



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



In the matter of:  ----- SSN: -----  Applicant for Security Clearance	) ) ) ) ) )	ISCR Case No. 08-07254
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**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel

For Applicant: *Pro se*

March 31, 2009

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed Electronic Questionnaires for Investigations Processing (e-QIP) which were certified on December 4, 2007. On October 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) citing to security concerns arising 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 for SORs issued after September 1, 2006.

In a response notarized on December 5, 2008, Applicant constructively admitted three of the seven allegations regarding finances. DOHA received Applicant's request to have the matter heard before an Administrative Judge and I was assigned the case on January 13, 2009. Applicant and Department Counsel agreed to a hearing date of February 4, 2009. A Notice of Hearing to that effect was issued on January 16, 2009.

The hearing was timely convened. During the hearing, Department Counsel introduced five documents, which were admitted into the record as exhibits (Exs.) 1-5 without objection. Applicant introduced two documents, admitted into the record as Exs. A-C without objection. Applicant testified on his own behalf; no witnesses appeared. Applicant was given through February 16, 2009, to forward any additional information. Four documents were timely delivered to Department Counsel by Applicant for review and were then forwarded to me on February 18, 2009. They were admitted into the record as Exs. D-G without objection. The transcript (Tr.) was received on February 19, 2009, and the record was closed. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

### **Findings of Fact**

Applicant is a 37-year-old network administrator who has worked for the same government contractor for over a year. He has a high school diploma and an associate's degree in computer networking. He is married and has three young children.

In October 1995, shortly after divorcing his first wife, Applicant began active duty service in the United States Army. In 1996, he married his current wife, who had two small children from a previous marriage. The newlyweds experienced some financial difficulties. They were not allowed to live on-post, necessitating a high priced local rental property. In 1997, a son was born. Meanwhile, problems related to his recent divorce persisted. For example, it was agreed his ex-wife would keep their car and make payments on it. Instead, she defaulted on the payments and creditors began to pursue him. In addition, a hip injury unexpectedly forced Applicant to take an honorable medical discharge in October 2008.

After a brief period of unemployment lasting a couple of weeks, Applicant found civilian employment in a large and costly metropolitan area. Although he was happy with the employment, he found his salary was insufficient to support a family of five in that region. Bills eventually went unpaid or were paid late. In September 1999, Applicant filed for Chapter 7 bankruptcy protection. It included debts from his first marriage and their separation.<sup>1</sup> He received a discharge in April 2000. Relieved of his past debt, Applicant was ready to start anew. His employer, however, was forced to file for bankruptcy in October 2000. As a result, Applicant found himself without a job and, consequently, without an income.<sup>2</sup>

In mid-December 2000, Applicant was hired in a less expensive region in a neighboring state. Things were looking up until the terrorist attacks of September 11, 2001. Within a week, a quarter of his company's employees were laid off, including Applicant. He filed for unemployment with the state that month and continued on state

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<sup>1</sup> Tr. 65.

<sup>2</sup> Tr. 14.

aid through September 2002.<sup>3</sup> As he looked for work, the entire telecommunications industry began to decline. He resorted to work as a security officer in September 2002, then added a second job as a technician for an information sciences entity in December 2002.<sup>4</sup>

During the summer of 2004, Applicant's wife faced an intolerable work environment at the medical office where she worked. She gave two weeks notice of her intention to quit. On her last day, Applicant learned his technical employer was being taken over by a larger entity. He then was laid off. Realizing his area of expertise was in flux, Applicant decided to utilize his GI Bill benefits and continue his education. Although he received some parental assistance and his landlords agreed to work with him, some bills were paid late, new debts accrued, and state taxes went unpaid. State liens were obtained against him for non-payment of state taxes in the amounts of about \$1,999, \$268, and \$2,866, but they were ultimately satisfied in May 2005.<sup>5</sup> Applicant believes all three liens were for the same tax year.<sup>6</sup> His federal taxes have been regularly paid.

While attending school full time, Applicant did some "work on the side."<sup>7</sup> At the urging of a friend, he filed for unemployment in August 2005 after circumstances diverted the need for his services from the area. The state discovered he had been let go from his prior employment and was pursuing his education. Consequently, he was found ineligible for unemployment for the reasons he had cited, but by that point he had already received financial assistance from the state.<sup>8</sup>

In May 2006, Applicant graduated with honors. He was unable to find employment until September 2006. Applicant left that employer for his current position in November 2007. He completed an e-QIP in December 2007. Sometime around February 2008, he retained a law firm to help straighten out his credit.<sup>9</sup> He received the SOR at issue in this proceeding in October 2008.

Of concern in the SOR are six delinquent accounts that emerged following Applicant's April 2000 Chapter 7 bankruptcy discharge.

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<sup>3</sup> Ex. 1 (SF-86) at 17/40.

<sup>4</sup> *Id.* at 15-17/40.

<sup>5</sup> Exs. D-F (State tax lien papers).

<sup>6</sup> Tr. 54.

<sup>7</sup> Tr. 18.

<sup>8</sup> Tr. 18-20.

<sup>9</sup> Tr. 20.

**MEDICAL ACCOUNT** placed for collection in about June 2005 for approximately \$152. (*SOR allegation 1.b*). The account is for urgent care services rendered to Applicant when he was unemployed and had no insurance. The claim should have been processed through his wife's health insurance policy.<sup>10</sup> He discovered it was on his credit report in December 2007, after he completed the e-QIP but before he met with investigators. He believes his wife paid the balance at that time.<sup>11</sup> Applicant stated he has disputed this account's continued entry,<sup>12</sup> but presented no documentation regarding the current status of this account before the record was closed.<sup>13</sup> There is *no evidence of payment*.

**UTILITIES ACCOUNT** placed for collection in about August 2003 for approximately \$255. (*SOR allegation 1.c*). Applicant admits this bill is his, but thought the balance was paid.<sup>14</sup> After disputing the account, he discovered it was from a different residence than he had previously thought.<sup>15</sup> It was from their residence during his post-911 period of unemployment. He thought this bill had been paid at the time by his wife. He is hoping to pay the balance at the end of the month, but *could not make payment before the record was closed*.<sup>16</sup>

**STATE TAX LIEN** filed against Applicant in March 2005 for approximately \$1,999. (*SOR allegation 1.d*). *Satisfied* on or about May 18, 2006.<sup>17</sup>

**STATE TAX LIEN** filed against Applicant in March 2005 for approximately \$268. (*SOR allegation 1.e*). *Satisfied* on or about May 18, 2006.<sup>18</sup>

**AUTO LOAN** debt for approximately \$30,000 for a balance from an involuntary repossession of a vehicle in about April 2001. (*SOR allegation 1.f*). Applicant is unsure of the origin of this credit report origin. He maintains that he "never had a car that was for \$30,000 and got it taken away."<sup>19</sup> He stated: "The only car maybe that got repossessed like that was whenever I had a bankruptcy. I don't think I have ever owed

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<sup>10</sup> Tr. 46.

<sup>11</sup> Tr. 49-51.

<sup>12</sup> *Id.*

<sup>13</sup> Tr. 47.

<sup>14</sup> Tr. 51.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*; Tr. 52.

<sup>17</sup> Ex. D (Judgement Roll Maintenance, dated February 1, 2009).

<sup>18</sup> Ex. E (Judgement Roll Maintenance).

<sup>19</sup> Tr. 25.

\$30,000 on a car unless it was that Jeep, which was right in before the - - right before I did the bankruptcy, and I gave that up in the bankruptcy.”<sup>20</sup> Applicant’s 1999 bankruptcy petition was discharged in 2000. Applicant recalls a vehicle being part of the bankruptcy.<sup>21</sup> He has received no correspondence regarding the sale of a repossessed car. The auto loan account was a joint account. According to the credit report, the account was opened in August 2000 and last reported as delinquent in April 2001. The method of payment for the account is noted as “repossession” after the account became \$1,463 past due. The credit report states “Repossession; *There may be balance due*; Repossession; Last reported delinquencies: 04/2001=1.”<sup>22</sup> The date of last activity noted on the December 2007 credit report is April 2001.

**STATE TAX LIEN** filed against Applicant in May 2006 for approximately \$3,004. (*SOR allegation 1.g*) for unemployment benefits received while ineligible.<sup>23</sup> *In partial repayment*, as shown by transacted check, dated September 16, 2008, for \$150.<sup>24</sup> Applicant says he is “trying to find other check stubs” to prove other payments, but produced no other evidence of other payments before the record closed.<sup>25</sup>

Currently, Applicant is living within his means. He has two cars but no car payments, and insurance for the family is about \$200 a month. He spends about \$300 a month for the family’s gasoline. The family’s rent is \$725 a month.<sup>26</sup> Utilities run about \$300-\$350, phone charges average about \$125, and cable costs about \$70 a month. Groceries cost about \$700 a month. His stepson is about to reach his majority and will soon be independent, thus lowering some related charges, such as car insurance.

Applicant has four credit cards. Two have no current balance, the other two have balances of \$400 and \$200, respectively. He makes \$50 payments on the cards per month. The family’s regular group activity costs about \$125 a month.<sup>27</sup> In sum, monthly expenses run about \$2,600 per month.<sup>28</sup> That amount is paid through the joint account of Applicant and his wife, who, as a couple, net about \$4,000 per month.<sup>29</sup> The couple

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<sup>20</sup> *Id.*; Tr. 54-59.

<sup>21</sup> Tr. 33.

<sup>22</sup> Ex. 4 (Credit Report, dated Dec. 17, 2007) at 9. (Emphasis added).

<sup>23</sup> Tr. 59.

<sup>24</sup> Ex. H (Cancelled check #980); Tr. 20.

<sup>25</sup> *Id.*; Ex. C (FAX Cover sheet).

<sup>26</sup> Tr. 37.

<sup>27</sup> Tr. 41.

<sup>28</sup> *Id.*

<sup>29</sup> Tr. 42.

has a savings account, into which about \$75 a month is deposited from his wife's salary.<sup>30</sup> It is reserved for unexpected expenses and emergencies.

Applicant is currently pursuing credit counseling.<sup>31</sup> This should complement his work with his credit repair law firm, which he feels is failing to pursue his case in an effective manner.<sup>32</sup> He regrets retaining that firm as he thought these matters would have been resolved by now. It is his hope to resolve his final issues so he can contemplate a home purchase or start a computer business with a friend.<sup>33</sup> He is committed to resolving any past debt in order to move on with his life with his integrity and patriotism unquestioned.<sup>34</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 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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

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<sup>30</sup> Tr. 43.

<sup>31</sup> Ex. C (FAX cover letter).

<sup>32</sup> Tr. 62.

<sup>33</sup> Tr. 64.

<sup>34</sup> Tr. 69.

Department Counsel. . . .<sup>35</sup> The burden of proof is something less than a preponderance of evidence.<sup>36</sup> The ultimate burden of persuasion is on the applicant.<sup>37</sup>

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>38</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>39</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>40</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### GUIDELINE F

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

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<sup>35</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>36</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>37</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Executive Order 10865 § 7.

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.<sup>41</sup> The Regulation sets out several potentially disqualifying conditions under this guideline.

Applicant faced significant periods of unemployment from September 2001 to October 2002 and May 2006 through September 2006. During those times and other periods of intermittent employment, some accounts became delinquent. Although the majority of those accounts now at issue (e.g., two state tax liens, a medical account, and a utilities bill) were unintentionally overlooked, the number of delinquent bills was multiple and over half remain unpaid. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) ("a history of not meeting financial obligations") and FC DC AG ¶ 19(a) ("inability or unwillingness to satisfy debts") apply with regard to SOR allegations 1.b, 1.c, 1.d, 1.e, and 1.g. With such conditions raised, the burden shifts to Appellant to overcome the case against him and mitigate security concerns.

As a preliminary matter, however, the Government failed to present sufficient evidence establishing SOR allegation 1.f, a \$30,000 car loan liability. The credit report introduced as Ex. 4 (Credit Report, dated December 12, 2007) is inconclusive. It reflects a car loan for a car possessed by Applicant from only August 2000 through April 2001. It shows an account with a past due amount in 2001 of approximately \$1,500 on a car loan with a balance of \$30,000. It explicitly notes that the method of payment on the account was repossession. There is no indication of a post-repossession auction, post-resale balance for the car, or any indication as to whether the repossession satisfied any portion of Applicant's original loan balance on the car. Instead, it equivocally notes: "There may be a balance due." Moreover, the account remained on his credit report merely as a past due entry from 2001 with no adjustments as to any balance owed on the account through 2008, a more than sufficient interval for the creditor to have established an adjusted balance owed, if any, after auction. Consequently, the credit report provides evidence of a past due account which led to a repossession and a past due balance. It does not establish a \$30,000 debt.

As for the other accounts noted, the medical account went unpaid because Applicant's wife's insurer neglected or chose not to process his claim for medical urgent care while he was uninsured and unemployed. The remainder of the accounts became delinquent through Applicant's inability to maintain employment in a faltering industry. Consequently, with regard to this debt, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior 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") applies.

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<sup>41</sup> Revised Adjudicative Guideline (AG) ¶ 18.



Applicant's erratic employment history since 2000 mirrors the erratic nature of the technological industry over the past nine years. The "dot.com" bubble burst circa 2000, the impact of 911, and the restructuring of many tech companies mid-decade stagnated growth and hindered employment for individuals such as Applicant. To cope through this period of transition, Applicant returned to school and resorted to working outside his field while his industry reformed. With his industry now in a less feverish level of reorganization, Applicant has a stable job as well as additional educational credentials and experience should his industry again undergo change. Consequently, FC MC ¶ AG 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").

Applicant sought assistance from a credit repair law firm and is currently receiving financial counseling. He satisfied his two state tax liens in 2006 (SOR allegations 1.d and 1.e), a total sum amounting to about \$2,500. He also provided evidence that some repayment efforts toward his unemployment overpayment were made (SOR allegation 1.g). Although he failed to provide evidence of payment for the minor utilities and medical bills (SOR allegations 1.b and 1.c), he credibly testified one was previously paid and the other would be paid within a few weeks. While a promise to pay in the future has little weight in these proceedings, the sum at issue is a manageable amount of about \$400, not so large a sum to raise serious security concerns. Given the efforts thus far expended, 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") and FC MC ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") apply. None of the other mitigating conditions, however, 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 public trust position 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, as well as the "whole person" factors. Applicant is a mature and articulate man who was genuinely blind-sided by the existence of the debts at issue. No sooner had he gotten back on track financially after

a messy divorce through a September 1999 bankruptcy discharge, his industry began its own downward trend. Consequently, from 2000 through 2007, his employment was erratic and seldom secure, with protracted periods of unemployment such as from September 2001 to October 2002 and May through September 2006. To increase his attractiveness to employers and gain a competitive edge during a time of industry turmoil, he returned to school and earned a degree. Today, he has emerged from his industry's turmoil with a steady job and earns sufficient income to meet his needs.

During that time of flux, however, Applicant acquired some delinquent debt. This acquisition was largely the result of oversight, not neglect or intentional avoidance. About \$2,500 owed for state taxes in 2005 was paid in 2006. Some progress has been made toward an unemployment compensation overpayment and Applicant is resolved to see that balance satisfied. Remaining is only about \$400 toward a medical and a utility bill, both of which Applicant acknowledges and of which he testified proof of payment would be forthcoming, but could not be located before the record closed. Regardless, \$400 is not so great a sum as to seriously sustain security concerns. Moreover, after he completes the financial counseling he is now pursuing, Applicant should be better prepared to handle his finances pro-actively in the future. With security concerns thus mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

### **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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge