



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



In the matter of: )  
)  
) ISCR Case No. 08-07110  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 22, 2009

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF 86), on September 28, 2007. On April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 30, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and the case was assigned to me on July 2, 2009. Applicant and Department Counsel agreed to an August 26, 2009, hearing date. On July 27, 2009, a Notice of Hearing was issued scheduling the hearing for that date. The hearing was convened as scheduled. Department Counsel submitted six exhibits (GE) 1-6 without objection. Applicant did not introduce any exhibits. He testified on his own

behalf. The transcript (Tr.) was received on September 3, 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, dated April 30, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k of the SOR with explanations.

Applicant is a 29-year-old employee of a defense contractor. He graduated from high school in 1998. He has been employed since 1999. He attended some college courses in 2001. Applicant married in 2002 and has two children from that marriage. He has worked for his current employer since May 2007 (Tr. 9).

Applicant worked in Iraq, Afghanistan and Kuwait for periods of time in 2007 and 2008. While he was deployed overseas, his wife handled the household financial affairs. She did not pay the household bills in his absence. He acknowledged that there were late bills prior to his deployment (Tr. 14). Applicant stated that he would use the extra money that he earned when overseas to “catch up” on the bills. He admitted that he should have paid more attention, but he was out of the country and took for granted that his wife would pay the bills. Instead, he acknowledged that the situation worsened (Tr. 14).

When Applicant learned that he and his wife had delinquent debt, he became overwhelmed. He claimed he did not know how to handle the situation. He did not check his credit reports. When he spoke to a government investigator in April 2008, he stated he would arrange payments for the delinquent debts (GE 6). He realizes that he is ultimately responsible for the delinquent debts (Tr. 15). He believes the only way to cure the situation is to return overseas and make more money to pay off the bills (Tr. 15). He and his wife are now seeking a divorce (Tr. 37).

The SOR alleges eleven delinquent debts, including medical accounts, a truck repossession and credit card accounts. The delinquent debts total approximately \$16,000 (GE 3). Applicant has not paid any of the delinquent debts. He believes he defaulted on payments for his truck and some credit cards in 2004 (Tr. 19). Some of the medical bills are from 2004 or 2005. He believes he made payments of \$148 and \$215 on two of his debts. He had no documentation for this assertion (Tr. 23). He acknowledged that one account for \$414 (1.k) is an overdraft that he forgot to pay (Tr. 23).

Applicant has not received any financial counseling. He does not have a repayment plan for any of his debts. He states he does not know how to contact many of the creditors. However, several accounts are for medical procedures that Applicant's wife had in 2002 (Tr. 20). He acknowledged that he co-signed a loan so that she could have elective surgery.

In September 2008, Applicant answered interrogatories and again promised to settle or make payment arrangement for his delinquent debts (GE 5). He noted that he would pay the small medical accounts as soon as possible. He has not done so. He intends to pay on the accounts when the divorce agreement is final (Tr. 37).

Applicant's monthly net income is approximately \$2,400. He has some retirement savings. He is paying child support. He is living with his parents. He does not have any credit cards (Tr. 39).

Applicant loves his job. He wants to continue his work overseas. His father was in the military and he is proud to serve his country.

### **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.

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, 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 that 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 delinquent debts on several accounts over a period of time. His credit reports confirm the debts. He admits that he has \$16,000 in delinquent debt. The evidence is sufficient to raise these disqualifying conditions.

The guideline also 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 learned that his wife had not paid household bills. He defaulted on some accounts as early as 2004. He has not paid any of the accounts. This mitigating condition does not apply.

Under AG ¶ 20(b), 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’s wife did not pay the bills while Applicant was overseas. This may have exacerbated the problem but

he had financial difficulties prior to 2007 and 2008. Applicant has promised to repay his delinquent debts but he has not acted responsibly by paying the accounts. This is not a factor for consideration.

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). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received financial counseling. He has not resolved the delinquent accounts. His efforts are insufficient to carry his burden in this case. I conclude these mitigating conditions do not apply.

### **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 and conclude they are insufficient to overcome the Government’s case. Applicant has been steadily employed since 1999. He has worked for a defense contractor since 2007. While he noted that his wife did not pay bills while he was overseas, he admitted that he is ultimately responsible for the debts. When he learned of the delinquent accounts, he did not take action to resolve the debts.

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 security concerns arising from his 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:                   AGAINST APPLICANT

Subparagraphs 1.a: - 1.k:               Against 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.

NOREEN A. LYNCH  
Administrative Judge