



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



In the matter of: )  
)  
) ISCR Case No. 08-05806  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: James F. Duffy, Esq., Department Counsel  
For Applicant: *Pro Se*

May 22, 2009

**Decision**

DAM, Shari, Administrative Judge:

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

On November 28, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 March 21, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On March 31, 2009,

Department Counsel prepared a File of Relevant Material (FORM) containing nine Items, and mailed Applicant a complete copy the following day. Applicant received the FORM on April 22, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant submitted a statement that I marked as Applicant Exhibit (AE) 1 and admitted into the record. On May 1, 2009, DOHA assigned the case to me.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the allegations contained in Paragraph 1 of the SOR, except Paragraphs 1.j and 1.o. He admitted the allegations contained in Paragraphs 2. b and 2.c, and seemingly denied those in Paragraph 2.a.

Applicant is 44 years old and unmarried. He has six children, ages 7 to 21. Since June 1984, he has worked as a computer operator for a defense contractor. He obtained a Secret security clearance in January 1996. (Item 5) He noted in his April 2009 statement that he does not presently have access to classified information. (AE 1)

In November 2007, Applicant completed an e-QIP. In response to Question 27(b) that requests information about garnishments or repossessions, Applicant disclosed a January 2003 garnishment for child support. He did not disclose an automobile repossession. In response to Questions 28(a) and (b), which asked whether he had any financial debts more than 90 or 180 days delinquent, he answered "No," and did not disclose eleven delinquent debts.

In August 2008, Applicant completed a set of Interrogatories regarding delinquent debts. (Item 6) Applicant submitted information about two garnishments for child support that were entered by the court: one in June 2002 and one in September 2007, for two separate children. The 2007 garnishment is for \$840 per month. Applicant also completed a Personal Financial Statement. He earns approximately \$59,000 annually. After paying the \$840 garnishment and another \$1,000 loan every month, his net monthly income is \$1,162. His expenses are about \$2,000, leaving him with a monthly deficit. (Item 6)

In responding to Questions 28(a) and (b) in the Interrogatories about his failure to disclose delinquent debts, Applicant explained that "My finance situation the past six years has no bearing on the job I have been doing for the past 24 years." (Item 6)

In his Answer to the SOR, Applicant again asserted that his financial situation did not have relevance to his job performance. He noted, "I have always safeguarded classified information without any security infractions." (Item 4) He attributed his financial problems to the 2007 child support garnishment and noted that he could not get a second job because any additional income he might receive would raise his child support payments. (*Id.*) He admitted that he failed to disclose information regarding his delinquent debts because he "Answered the questions quickly as I do not see why my situation has anything to do with my performance at work." (*Id.*)

In that Answer, Applicant explained why he did not disclose the repossession of his automobile under Question 27 of the e-QIP. "When my 1999 Chevy suburban was repossessed I got it back the next day. When the transmission/transfer case stopped working I gave the truck back to the dealership, as I could not afford to pay the car payments and the cost of the maintenance." Seemingly, he did not consider the return of his vehicle to be legal repossession.

Based on credit bureau reports (CBR) dated December 2008 and December 2007, Paragraph 1 of the SOR alleges 14 delinquent debts, totaling \$34,565, which began accruing in 2003. (Items 7 and 8) The debt alleged in SOR ¶ 1.n for \$9,127 should be for \$6,523, which is the amount of the judgment entered in the matter. (Item 6) All of the debts are unresolved, including the \$740 debt listed in SOR ¶ 1.j that Applicant denied. Applicant did not present any evidence that he contacted any of creditors or attempted to address the debts.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision." 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."

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.

## **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. Based on two CBRs and his statements, Applicant has been unable or unwilling to satisfy debts that began accruing six years ago. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation. The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Applicant's multiple financial problems arose six years ago and continue to the present. Because the problems are ongoing and not isolated, it is likely that they will continue in the future, and do cast doubt about his judgment. Hence, this condition does not apply.

AG ¶ 20(b) states that it may be mitigating where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce

or separation), and the individual acted responsibly under the circumstances.” Applicant did not offer any substantive evidence to support the application of this condition.

Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Applicant did not present any evidence that he received credit counseling and/or that his financial problems are under control, as required under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” He did not provide evidence that he paid, attempted to pay or is on a repayment plan for any debt. AG ¶ 20(d) does not apply. He denied one debt but did not produce documentation indicating that he successfully disputed debt. Such evidence is necessary to trigger mitigation under AG ¶ 20(e), which applies when “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.” AG ¶ 20(f) is not applicable to the facts in this case.

### **Guideline E, Personal Conduct**

The security concern pertaining to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleged in SOR ¶¶ 2.a, 2.b and 2.c that Applicant falsified answers to three questions on the SF-86; to wit, he failed to disclose an automobile repossession and debts that were more than 90 and 180 delinquent. The Government contended that those omissions may raise a security concern and be disqualifying. The disqualifying condition alleged under AG ¶ 16 in this case is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant disclosed a child support garnishment under Question 27(b), but apparently did not consider his voluntary relinquishment to be a legal repossession. Based on his explanation and the garnishment disclosure, I find that he did not intentionally withhold information about the repossession; hence, the Government did not establish a

disqualifying condition as to SOR ¶ 2(a). Applicant admitted that he willfully did not disclose any information about his delinquent debts because he did not think the Government had a right to know. The Government established disqualifications as to the allegations set forth in SOR ¶ 2(b) and ¶ 2(c).

AG ¶ 17 provides five conditions that could mitigate security concerns raised under this guideline:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After reviewing the above mitigating conditions, I find none of them are applicable. Applicant did not make any effort to promptly correct his omissions. He intentionally made a decision to withhold information based on his own belief. Although the omissions occurred less than two years ago, he continues to assert the appropriateness of that decision in 2009. He has not acknowledged his wrongful conduct, nor demonstrated that he has taken steps to eliminate vulnerability to duress.

### **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). They include the following:

(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 44 years old and has worked for his employer for almost 25 years, during which time he has held a security clearance for at least ten years. In August 2008, the Government sent him a set of Interrogatories, alerting him to the financial delinquencies that could adversely affect his security clearance. In his response to the Interrogatories, he essentially said that the delinquent debts should not be of concern to the Government based on his long history of successful employment. He also indicated that his financial problems are directly related to a court-ordered garnishment for child support, the second one levied against his pay in less than ten years. In February 2009, he received the SOR, detailing the specific debts in question and articulating concerns under the financial and personal conduct guidelines. In mid-April 2009, he received the FORM, notifying him that he had an additional 30 days to respond and submit documentary evidence. Despite having approximately eight months to address the Government's concerns, including his deliberate decision to withhold requested information, he took no action. His failure to responsibly respond to those concerns calls into question his judgment and reliability.

Given his long employment history and previous experience with the security clearance process, it is troubling that he did not take any affirmative steps to address the Government's specific concerns when he learned of them. Based on his tight budget and lack of proof that he has attempted to address the outstanding debts in some way, similar problems are likely to occur in the future.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial issues and personal conduct.

### **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
Subparagraphs 1.a through 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge