



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-05069
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro Se*

December 15, 2008

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted a Security Clearance Application (e-QIP), signed December 13, 2007. On July 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and 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.

In an undated response, Applicant admitted six of eight financial allegations<sup>1</sup> and admitted one of two criminal conduct allegations. A request for hearing was received on

---

<sup>1</sup> The SOR lists financial allegations 1.a - 1.I, but failed to set forth an allegation 1.d. Consequently, there are eight, not nine, allegations concerning finances.

August 27, 2008, and I was assigned the case on August 29, 2008. Applicant and Department Counsel proposed a hearing date of September 16, 2008. Applicant waived the 15-day notice requirement. A notice of hearing was issued on September 4, 2008, setting the hearing for the proposed date.

The hearing was convened as scheduled. The Government offered five exhibits, which were accepted into the record as exhibits (Exs.) 1-5 without objection. Applicant represented himself and gave testimony; no witnesses were called. Applicant presented no exhibits. He was given until October 1, 2008, to submit any documents for consideration. The transcript (Tr.) was received on September 25, 2008. On September 29, 2008, Applicant submitted seven documents for review by Department Counsel. Department Counsel forwarded those documents to me on October 3, 2008, without objection. I accepted them into the record as Exs. A-G on October 6, 2008, and the record was closed.

### **Findings of Fact**

Applicant is a 31-year-old Electronic Engineer II applying for a position with a defense contractor. He has associate degrees in both general science and in electronic engineering. Applicant served in the military from 1995 through 1997. Divorced, Applicant has two minor children. He is currently engaged to marry.

As Applicant and his ex-wife prepared for divorce in 2002, state law required that they live apart for one year.<sup>2</sup> While estranged, and without Applicant's knowledge, she bought about \$15,000 in new furniture and redecorated the house using Applicant's credit card account.<sup>3</sup> Not knowing about the purchase, the credit card account went unpaid or underpaid. As a result, interest and fees raised the balance to about \$20,000.

After Applicant's divorce in 2003, Applicant was required to attend a number of court hearings in another state concerning his young daughter. The trips detracted from his work, which required significant travel. Fearing he would be fired for absenteeism, Applicant quit his job in the spring of 2005. As a consequence, he was without full-time employment until the middle of 2006. To meet his daily expenses and child support, he undertook a string of side jobs, often being paid under the table. There was no money leftover, however, to pay older debts. Some of those debts, like the furniture bill, dated back to his marriage. Several more obligations became delinquent. In early 2006, Applicant filed for bankruptcy. He withdrew the petition when his mother and friends advised him that it was a bad idea. They suggested it would be better for him to pay off his debts himself. Shortly thereafter, he was offered a job.

---

<sup>2</sup> Tr. 21.

<sup>3</sup> Tr. 21-23.

The new job was for six months and it started in mid-2006, around the time Applicant and his fiancée had their son.<sup>4</sup> Around September 28, 2006, Applicant attended a bachelor's party and consumed more alcohol than he was accustomed to consuming. He became heavily intoxicated.<sup>5</sup> After the party, friends dropped him off in front of the wrong apartment. When he could not get his key to work on the door lock, he kicked the door in. He then went to sleep on the stoop, where a neighbor saw him and called the police. He was arrested and charged with Felony Breaking and Entering, Larceny, and Possession of Stolen Property. The next morning, he went to apologize to the elderly neighbor whose door he had broken. Being on friendly terms, he explained what had happened. Two days later, she dropped all charges and the matter never went to court.<sup>6</sup> He now refrains from alcohol.

Around January 1, 2007, Applicant's mother called him and asked him to come over. She wanted him to evict his 18-year-old nephew from her home. His mother, who lives on an assisted living allowance, had allowed the troubled teen to stay with her. She then discovered he had stolen \$500 from her and she wanted him out. When Applicant arrived, he physically removed the resistant nephew from the residence. Later, after Applicant had returned home, police arrived. Based on the young man's story, he was arrested for Misdemeanor Assault, by Pointing a Gun, Misdemeanor Assault with a Deadly Weapon, and Simple Assault. In March 2007, Applicant explained the situation to the judge. The judge instructed the District Attorney to drop the charges. The charges were then dropped.

Applicant's six month long project was followed by an offer for a government position. He accepted the offer and started work in February 2007. Difficulty obtaining a security clearance, however, made Applicant ineligible for the position and he briefly worked in a different capacity until January 2008.<sup>7</sup> In January 2008, he was told that he had been granted a security clearance.<sup>8</sup> Hearing that news, he tendered his two week notice in anticipation of a private sector position. Since that time he has been without full-time employment. The SOR starting this process was issued on July 24, 2008.

The SOR noted seven delinquent debts. The largest is the debt for the furniture purchased by Applicant's then-estranged wife. That debt now has a balance of approximately \$20,502.<sup>9</sup> He has made sporadic payments on the debt, but the minimum payments now required are too large for him to pay. Similarly, he made about

---

<sup>4</sup> Tr. 23.

<sup>5</sup> Tr. 34.

<sup>6</sup> Tr. 35.

<sup>7</sup> Tr. 23-24.

<sup>8</sup> Tr. 25.

<sup>9</sup> SOR ¶ 1.h; Tr. 19-22.

two payments on an account for furniture storage, but its minimum payments also got too expensive. That account has a remaining balance of about \$3,543.<sup>10</sup>

The same situation took place with a creditor to whom he owes \$1,914<sup>11</sup> and one to which he owes \$1,988.<sup>12</sup> He and his fiancée have plans to start paying off an obligation owed to an apartment complex for approximately \$585. That account was opened in April 2006 and shows a date of last activity as January 2008. No payments have thus far been made on this balance.<sup>13</sup>

Applicant does not recognize the debt noted in the SOR showing a balance of \$461,<sup>14</sup> nor has he formally disputed its inclusion on his credit bureau report. Applicant did, however, pay off one of the debts at issue: He has satisfied the obligation noted as having an approximate balance of \$660.<sup>15</sup>

Applicant has been working with a debt consolidation company. His consolidated debt represents approximately \$21,000.<sup>16</sup> As part of that consolidation, they are poised to file a Chapter 7 bankruptcy on his behalf once he can satisfy the company's filing fee of \$1,551.<sup>17</sup> Payments toward that amount commenced in October 2008. Currently unemployed, his initial payments are set to be drawn from a disability payment.<sup>18</sup> It is his hope to soon be employed and convert the Chapter 7 bankruptcy to a Chapter 13 bankruptcy.<sup>19</sup>

To save money, Applicant now lives with his sister. Applicant no longer uses credit cards. He is scheduled to attend a debt class once he has paid the bankruptcy filing charge to the debt consolidation company.<sup>20</sup> He has an offer letter for a position should he obtain a security clearance, as well as an offer for a less profitable position

---

<sup>10</sup> SOR ¶ 1.i; Tr. 25.

<sup>11</sup> SOR ¶ 1.b; Tr. 26-27.

<sup>12</sup> SOR ¶ 1.g; Tr. 28-29.

<sup>13</sup> SOR ¶ 1.c; Tr. 26-27.

<sup>14</sup> SOR ¶ 1.e; Tr. 28.

<sup>15</sup> SOR ¶ 1.f; Tr. 31-32; Ex. G (Account statement showing zero balance); Ex. 3 (Interrogatories) at 20-21.

<sup>16</sup> Tr. 43.

<sup>17</sup> Tr. 44-45.

<sup>18</sup> Tr. 46. Applicant has received a \$450 per month disability payment since his discharge from the military in 1997. Tr. 65.

<sup>19</sup> Tr. 44, 46.

<sup>20</sup> Tr. 96.

which does not require a security clearance.<sup>21</sup> His recommendations are highly complimentary and reflect a thoughtful, sensible, competent individual.<sup>22</sup>

## 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.

The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they 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©, 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>23</sup> The burden of proof is something less than a preponderance of evidence.<sup>24</sup> The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.<sup>25</sup>

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

---

<sup>21</sup> Tr. 33-34.

<sup>22</sup> Exs. B-E (Recommendations).

<sup>23</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>24</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>25</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>26</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>27</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>28</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

### **Analysis**

Based upon consideration of the evidence, Guideline F (Financial Considerations) and Guideline J (Criminal Conduct) are the most pertinent to the evaluation of the facts in this case:

#### **Guideline F – Financial Considerations**

Under Guideline F, failure or an 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.<sup>29</sup> The Regulation sets out several potentially disqualifying conditions under this guideline.

Starting with his wife’s purchase of furniture for their house in 2002 through sometime after the rental of an apartment in April 2006, Applicant accrued at least seven delinquent debts, amounting to approximately \$29,700. Of that amount, only one debt has been paid, reducing that sum by about \$660. The rest of the debts remain substantially unpaid and unaddressed. Financial Considerations Disqualifying Condition

---

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Executive Order 10865 § 7.

<sup>29</sup> Revised Adjudicative Guideline (AG) ¶ 18.

(FC DC) AG ¶ 19©) (“a history of not meeting financial obligations”) and FC DC AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against him and mitigate security concerns.

Applicant has experienced two significant and protracted periods of unemployment. Both, however, were voluntary departures initiated on Applicant’s own volition. His 2005-2006 unemployment came about when he quit his job rather than risk being fired for his absenteeism. He later chose to leave federal employment for the private sector on word that he had been granted a security clearance before waiting for more substantial evidence. Neither period of unemployment, therefore, is the type contemplated under Financial Considerations Mitigating Condition (FC MC) 2, AG ¶ 20(b) (“the conditions that resulted in the behavior 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”). The acquisition of about \$20,000 in new furniture without his knowledge by his estranged wife, however, is sufficient to invoke that mitigating condition since about two-thirds of Applicant’s total delinquent debt is the result of her behavior.

Twice since the spring of 2005, Applicant has voluntarily left a position. Each time he faced a protracted period without full-time employment. Cumulatively, he has lacked full-time employment for about two of the past four years. This has directly impacted his ability to pay his bills. Still unemployed to date, only one of his smaller obligations has been satisfied and he has lacked the funds to proceed with a bankruptcy filing. Given these facts, Financial Considerations Mitigating Condition (FC MC) 1, AG ¶ 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 current reliability, trustworthiness, or good judgment”) does not apply.

Applicant testified that he made occasional payments on some of his delinquent accounts until his efforts were rebuffed by demands for minimum payments he could not afford. Without records of such payments and demands, it is impossible to gauge the nature of these efforts. Based on his depiction, however, FC MC 4, AG ¶ 20(d), (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) does not apply.

While Applicant has met with a debt consolidation company, there is no evidence he has received financial counseling or will receive any finance education until after he has filed for bankruptcy. With only one of the smaller obligations being satisfied in the past few years and with his bankruptcy yet to be filed, Applicant’s poor financial situation remains largely unaddressed. FC MC 3, AG ¶ 20© (“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”) cannot apply.

While the majority of Applicant’s debt may have been created without his knowledge, he has done little to address any of his delinquent obligations in the interim.

He has demonstrated questionable judgment by neglecting his financial obligations while he has maneuvered his career. This has led to his debts still lingering, unaddressed, and unmoved from where they were in early 2006 when he first petitioned for bankruptcy.

### **Guideline J, Criminal Conduct**

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. With respect to Guideline J (Criminal Conduct), the Government has established its case. Applicant admits he was arrested twice for the charges cited, giving rise to Criminal Conduct Disqualifying Conditions (CC DC) AG ¶ 31(a) (a single serious crime or multiple lesser offenses), and CC DC, AG ¶ 31© (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted).

Applicant had the misfortune of being arrested over two odd and very uncharacteristic incidents within a very short time. The case files are devoid of any hint of other arrests or wrong-doing. In the first instance, Applicant, in rare form, celebrated too much at a friend's bachelor party. He sensibly did not drive home. Vexed he could not get his key to work on his apartment door, he kicked the door in. The only problem was, it was not his door. Recognizing that the act was uncharacteristic, the renter declined to press charges. The matter was dropped without objection, and a contrite and embarrassed Applicant made restitution for the damage. He has refrained from alcohol since that time. Criminal Conduct Mitigating Condition (CC MC) AG ¶ 32(a) ("so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment") and CC MC AG ¶ 32(d) ("there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement") apply.

Similarly, when Applicant's mother could not get her troubled and troublesome grandson to leave her home after she discovered he had stolen \$500 from her, she called for Applicant's assistance. Applicant arrived and physically removed the young man from the premises and sent him on his way. Bent on making a family matter public, the nephew told the police a different version, involving guns and threats. The matter was soon resolved and dropped. Again, the same two mitigating conditions noted above apply.

### **Whole Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have also considered Applicant's highly credible testimony. He is a mature, direct, and candid individual with a fine work



record and a notable record for community service. A “whole person” evaluation was also conducted.

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) 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 public trust position must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant is an intelligent, educated man with professional aspirations and a desire to excel. With regard to his finances and his debt, however, he has made some poor choices. Rather than work with his employers or the court system, he quit his job in 2005 in fear that his absenteeism would lead to his being fired. As a result, he relied on “side jobs” for a year which could barely sustain him financially. Without waiting for written confirmation that he had been granted a security clearance and otherwise making sure he was ready for a smooth transition into his private sector position, he gave two weeks notice to his government employer, unaware his security clearance application had not yet been granted. As a result, almost an entire year was again lost without full-time employment. More recently, he has put a job offer that does not require a security clearance on hold pending resolution of this process, in hopes he can qualify for a more lucrative position that requires a security clearance.

Throughout this time, from 2005 to date, Applicant has satisfied only one debt – for approximately \$660. During that time he failed to dispute one debt that he does not recognize. Given the few documents introduced for consideration as evidence, he also failed to document those occasional payments he alleges he has made to other creditors. In seeking dismissal of his earlier bankruptcy petition, Applicant thought it best to pay off the debts himself. A little over two years later, he is unable to pay for a professional bankruptcy filing. Had Applicant been more committed to sustaining employment in order to be able to meet his obligations or had he continued with his previous bankruptcy filing, his debts might be paid and a record of financial stability established. Instead, Applicant’s debt remains virtually unchanged and security concerns regarding his finances remain unmitigated.

As for criminal conduct security concerns, Applicant’s depiction of the two incidents helped explain why the charges were so readily dropped. An uncharacteristic night of carousing and its repercussions were remedied through contrition, restitution, and the understanding of a neighbor. Significantly, Applicant has since refrained from alcohol, demonstrating sound judgment and level-headed personal conduct. Moreover,

false accusations by a troubled thief were easily set straight. Neither incident calls into question his ability or willingness to comply with laws, rules, and regulations. Criminal conduct security concerns are mitigated.

Applicant is young and, assuming they are carried out, his current bankruptcy plans should help remedy his current financial problem. At present, however, Applicant was unable to present sufficient evidence of tangible progress on his debts to mitigate financial considerations security concerns. Therefore, I conclude that it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

### **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: <sup>30</sup>	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge

---

<sup>30</sup> For consistency with the SOR, there is no Subparagraph 1.d.