



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-07043
	)	
Applicant for Security Clearance	)	

**Appearances**

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

May 6, 2009

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed and certified a Questionnaire for Sensitive Positions, Standard Form 86 (SF-86), on November 28, 2007. On October 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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.

In his undated Answer to the SOR, Applicant requested a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on February 26, 2009. The FORM contained documents identified as Items 1 through 7. By letter dated March 2, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on March 13, 2009. His response was due on April 12, 2009. He filed additional information within the required time period. Department Counsel did not object to the admission of Applicant's additional information. On April 22, 2009, the case was assigned to me for a decision. I admitted to the record the additional information that Applicant provided in response to the FORM.

### **Findings of Fact**

The SOR contains seven allegations of financial delinquency under AG F, Financial Considerations. (SOR ¶¶ 1.a. through 1.g.) In his Answer to the SOR, Applicant admitted five of the Guideline F allegations of financial delinquency (¶¶ 1.b., 1.c., 1.d., 1.e., and 1.f.) He denied two Guideline F allegations (¶¶ 1.a and 1.g.) as redundant and provided explanations. The Government withdrew SOR ¶¶ 1.a. and 1.g. Applicant's admissions are entered herein as findings of fact. The allegations at SOR ¶¶ 1.a. and 1.g. are concluded for Applicant. (Item 1; Item 4.)

Applicant is 47 years old, never married, and employed as a costing and scheduling planner by a government contractor. In 1983, he earned a Bachelor of Science degree in Business Administration. He has held a security clearance with his current employer since 1997. (Item 5.)

In response to DOHA interrogatories, Applicant reported a net monthly income of \$4,794. He identified \$930 in fixed living expenses, and he reported a monthly home mortgage payment of \$1,856. He reported he was current on his home mortgage as well as five consumer debts, totaling \$11,625, on which he made total monthly payments of \$336. Applicant reported a monthly net remainder of \$1,671. (Item 6.)

Applicant's assets include approximately \$208,000 in real estate investments, \$6,700 in bank savings, \$48,000 in a 410 K pension plan, and two automobiles valued at \$24,000. (Item 6.)

In response to the SOR, Applicant admitted five delinquent debts of approximately \$120,200. He stated that all five delinquent debts had resulted from losses associated with two real estate investments. He explained that the delinquent debt of approximately \$14,947, alleged at SOR ¶ 1.b, arose when he renovated his two properties after a hurricane. He stated that he intended to settle the account by using funds acquired from refinancing his primary residence, his income tax refund, and his 401 K account. (Item 4; Response to FORM.)

Applicant identified the delinquent debt of \$5,250, alleged at SOR ¶ 1.c, as owed to a furniture company. He stated that he had been unable to pay the debt because of

his struggle to pay other delinquencies associated with his real estate properties. He stated that he intended to pay this debt in full from funds he hoped to acquire from refinancing his primary residence, his income tax refund, and his 401 K account. (Item 4.)

Applicant stated that a delinquent debt of \$10,872, alleged at SOR ¶ 1.d, had resulted when he was unable to pay for renovations he had made to his two rental properties after they were damaged by a hurricane. He stated he also plans to pay this debt from proceeds received from refinancing his primary residence, his tax refund, and his 401 K account.

Applicant identified the delinquent debts of \$46,185 and \$42,954, alleged at SOR ¶¶ 1.e. and 1.f., as home equity/home mortgage accounts financing the purchases of two condominiums that had been foreclosed as a result of past due payments. He stated he had been unable to rent or sell the properties because of a downturn in the housing market in his region in 2006 and 2007. He stated that after the properties were sold at auction, he would be responsible for paying income tax on any outstanding amount owed. Applicant's credit report indicates that he defaulted on the mortgages in the fall of 2007. (Item 4; Item 5; Item 7.)

In his Answer to the SOR, Applicant indicated that he had financial and legal advice regarding the foreclosure of his two condominium apartments. It not clear from the record that he has had consumer credit counseling. (Item 4.)

In his response to the FORM, Applicant emphasized that his financial difficulties were temporary and should not be seen as indications of irresponsibility and lack of security worthiness. He stated: "That some bad business decisions, bad timing, and a real estate market crash led to my current financial condition, is absolutely no reason to question my character as a trusted, responsible protector of my Country's secrets." (Response to FORM at 1.)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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.

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 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. Applicant accumulated substantial delinquent debt and did not pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person’s control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d)).

Applicant has a history of financial delinquencies that dates to at least 2007. Moreover, the delinquencies remain unpaid and have occurred under circumstances that are likely to recur.

Applicant has income and financial resources sufficient to pay or settle several of his delinquent debts, and he has failed to do so. Certainly, the downturn in the housing market and damage to his properties by a hurricane were beyond Applicant’s control. However, the record does not reflect that Applicant’s actions in the face of his financial difficulties were reasonable and responsible. Applicant expressed his intent to satisfy and settle his delinquent debts in the future. However, in determining an individual’s security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(b) and 20(c) apply in part to the facts of Applicant’s case. However, I also conclude that AG ¶¶ 20(a) and 20(d) do not apply in mitigation to the facts of Applicant’s case.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an applicant’s conduct and all relevant 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. Applicant is a mature adult. He earns a good salary and reports a net remainder each month of \$1,671. Not counting his real property, he has over \$75,000 in personal assets. Despite these financial strengths, Applicant has failed to satisfy or to show good faith attempts to satisfy his delinquent debts. His failure to initiate actions to satisfy some of his smaller debts even when he had sufficient funds to do so raises security concerns about his judgment and reliability.

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

### **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. through 1.f.:	Against Applicant
Subparagraph 1.g.:	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. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge