



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-07592 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: Pro Se

June 4, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted an electronic questionnaire for investigations processing (e-QIP) on June 26, 2007. On December 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, 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 January 27, 2009, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on February 19, 2009. The FORM was forwarded to Applicant on February 20, 2009. Applicant received the FORM on March 17, 2009. He had 30 days to submit a response to the FORM. He did not submit a response. On May 15, 2009, the FORM was forwarded to the hearing office. The FORM was assigned to me on May 18, 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, Applicant admits to the allegations in SOR ¶¶ 1.a, 1.b and 1.d. He denies the allegation in SOR ¶ 1.c. (Item 3)

Applicant is a 41-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as an engineer tech with the defense contractor since September 2002. He served in the Army National Guard from April 1995 to March 2005. He is married and has three children and two stepchildren. (Item 4)

On December 16, 2008, Applicant submitted an electronic questionnaire for investigations processing (e-QIP) in order to apply for a security clearance. Applicant's background investigation revealed the following delinquent accounts: a \$4,750 civil judgment that was entered against Applicant on February 1, 2002 (SOR ¶ 1.a: Item 5, credit report dated September 19, 2008 at 2; Item 6; Item 8 at 4); a \$59 satellite television account placed for collection in September 2007 (SOR ¶ 1.b: Item 5, credit report dated September 19, 2008, at 7; Item 7 at 1; Item 8 at 12); a \$7,053 account placed for collection in May 2007 (SOR ¶ 1.c: Item 5, credit report, dated September 19, 2008 at 7); and a \$12,918 account owed to the Department of Defense placed for collection in August 2007 (SOR ¶ 1.d: Item 5, credit report, dated September 19, 2008, at 14-15; Item 7 at 2).

In his response to the SOR, Applicant indicated that he was in the process of negotiating a payment arrangement pertaining to the debt alleged in SOR ¶ 1.a. At the close of the record, it is unclear whether an agreement was made. He provided proof that the \$59 debt alleged in SOR ¶ 1.b was settled. (Item 3 at 1) He disputes the debt alleged in SOR ¶ 1.c. On January 12, 2009, he entered into a repayment agreement related to the debt alleged in SOR ¶ 1.d. He agreed to pay \$250 a month towards the debt. He provided a bank record that showed a \$250 payment was made on January 23, 2009. He provided no proof of subsequent payments. (Item 3)

In response to interrogatories dated September 30, 2008, Applicant provided proof that he resolved other delinquent accounts that were not alleged in the SOR, but were listed on the credit report obtained during his background investigation. In the response to interrogatories, he initially disputed the debt owed in SOR ¶ 1.a, claiming that it was a personal loan that was fraudulently taken out in his name. (Item 5) However, he admits the debt in his response to the SOR.

The record does not provide information as to the status of Applicant's current financial situation. Applicant did not explain the cause of his financial problems. He did not provide information about his work performance.

## 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. 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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations); apply to Applicant's case. The SOR alleges four delinquent accounts, an approximate total of \$24,780.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is not applicable. Three of Applicant's accounts became delinquent in 2007. Although not alleged in the SOR, Applicant had eight other delinquent accounts which were addressed in his response to interrogatories. Although these accounts were resolved, it is worth considering these additional delinquent accounts when reviewing the extent of Applicant's financial problems. Of the four accounts that remain unresolved, Applicant resolved the \$59 debt alleged in SOR ¶ 1.b. Three debts remain unresolved. FC MC ¶ 20 (a) does not apply because Applicant has a lengthy history of financial problems. Questions remain as to Applicant's ability to resolve his financial situation.

FC MC ¶ 20(b) (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) does not apply. The record evidence does not indicate the cause of Applicant's financial problems. I cannot conclude his financial problems were caused by circumstances beyond Applicant's control. I also cannot conclude Applicant acted responsibly under the circumstances because he did not provide information regarding his personal financial situation (such as net monthly income, monthly expenses, a budget, etc.)

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) does not apply. There is no evidence that Applicant attended financial counseling. While he has resolved several of his delinquent accounts prior to the SOR being issued, three delinquent accounts remain, totaling approximately \$24,721. While he entered into a payment agreement with the debt alleged in SOR ¶ 1.d, he provided proof that he only made one payment. I cannot conclude he is timely making payments under the terms of his payment plan without proof of additional payments. It is unlikely that his debts will be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.b, and the debt alleged in SOR ¶ 1.d. However, he has not provided proof that he has been making timely payments towards his repayment agreement pertaining to the debt alleged in SOR ¶ 1.d. He has not settled or resolved the debts alleged in SOR ¶¶ 1.a and 1.c. Some credit should be given to Applicant because he resolved several accounts that appeared on his credit report during his background investigation, but were not alleged in the SOR. However, a significant amount of unresolved delinquent debts remain.

FC MC ¶20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) potentially applies with respect to the debt alleged in SOR ¶ 1.c. Applicant disputes this debt. However, he provided no evidence that he is taking action to formally dispute this debt. There is insufficient proof to apply FC MC ¶20(e).

Applicant's failure to take steps to resolve his delinquent accounts remains a security concern. He has not mitigated the security concerns raised under financial considerations.

### **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. While Applicant resolved a lot of debts prior the SOR being issued, he has a significant amount of unresolved delinquent debt. Insufficient information was provided as to the cause of the financial problems and Applicant's current financial situation. Applicant did not provide enough evidence to support mitigation of the financial considerations concern.

### **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:         | For Applicant     |
| Subparagraph 1.c:         | Against 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge