



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-05929
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Pro Se

July 24, 2009

**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on September 9, 2005. On March 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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.

On April 18, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 18, 2009. The case was assigned to me on May 22, 2009. On June 3, 2009, a Notice of Hearing was issued, scheduling the hearing for June 17, 2009. The case was heard on that date. At hearing, Applicant waived the 15-day notice requirement of ¶ E3.1.8 of the Directive. (Tr at 9) The Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7 without objection. Applicant testified, called one

witness, and offered two exhibits which were admitted as Applicant Exhibits (AE) A – B without objection. The transcript (Tr) was received on June 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant denies the allegation in SOR ¶1.r, and admits all of the remaining SOR allegations.

Applicant is a 40-year-old sharepoint developer employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since January 2009. From July 1986 to May 1999, he served on active duty in the United States Army. He separated with an honorable discharge with the rank of Sergeant First Class (E-7). His career field was Special Forces. He was injured on two occasions while on active duty. He receives \$650 a month in disability benefits from the Veteran's Administration (VA). He has held a security clearance since 1987. He has a bachelor's degree in Science and Information Technology. He has been divorced twice. He has a 20-year-old daughter from his first marriage. He has a daughter, age 14, and a son, age 12, from his second marriage. (Tr at 4-6, 19-20; Gov 1; Gov 5)

On September 9, 2005, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Gov 1.) He disclosed a bankruptcy filed in April 2005, in response to section 27 on his questionnaire. A subsequent background investigation confirmed that Applicant had filed for bankruptcy under Chapter 13. Applicant initially paid \$200 a month towards the Chapter 13 plan. Applicant accepted a job in another state that increased his income. He also failed to list his \$650 monthly VA disability payment as income on his initial bankruptcy paper work. The Bankruptcy Court increased his monthly payments to \$800. Applicant claims that he was unable to make this payment. As a result, the Chapter 13 bankruptcy was dismissed due to nonpayment in June 2006. (Tr at 36-38,45-48;Gov 2;Gov 6 at 1)

Applicant's security clearance background investigation disclosed the following delinquent accounts: a \$2,983 account owed to an apartment complex that was placed for collection in August 2007 (SOR ¶ 1.b: Gov 6 at 1; Gov 7 at 1); a \$2,917 account that was placed for collection in July 2006 (SOR ¶ 1.c: Gov 6 at 1; Gov 7 at 1); a \$220 gas bill that was placed for collection in July 2007 (SOR ¶ 1.d: Gov 6 at 1; Gov 7 at 1); and a \$91 account owed to an apartment complex that was placed for collection in August 2005 (SOR ¶ 1.e: Gov 6 at 1; Gov 7 at 1).

Additional delinquent accounts include: a \$95 medical account that was placed for collection in March 2003 (SOR ¶ 1.f: Gov 6 at 1; Gov 7 at 1); a \$3,274 credit card account that was charged off in October 2004 (SOR ¶ 1.g: Gov 3 at 10; Gov 6 at 2; Gov 7 at 2); a \$582 credit card account that was charged off February 2004 (SOR ¶ 1.h: Answer to SOR); a \$1,299 account owed to an apartment complex (SOR ¶ 1.i: Gov 3 at

6); and a \$211 telephone account that was placed for collection in December 2004 (SOR ¶ 1.j: Gov 6 at 2).

Additional delinquent accounts include: a \$607 cable television account that was placed for collection in October 2007 (SOR ¶ 1.k: Gov 7 at 1); a \$455 credit card account (SOR ¶ 1.l: Gov 7 at 2); an \$8,729 bank signature loan account that was placed for collection in October 2004 (SOR ¶ 1.m: Gov 6 at 3; Gov 7 at 2); a \$16,805 debt owed after an automobile repossession (SOR ¶ 1.n: Gov 3 at 10); a \$1,086 delinquent electronics store account (SOR ¶ 1.o: Gov 3 at 10; Gov 7 at 5); and a \$127 account. (SOR ¶ 1.p: Gov 3 at 10)

Additional delinquent accounts include: a \$244 credit card account (SOR ¶ 1.q: Gov 3 at 10; Gov 6 at 5; Gov 7 at 5); a \$2,184 automobile loan (SOR ¶ 1.r: Gov 3 at 10; Gov 6 at 2-3; Gov 7 at 2); a \$46,640 delinquent student loan account (SOR ¶ 1.s: Gov 3 at 10; Gov 6 at 2; Gov 7 at 3); and a \$30 debt owed to a consumer credit counseling agency. (SOR ¶ 1.t: Gov 3 at 10; Answer to SOR)

Applicant separated from the United States Army in 1998. He accepted a job with a contractor in a U.S. territory for six months. He then accepted a position with another defense contractor located in the southern part of the United States. In 2002, Applicant and his family moved to the state where his oldest daughter (then 13) was living with her mother and her step-father. Applicant decided to move there because he was concerned that his daughter's step-father was abusing her and his daughter was also acting up. He used the family savings and took out a loan in order to get custody of his daughter. On March 1, 2003, the court awarded him custody of his daughter. (Tr at 34; AE B)

In November 2003, Applicant's oldest daughter attempted suicide. The family incurred additional expenses for his daughter's counseling and medications. Applicant moved the family to another state in order to get his daughter away from her mother and step-father. Applicant and his second wife began to have marital problems. On June 3, 2005, they divorced. Their divorce agreement indicates Applicant and his wife had a \$1,500 deficit each month. Applicant agreed to be responsible for the marital debts. The court ordered Applicant to pay monthly child support of \$1,581.32. Applicant claims that he put his family first over his bills. He made sure his child support was paid before anything else. (Tr at 35-36, 41; AE A)

In July 2005, Applicant was working as a contractor and did not think that his contract would be renewed. He accepted a job in another state. The company that hired him paid his moving expenses. In return, he agreed to work for the company for one year. He left the company's employment after 11 months. The company is attempting to collect the \$2,917 amount paid to Applicant for moving expenses since he did not work for the company for one year as promised. (Tr at 52-53; SOR ¶ 1.c)

In April 2007, Applicant was laid off. He was unemployed for a month and a half. He found another job in May 2007 but at a lesser salary. After four months, his salary

increased to his previous salary. In December 2008, he moved back to where his ex-wife and two younger children reside in order to be closer to his children. (Tr at 39-41)

Applicant has not paid any of the debts alleged in the SOR. He has not arranged payment plans towards any of the debts alleged in the SOR. (Tr at 60.) He intends to avoid filing for bankruptcy. He hopes to have his child support payments lowered but has not begun proceedings to do so because he does not want to alienate his ex-wife. (Tr at 40-41.)

On July 29, 2008, Applicant consulted a credit counseling agency. He was unable to enter into a repayment agreement because his expenses were approximately \$1,067 over his net monthly income of \$5,388. (Gov 3 at 9-10)

Applicant's second ex-wife testified on his behalf. She has known Applicant since 1991. They were married for 15 years. They began to experience financial problems when they gained custody of Applicant's daughter from a previous marriage. After the divorce in 2005, the financial issues became more difficult. During the first year of the divorce, Applicant was late on his child support a couple times. She almost got evicted once. She states that Applicant always makes sure that the needs of his children are met. He is very close to his children. She describes Applicant as loyal and honest. She states that he would not jeopardize his livelihood or his children's livelihood. (Tr at 27-33)

A personal friend and co-worker of Applicant's has known him for over 10 years. He and Applicant were co-workers at various defense contractors. He and Applicant currently work at the same company but in different divisions. He has daily interaction with Applicant. He describes Applicant as extremely professional and security conscious. He socializes with Applicant outside of work. He has never seen Applicant lose control. (Tr at 21-24)

Applicant earned \$100,000 a year in his previous job. His annual income has decreased to \$80,000 in his current job. (Tr at 71)

His awards and decorations received during his active duty service with the Army include the Army Commendation Medal (3<sup>rd</sup> Award); the Army Achievement Medal (2<sup>nd</sup> Award); the Army Good Conduct Medal (4<sup>th</sup> Award); the National Defense Service Medal; the Noncommissioned Officer's Professional Development Ribbon with Numeral 2; the Army Service Ribbon; the Overseas Service Ribbon; the Expert Marksmanship Qualification Badge with Rifle Bar; the Expert Infantryman Badge; Master Parachutist Badge; the Special Forces Tab; the Honduran Military Airborne Badge; the Paraguayan Air Force Parachutist Badge; and the Venezuelan Parachutist Badge. (Gov 5)

## 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 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.

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 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 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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a) (an inability or unwillingness to satisfy debts); FC DC ¶ 19(c) (a history of not meeting financial obligations); and FC DC ¶ 19(e) (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) apply to Applicant's case. Applicant has 19 delinquent accounts, an approximate total balance of \$88,579. Of that amount, approximately \$46,640 relate to student loan debts. While some mitigating factors apply to Applicant's case, most of the delinquent debts are the result of poor financial management. Applicant's income should be sufficient to meet his expenses, yet, he has spent more than he has earned for several years.

The government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following Financial Considerations Mitigating Conditions (FC MC) potentially apply to Applicant's case: FC 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 current reliability, trustworthiness, or good judgment) does not apply. Applicant's delinquent accounts remain outstanding. While he filed for Chapter 13 bankruptcy in March 2005, the case was dismissed for nonpayment in June 2006. He has made no attempt to resolve his delinquent accounts, including considering whether to file a Chapter 7 bankruptcy since that time. He continued to incur delinquent accounts. His excessive financial problems raise questions about his reliability, trustworthiness and good judgment. FC MC ¶ 20(a) does not apply.

FC MC ¶ 20(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) partially applies. Applicant incurred significant expenses when he sought custody of his daughter in March 2003. He incurred additional expenses dealing with his oldest daughter's emotional problems. His divorce in 2005 added a further strain on his finances. He had a brief period of unemployment in 2007. This explains some of the debts that Applicant incurred. The next question to be asked is whether Applicant acted responsibly under the circumstances. I cannot conclude that Applicant acted responsibly under the circumstances because he made no attempt to resolve his delinquent accounts. After his Chapter 13 bankruptcy was dismissed in June 2006, he continued to incur delinquent debt.

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. Applicant consulted a credit counseling agency on July 29, 2008. He never followed through with any suggestions made by the agency. Considering the extensive amount of debt, his financial issues are unlikely to be resolved in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant applied for Chapter 13 bankruptcy in March 2005, the case was dismissed in June 2006 because of nonpayment. He has made no attempt to resolve any of his delinquent debts since that time. He has not initiated a good-faith effort to resolve his overdue accounts.

### **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 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. I considered Applicant's honorable service in the United States Army. I considered the favorable comments of Applicant's witnesses, including his ex-wife. I considered the expenses Applicant incurred when he gained custody of his oldest daughter. While I commend Applicant's efforts to provide for his children first, his delinquent debts were not solely incurred based on circumstances beyond his control. Poor financial planning and budgeting contributed to his financial problems. If he followed a strict budget, his annual income is sufficient to meet his expenses. Applicant has not established a plan to resolve his delinquent accounts. Applicant is an articulate and bright man. However, his financial situation is still precarious. He needs to consider all of his options towards resolving his delinquent accounts and perhaps will qualify for a security clearance in the future. At this time, Applicant has not met his burden of proof to mitigate the security concerns raised under financial considerations.

### **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:	FOR APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	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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ERIN C. HOGAN  
Administrative Judge