



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-05848 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

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

February 17, 2009

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

On October 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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.

Applicant answered the SOR in an undated written response, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on December 30, 2008. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an

opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 5, 2009. He responded with an undated letter and six documents. Department Counsel did not object to his response. The case was assigned to me on February 10, 2009.

### Findings of Fact

Applicant is a 26-year-old employee of a defense contractor. He has a Bachelor of Science degree. He is married. He stated in October 2008 that his wife was pregnant and expected to give birth in about four months.<sup>1</sup>

The SOR alleges four delinquent debts totaling \$11,493. The SOR also alleges that Applicant's personal financial statement reflects a negative net monthly remainder of \$362. Applicant admitted all the allegations, with the exception of the \$685 debt alleged in SOR ¶ 1.d, which he stated was paid. He also provided additional information to support his request for eligibility for a security clearance.

Applicant attended college between 2001 and 2006. He worked while attending school, but his income was barely enough to meet his living expenses. His current financial situation remains problematic. He provided financial data to an investigator from the Office of Personnel Management (OPM) in October 2007. After accounting for his income, expenses, and debts, he had \$362 more going out in debts and expenses than he had income. His father periodically assisted him financially with the shortfalls.<sup>2</sup> Applicant's negative cash flow is alleged in SOR ¶ 1.e. Applicant responded to DOHA interrogatories in October 2008. He stated:

I would like to state that I am incapable [of making] payment plans for the debts mentioned in the report. My responsibilities have greatly increased since the date of the interview. I became married and my wife and I are currently expecting a child in about four months. Since she's unemployed [and] uninsured, I am therefore responsible for all maternity expenses and all associated expenses thereafter.<sup>3</sup>

In addition to his delinquent debts and other expenses, Applicant's credit reports also show at least \$60,000 in student loans. The student loans are not listed as delinquent. He pays \$74 per month on one loan with a balance of about \$21,000. The remaining student loans are in deferment, but they will need to be addressed eventually. He has not received financial counseling.<sup>4</sup>

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<sup>1</sup> Items 5, 7.

<sup>2</sup> *Id.*

<sup>3</sup> Item 7.

<sup>4</sup> Items 6-9.

Applicant submitted sufficient documentation to establish that the \$685 debt, alleged in SOR ¶ 1.a, was actually a \$259 debt. This debt was paid in July 2008.<sup>5</sup>

Applicant admitted owing a delinquent debt of \$434 to a medical provider, as alleged in SOR ¶ 1.b. He sustained injuries requiring medical treatment when his car was struck by another vehicle. He sued the other party and was awarded a judgment. The other party did not have insurance, and Applicant has apparently not been able to collect on the judgment. He told the OPM investigator in October 2007 that he would call the collection company within a month to establish a payment plan. The debt remains unpaid.<sup>6</sup>

Applicant co-signed a car loan with his girlfriend in about 2003. She did not earn enough money to make the payments, and he was unable to pick up the payments after she stopped paying on the loan. The car was repossessed in about 2004. Applicant admits he owes the deficiency balance of \$8,542, as alleged in SOR ¶ 1.c.<sup>7</sup>

Applicant was the victim of a con artist in 2006. He subscribed to an internet web site to find a roommate. He received an e-mail from a woman in Africa stating that she would like to be his roommate. She sent him two checks for \$800. She asked him for \$800 back, so that she could move her belongings to the United States. He cashed the checks at his bank and sent her \$800. The bank notified him that the checks were not valid. The bank attempted to debit the \$1,600 from his account, but he had a negative balance. The bank asked Applicant to repay the money. He told the bank that he was the victim of fraud, but the bank still wanted the money. Applicant told the OPM investigator in October 2007 that the balance due on the account was \$1,832. He stated that he would contact the collection company handling the debt within six months to establish a monthly payment schedule. He has made no payments on this debt, which is alleged in SOR ¶ 1.d.<sup>8</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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

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<sup>5</sup> Items 4, 8; Applicant's response to FORM.

<sup>6</sup> Items 4-9.

<sup>7</sup> *Id.*

<sup>8</sup> Items 4-7.

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 the 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 adverse 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 lists several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. He continues to have a negative monthly cash flow. The evidence is sufficient to raise all of the above potentially disqualifying conditions.

Four mitigating conditions under AG ¶¶ 20(a)-(d) are potentially applicable in this case:

- (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;
- (b) 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;
- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not made payments on most of the debts alleged in the SOR. His financial problems are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant attributes his debts to being a student and not earning enough money. He also had an explanation for each debt. The medical debt resulted from a car accident that was not his fault. The car was repossessed because his girlfriend did not pay the monthly payments. However, he co-signed for the car loan, which meant that he guaranteed the loan. He stated that he was the victim of an internet scam. He received

\$1,600 from the bank. If he had properly analyzed the situation, he would have realized that it did not make sense to turn around and send the woman \$800. Even accepting Applicant's explanation for this debt, he made \$800 on the deal. The bank gave him \$1,600, and he only paid the woman \$800. He should have, at a minimum, paid the bank back the \$800. He did not. I find that the conditions that resulted in his financial problems were only partly beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Other than \$259 for the debt alleged in SOR ¶ 1.a, Applicant has made no payments on any of his debts. He did not act responsibly under the circumstances. AG ¶ 20(b) is not applicable.

Applicant has not received financial counseling. He has delinquent debts and has a negative cash flow each month. There are no clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable. One payment of \$259 does not constitute a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable.

### **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 common sense 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 has more than \$10,000 in delinquent debt. He has more expenses than he has monthly income. With the large amount of student loans looming, there is little chance that Applicant's financial problems will be resolved in the foreseeable 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 has not mitigated the Financial Considerations security concerns.

## **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     |
| Subparagraphs 1.b-1.e:    | Against 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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Edward W. Loughran  
Administrative Judge