made just before the security clearance proceedings suggests that he was motivated by the clearance issue rather than obligation to his creditors. AG ¶ 20(d) and ¶ 20(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,” applies to the debt in SOR 1.f. Available information, including Applicant’s admissions during his February 2008 interview, shows that a credit card account ending in x3737 was referred for collection in the approximate amount of \$5,431, likely with the assignee in SOR 1.f. Applicant contended that the debt had been paid. While he did not furnish proof of payment, the creditor’s withdrawal of the lawsuit coupled with Equifax not listing any current delinquency for that account substantiates his position that he does not presently owe the alleged debt. In contrast, Applicant did not meet his burden of demonstrating that SOR 1.c and 1.e pertain to the same debt, or that he does not owe the balances in SOR 1.c, 1.d, and 1.e. Financial concerns are not fully mitigated in light of his demonstrated disregard of those debts over the past five years.

### **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 conduct and all the circumstances in light of 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.

Applicant’s divorce explains why he fell behind in his financial obligations initially, and he had unexpected vehicle repair expenses and ongoing child support payments that affected his ability to repay his debt. But he did not show good faith when he did not report his change of address to his creditors in 2006. As of 2008, he was no longer paying child support and should have been in a better financial position to make payments on his old debts. Faced with a credit report that listed unpaid delinquent debt that adversely affected his credit, such as a higher interest on a car loan making his payment \$691 a month, Applicant largely ignored the debts until he was contacted by DOHA in the fall of 2008. While he retained the services of a lawyer, neither he nor his



attorney showed any urgency in resolving the issues of concern. As of mid-September 2009, Applicant had not contacted the creditors in SOR 1.c or 1.e. He presented nothing that would definitively disprove his liability. Nor had he saved any funds to make payments on those debts should the creditors continue to hold him liable for past due balances. Given the ongoing concerns about Applicant's financial judgment, I am unable to conclude that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance at this time.

### **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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

### **Conclusion**

In light of 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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ELIZABETH M. MATCHINSKI  
Administrative Judge