



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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-----, ----- ) ISCR Case No. 08-07447  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 26, 2009

**Decision**

WHITE, David M., Administrative Judge:

Applicant owed more than \$17,000 in four reported delinquent debts in March 2008. At least one of these debts, for \$6,272, remains unresolved and insufficient information was provided about the circumstances of any of them to mitigate security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted his Questionnaire for Sensitive Positions (SF 86), on June 25, 2007. On October 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F.<sup>1</sup> 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.

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<sup>1</sup>Item 1.

Applicant answered the SOR in writing on December 8, 2008, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>2</sup> Department Counsel submitted the Government's written case on January 9, 2009. A complete copy of the file of relevant material (FORM)<sup>3</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on February 3, 2009, and returned it to DOHA. He did not submit any material in refutation, extenuation or mitigation, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on April 15, 2009.

### Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He is married, with no children, and has been continuously employed since at least 1999. He retired in 1997 after 20 years of enlisted service in the Army, but never held a security clearance.<sup>4</sup> In his response to the SOR, he denied the factual allegations in SOR ¶¶ 1.a through 1.c, and admitted the truth of SOR ¶ 1.d.<sup>5</sup> He stated, "I admit that my previous financial situation caused me to default of previous financial obligations." He did not elaborate further concerning that situation, however. Applicant's admissions, including those contained in his response to interrogatories,<sup>6</sup> are incorporated in the following findings.

Applicant admits owing \$6,272 to a large vacation ownership and resort company. This debt became delinquent in April 2002. In December 2008, he said he was "in the process of attempting to settle this situation."<sup>7</sup> He provided no information concerning the origin of the debt or his reason for non-payment. This is the only one of the four delinquencies alleged in the SOR to appear on his most recent record credit bureau report (CBR).<sup>8</sup>

Applicant claimed that the \$5,838 delinquent credit card debt in collections alleged in SOR ¶ 1.a, was settled on July 6, 2006, with an agreed payment of \$3,882. He provided a poor copy of a bank statement showing issuance of a check from an

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<sup>2</sup>Item 3.

<sup>3</sup>The Government submitted nine items in support of the allegations.

<sup>4</sup>Item 4 at 1-11.

<sup>5</sup>Item 3.

<sup>6</sup>Item 7.

<sup>7</sup>Item 3.

<sup>8</sup>Item 8 at 2.

unidentified account in that amount on July 5, 2006. The payee was not identified on the statement. He said he never received a receipt or other correspondence reflecting the paid status of the account. The CBRs from July 2007 and March 2008 show that this account was placed with the SOR-alleged collection agency in February 2007, well after his reported settlement with the previous collection agency. The account numbers cited by Applicant do not match those in the two CBRs, although there were other accounts listed with the previous creditors on each CBR that reflect zero balances due to transfer of the accounts to other creditors. This debt was reported by Experian on the two earlier CBRs, but does not appear on the more recent October 2008 Equifax CBR. Applicant provided no explanation concerning the origin of this debt or why it became delinquent.<sup>9</sup>

SOR ¶ 1.b alleged a different delinquent credit card debt in collections in the amount of \$5,025 that remained unpaid as of March 12, 2008. Although Applicant formally denied this, he implicitly admitted it by explaining that he had settled the debt for a payment of \$3,582 to a different debt collector in November 2008. The letter he provided to document this payment did involve the same type of credit card, but the account number does not match those cited in the CBRs. This debt was reported by Trans Union on the two earlier CBRs, but does not appear on his October 3, 2008, Equifax CBR despite the fact that the submitted letter reflects payment did not take place until November 12, 2008. Again, Applicant provided no explanation concerning the circumstances surrounding this delinquency.<sup>10</sup>

Applicant also denied SOR ¶ 1.c, that alleged a \$101 delinquent debt resulting from a returned check dating to June 2002. He said he does not recognize this debt or know how it arose. It was reported by Equifax on his first two record CBRs, but does not appear on the latest Equifax report. The record contains no further information concerning this debt.

Applicant offered no evidence of credit or financial counseling. He submitted a Personal Financial Statement in August 2008 that showed \$11,334 in monthly income and \$4,442 in total monthly expenses and debt payments, for a net monthly surplus of \$6,892. It also reflects \$10,000 in bank savings.<sup>11</sup> Applicant offered no explanation for his delinquent debts in light of this apparent financial ability to resolve them. Applicant offered no other evidence concerning his character, trustworthiness or responsibility. I was unable to evaluate his credibility, demeanor or character in person since he elected to have his case decided without a hearing.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition

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<sup>9</sup>Item 3 at 1, 6; Item 5 at 4, 7, 10; Item 6 at 4, 5, 8; Item 8.

<sup>10</sup>Item 3 at 1, 5; Item 5 at 13; Item 6 at 10; Item 8.

<sup>11</sup>Item 7 at 5.

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "Any determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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.

## **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), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are potentially disqualifying. As recently as March 2008, Applicant's CBR reflected \$17,236 in delinquent debt. He claimed one of those debts had been settled in July 2006, some seven months before it was reportedly placed for collection with the current creditor, but did not corroborate that claim with credible evidence. He also claimed to have settled another of the debts in November 2008, but without explanation for why it became delinquent. Neither of these two debts appears on his October 2008 Equifax CBR, but both were reported by different services on the earlier reports so that fact is not dispositive. The \$101 returned check debt, formerly reported by Equifax, disappeared from his most recent report so its validity is not established at this stage. The existence of more than \$17,000 in delinquencies in March 2008, some dating back to 2002, is sufficient to raise both of these disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters, and shifting the burden to Applicant to rebut, explain, extenuate or mitigate those concerns.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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's financial irresponsibility is both long-standing and continues to date. Although he reportedly has substantial excess monthly income, he did not demonstrate that delinquent indebtedness is unlikely to recur, since some delinquent debt remains and casts continuing doubt on his trustworthiness. The evidence does not support application of this potentially mitigating condition.

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 did not demonstrate that any of his delinquent debt arose from circumstances that were beyond his control. The one he admits still owing was for some type of vacation resort arrangement. The other two major delinquencies were for credit cards, and the reasons for the underlying charges or why he did not pay them in a timely fashion were not provided. Applicant has not established mitigation of any of his debts under this provision.

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). This mitigating condition was not asserted by Applicant and there is no evidence to support it in this record. 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 submitted insufficient evidence to carry his burden of proof in support of his claim to have resolved the credit card debts alleged in SOR ¶¶ 1.a and 1.b, and provided no evidence of progress toward resolving his \$6,272 debt that has been delinquent since 2002. It may be the case that some mitigation would be established by his recent efforts to resolve his delinquencies, but even if his claims are accepted, insufficient time and responsible performance has occurred to date to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues in part to date.

### **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. Applicant is a mature individual who is responsible for his choices and conduct. He presently has at least \$6,272 in delinquent debt, and did not meet his burden to prove resolution of \$10,863 in delinquent credit card debt. None of his debt was shown to have arisen for reasons beyond his control.

Applicant has the apparent present ability to resolve financial delinquencies, but offered no explanation for not having done so. His debts continue to create substantial potential for pressure, coercion, or duress. He provided no information to indicate that continuation or recurrence of financial problems could be considered unlikely. The

record contains insufficient other evidence about his character or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his history of not meeting his financial obligations and inability or unwillingness to satisfy his current debts.

### **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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge