



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-07340  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tom Coale, Esquire, Department Counsel

For Applicant: *Pro se*

August 4, 2009

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 19, 2007 (Item 4). On January 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on February 12, 2009, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on March 11, 2009. The Applicant received the FORM on March 24, 2009, and was given 30 days to submit any additional information. The Applicant elected not to submit any additional information. The case was assigned to

me on May 15, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

The Applicant is 53 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

### **Guideline F, Financial Considerations**

The Government alleges under the Financial Considerations adjudication guideline that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds.

The Applicant admitted allegations 1.a., 1.b., 1.c., 1.e., and 1.f. of the SOR. Those admissions are hereby deemed findings of fact.

The FORM contained credit bureau reports dated July 18, 2007 (Item 5); June 19, 2008 (Item 6); and January 11, 2009 (Item 7). Those reports show that the Applicant owed the debts set forth in the SOR. The Applicant submits that he was laid off in 2004 from his long-time employment and found his hourly salary dropped from \$24.52 per hour to \$9.52 per hour. He currently makes \$12.50 an hour. (Item 3 at 1.)

1.a. The Applicant admits that he is indebted to a credit union for a judgment in the amount of \$22,000.00. He submitted a letter from the law firm for the credit union showing that, in November 2008, he had come to a payment arrangement for the judgment. That arrangement requires the Applicant to pay \$125.00 per month beginning in December 2008 until he has paid off the debt. This payment is withdrawn automatically from his checking account. (Item 3.) This subparagraph is found for the Applicant.

1.b. The Applicant admits owing a past due debt in the amount of \$5,148.00. There is no evidence that the Applicant has taken any steps to resolve or pay this debt.

1.c. The Applicant admits that he is indebted to a credit card company in the amount of \$37,750.00. There is no evidence that the Applicant has taken any steps to resolve or pay this debt.

1.d. The Applicant denies owing a debt to an automobile leasing company in the amount of \$18,966.00. He states that this is the same debt as the judgment set forth in subparagraph 1.a., above. Based on my review of the evidence, I find this argument credible and worthy of belief. This subparagraph is found for the Applicant.

1.e. The Applicant admits that he is indebted to an apartment complex in the amount of \$2,710.00. This debt occurred because the Applicant was laid off and could

no longer afford his apartment. He currently lives with his mother. There is no evidence that the Applicant has taken any steps to resolve or pay this debt.

1.f. The Applicant admits that he is indebted to a second credit card company in the amount of \$8,800.00. There is no evidence that the Applicant has taken any steps to resolve or pay this debt.

1.g. The Applicant denies that he is indebted for a medical bill in the amount of \$269.00. He states in his Answer that this debt has been paid in full (Item 3 at 2.) This debt appears on the oldest credit bureau report in the record, which dates from 2007 (Item 5). However, it does not appear in the most recent reports that date from 2008 and 2009 (Items 6 and 7). The debt also does not appear on an August 6, 2008, credit report provided by the Applicant. (Item 8 at 12-29.) This subparagraph is found for the Applicant.

### **Guideline E - Personal Conduct**

The Government alleges under the Personal Conduct adjudicative guideline that the Applicant is ineligible for clearance because he has engaged in conduct which shows questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

2.a. The Applicant filled out his Electronic Questionnaires for Investigations Processing (e-QIP) on June 19, 2007 (Item 4). Question 28.a. of Item 4 asks the Applicant whether, within the last seven years, he had been more than 180 days delinquent on any debts. In addition, Question 28.b. asks the Applicant whether, as of that date, he was currently more than 90 days delinquent on any debt. He stated, "No" in response to both questions. He did not set forth any of the numerous delinquent debts described under Paragraph 1, above. This answer was, therefore, false.

The Applicant denied this allegation and stated, "I told the investigator about all of my debts. I completed the questionnaire on-line, and did not intentionally make false statements. I misunderstood the questions on the on-line questionnaire." (Item 3 at 2.) The Applicant had an interview with a Government investigator on November 15, 2007, and fully discussed his debt situation. (Item 8 at 6-8.) I have considered all of the available evidence and find that it does adequately explain the Applicant's conduct. Specifically, under the particular circumstances of this case, I find that the Applicant did not falsify his questionnaire.

### **Policies**

Security clearance decisions are not made in a vacuum. 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 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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. The evidence shows that the Applicant has at least \$45,608.00 in past due debts, all of which have been due and owing for several years. This figure excludes the amounts in allegations 1.a., 1.d. and 1.g., which I have found for the Applicant. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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." AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, . . .), and the individual acted responsibly under the circumstances." The Applicant argues that most of these debts came from unemployment or underemployment after 2004. However, the Applicant has not made any attempts to pay or otherwise resolve his debts until very recently. He evidently does not have any organized program to pay these debts. I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances. In addition, the Applicant states on page 1 of his Answer (Item 3), "I admit that I have made some serious mistakes with my finances." Without more, I cannot find that he will use good judgment regarding his debts in the future.

AG ¶ 20(c) states that it may be mitigating where, "there are clear indications that the problem is being resolved or is under control." His past due indebtedness appears to all predate 2005. He is slowly paying his past due indebtedness. This mitigating condition is arguably applicable.

The Applicant has initiated a good-faith effort to pay off two of his creditors. However, he continues to have excessive debts, in the amount of \$45,608.00 that he has no current plans to pay. AG ¶ 20(d) is not applicable.

I have weighed the Applicant's conduct in paying some of his accounts in the past year. In addition, I have looked at the circumstances in which he allowed this conduct to occur, particularly that he was laid off. While he is paying his debts off, and is to be commended for that, I find that it is still too soon, given the other circumstances of this case, to find that this conduct may not recur in the future. Paragraph 1 is found against the Applicant.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) states that it may be disqualifying where an Applicant engages in the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

The Applicant's Questionnaire contains false answers about his financial situation. I have considered his written statement, wherein he states that he would not falsify a questionnaire about his debts, and that he misread the questions in the on-line questionnaire. He also showed that, several months later, he discussed his debt situation in detail with a Government investigator. Based on the facts of this case, the Applicant has met his burden to show that the act was a benign error and not an intentional falsehood. AG ¶ 17(a) "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts"; and ¶ 17(c) "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment" also apply to this case.

Based on the record, I find the Applicant did not intentionally falsify his answers as set forth in subparagraph 2.a. Based on all of the information set forth above, Paragraph 2 is found for the Applicant.

## 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 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. Under AG ¶ 2(a)(3), all of the Applicant's conduct, financial, and personal, is frequent and relatively recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), or that the likelihood of recurrence is close to nil (AG ¶ 2(a)(9)).

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 the Applicant has not mitigated the security concerns arising from his Financial Considerations.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. Paragraph 2 is found for the Applicant.

## 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 THE APPLICANT
Subparagraph 1.a.:	For the Applicant
Subparagraph 1.b.:	Against the Applicant
Subparagraph 1.c.:	Against the Applicant
Subparagraph 1.d.:	For the Applicant

Subparagraph 1.e.:	Against the Applicant
Subparagraph 1.f.:	Against the Applicant
Subparagraph 1.g.:	For the Applicant
Paragraph 2, Guideline E:	FOR THE APPLICANT
Subparagraph 2.a.:	For the 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.

WILFORD H. ROSS  
Administrative Judge