



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



In the matter of: )  
)  
) ISCR Case No. 08-08039  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

January 8, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 20, 2008 (GE 1). On September 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline F (Financial Considerations).<sup>1</sup>

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<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.

Applicant answered the SOR on October 20, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on October 31, 2008. DOHA issued a notice of hearing on November 5, 2008. I convened the hearing as scheduled on November 11, 2008. The government offered exhibits (GE) 1 through 3, which were received without objection (Tr. 18). Applicant testified on his own behalf and submitted exhibits (AE) 1 through 5, which were received without objection (Tr. 22). I granted Applicant's request to keep the record open until December 12, 2008, to submit additional matters. He submitted AE 6 - 8 post-hearing. DOHA received the transcript of the hearing (Tr.) on December 2, 2008.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.k to 1.p. He denied the allegations in SOR ¶¶ 1.a, 1.d, and 1.g to 1.i. After a thorough review of all evidence of record, including his demeanor and testimony, I make the following findings of fact.

Applicant is a 54-year-old computer help desk manager in charge of an eight person team. He works for a government contractor providing computer support to a government agency (Tr. 56-57). He graduated from high school, and has completed approximately two years of college courses on and off over the years (Tr. 5). He last enrolled in college during the fall of 2007 seeking a degree in computer information assurance and computer forensic investigation (Tr. 49). He served in the U.S. Army Reserve from 1970 to 1987 (Tr. 81-82).<sup>2</sup> He also claimed he served two years on active duty from 1972 to 1974. In 1987, he was honorably discharged from the Reserves at the rank of private first class (E-3).

Applicant married his first wife in 1978 and they were divorced in 1984. He married his second wife in 2000 and they were divorced in 2001. He has two adult children, ages 31 and 26 (Tr. 81).

In February 2008, Applicant submitted a security clearance application (GE 1). He disclosed that in 1983 and 1984 he was charged with possession of a dangerous controlled substance and served one year probation for each conviction. There is no evidence to show Applicant has been involved with illegal drugs since then. He also reported that in March 2006, he left a job by mutual agreement following allegations of unsatisfactory performance.<sup>3</sup>

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<sup>2</sup> Applicant's testimony is discrepant with information he provided in section 16 of his security clearance application (GE 1). GE 1 indicates he served approximately one year in the Army Inactive Reserve (1973), and from June 1980 to May 1985. He also claimed he received an honorable discharge from the U.S. Army National Guard. There are no documents in the record to corroborate his assertions.

<sup>3</sup> The SOR has not alleged this adverse information is of security concern, and I have not made any negative inferences or conclusions based on this information.

Applicant has worked for his current employer, a government contractor, since December 2007. He claimed to be a valuable employee with a good working record. Since December 2007, his gross salary has been approximately \$57,600 a year, or about \$3,100 net a month (Tr. 74). He also receives a \$50 stipend for driving his church's bus during the weekends. He lives with his father and pays \$700 rent. He claimed to have no loans or financial obligations other than those discussed during his hearing. His monthly net remainder is around \$400 (Tr. 74).

In his answers to the e-QIP financial questions, Applicant indicated he had his wages garnished by his state's child support enforcement agency, and that during the last seven years he was over 180 days delinquent in some debts. Applicant's background investigation addressed his financial problems, and included the review of March and August 2008 Credit Bureau Reports (CBR).

The SOR alleges fifteen delinquent/charged off accounts totaling approximately \$42,600. SOR ¶ 1.a (\$6,679)<sup>4</sup> is a debt for legal fees incurred by Applicant and his sister (Tr. 58-62). Applicant claimed he made some initial payments; however, he presented no evidence to support his claim. Applicant's sister made all the payments on this debt from August 2006 to August 2008 (AE 1). In 2008, Applicant's sister filed for bankruptcy protection and was discharged of this debt. He is now disputing the debt, because he believes his sister's bankruptcy discharge also released him of this obligation. However, Applicant did not provide any evidence that he filed for bankruptcy protection. He has made no payments on this debt since August 2008. He claimed he contacted the creditor to dispute the debt.

Applicant admitted the debt alleged in SOR ¶ 1.b (\$519). At his hearing, he claimed he was getting a large sum of money in December 2008 (source undisclosed), and promised to pay the debt (Tr. 33). Applicant settled this debt for \$400 and paid it on December 9, 2008 (AE 6). He did not explain the origin of the money he used to pay the debt.

Applicant admitted the debt alleged in SOR ¶ 1.c (\$409). He claimed he settled the debt in October 2008 for \$266. He promised to pay it on December 5, 2008 (Tr. 34-36). Applicant paid this debt around December 23, 2008 (AE 7). SOR ¶ 1.d (\$813) originated as a result of arrearages on his child support obligations. Applicant paid the debt on June 11, 2007 (Tr. 27).

SOR ¶¶ 1.e (\$6,586) and 1.f (\$8,879) both concern car notes. In 2003, Applicant received a "second chance" auto loan (SOR ¶ 1.f) to buy a used 2002 Dodge Stratus for \$12,000 (Tr. 84-87). He claimed the car was stolen and wrecked by the thief. Applicant claimed he had cancelled the car insurance because he was in the process of buying a new car (Tr. 39). Applicant settled this account for less than its full value and paid it off, presumably, in January 2007 (GE 2 at 9).

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<sup>4</sup> SOR ¶ 1.a alleges a debt of \$16,026. Applicant's sister paid most of the debt. The outstanding balance is around \$6,679.

The debt alleged in SOR ¶ 1.e (\$6,586) is still outstanding. In 2003, Applicant bought a used 2002 Chevy Malibu (Tr. 36, 67, 86). He testified this car was also broken into and, in June 2008, he decided to return the car to the dealer. At his hearing, Applicant promised to contact the creditor and make payment arrangements (Tr. 66-67). As of December 11, 2008, he claimed this debt was in mediation for payment arrangements (AE 6).

Applicant disputed SOR ¶¶ 1.g (\$2,837) and 1.h (\$3,277). Both debts are delinquent credit card accounts (Tr. 39-40). Applicant disputed both debts because the creditor did not specify whether the account holder was Applicant or his father. Applicant lives with his father, and both have the same name. His father had a stroke in 2003 and became disabled. Applicant admitted he had a credit card account with the same bank, but could not recall when (Tr. 68). He denied any of these two alleged debts were his, because the total amount of the charges was too high. To his recollection, his credit card account was a “second chance credit card” and had a \$500 limit (Tr. 41). He claimed he disputed these debts and they are under investigation. He presented no evidence to show he has formally disputed these accounts. Both debts are outstanding.

SOR ¶ 1.i (\$1,000) alleged a debt to an unspecified medical provider. Applicant claimed he formally disputed the debt and it is under investigation. He promised to pay it if it turned out to be his debt (Tr. 42).<sup>5</sup>

Applicant’s evidence shows he paid the following debts: SOR ¶ 1.k (\$784), paid on September 24, 2008 (Tr. 42, AE 6); SOR ¶ 1.l (\$73), paid on November 14, 2007 (AE 4); SOR ¶ 1.m (\$874), paid on December 9, 2008 (AE 6); SOR ¶ 1.n (\$350), settled before the hearing and paid on December 5, 2008 (Tr. 42, AE 6); and SOR ¶ 1.o (\$100) paid on November 24, 2008 (Tr. 42, AE 6). Applicant claimed he also paid SOR ¶ 1.p (\$107) on November 25, 2008 (Tr. 42, AE 6); however, he submitted no documentary evidence to support this claim.

Applicant expressed remorse for his financial problems. He acknowledged he should have been more diligent in addressing his debts (Tr. 48). He believed his old delinquent debts were closed, and as such, he did not have to pay them anymore. Although he has been consistently employed since 2000-2001, Applicant explained he fell behind on his debt payments because he was underemployed and underpaid. Since 2003, he could not find a good paying job and struggled financially (Tr. 83). He claimed he was willing to pay his debts, but he did not have the financial means to make all his old debt payments and afford his day-to-day living expenses. He was making those payments he could afford.

In the summer of 2007, he sought and received financial counseling through his church (Tr. 76). He promised to resolve all his delinquent debts as soon as possible (Tr. 79). Applicant sees his ability to obtain access to classified information as an “open

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<sup>5</sup> The SOR does not contain any subparagraph 1.j.

door” to his financial and professional well being. He understands he must clean up his credit to pursue his professional goals.

## Policies

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s eligibility for access to classified information.<sup>6</sup>

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 controlling 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.”<sup>7</sup> 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

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>7</sup> *Egan*, *supra*, at 528, 531.

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**

Under Guideline F, the security concern is that an Applicant’s 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. AG ¶ 18.

The SOR alleges fifteen delinquent/charged off accounts totaling approximately \$42,600. Of these, I find that four of Applicant’s delinquent debts remain outstanding: SOR ¶¶ 1.a (\$6,679), 1.e (\$6,586), 1.g (\$2,837), and 1.h (\$3,277), for a total of approximately \$19,379. Applicant paid the following debts during 2007: SOR ¶¶ 1.d, 1.f, 1.k, and 1.l. He paid the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.m-1.p after receipt of his September 2008 SOR.

Applicant presented some evidence of efforts to pay or resolve his legal obligations. He claimed he did not have the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and, AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's conduct does not warrant application of any mitigating conditions. AG ¶ 20(a) does not apply because his financial problems are not isolated. He currently has four delinquent debts that are still outstanding. The ongoing nature of his delinquent debts shows "a continuing course of conduct."

Applicant presented evidence that established circumstances beyond his control contributing to his inability to pay his debts, i.e., he was underemployed / underpaid. AG ¶ 20(b) applies, but only partially. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. This is evidence, in part, by his purchase of several vehicles, apparently beyond his financial means. He made some effort to resolve his debts by entering into settlement agreements and paying some of his creditors. However, Applicant failed to take any action to resolve his debts until after he was confronted about his delinquent debts during the security clearance background investigation process. He has been consistently employed since 2000-2001. His efforts to repay delinquent debts started in 2007. He presented no corroborated evidence of efforts to resolve his delinquent debts from 2001 to 2007.

AG ¶ 20(c) does not apply because, although he paid 10 of his delinquent debts, there are no clear indications that his financial problem is being resolved or is under control. His inability to pay his debts shows he was financially overextended. Furthermore, Applicant failed to explain where he obtained the funds to pay for his delinquent debts during 2007 and 2008. There is the concern that Applicant may have just shifted the debt to another creditor(s), or that he acquired additional debt beyond his financial means. He currently has four delinquent SOR debts totaling \$19,379. Applicant failed to establish that he is no longer financially overextended. Considering the totality of the circumstances, Applicant's actions to repay his creditors do not raise to the level of good-faith efforts to resolve his debts.

### **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, well trained man. He honorably served two years of active duty service and 15 years in the National Guard. He has been successful working for a defense contractor since December 2007. Because of his time in the service, age, and education, Applicant knew or should have known the importance of being financially responsible. His behavior shows he lacks self-control, judgment, reliability, and trustworthiness.

Overall, the record evidence fails to convince me of Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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.e, 1.g, and 1.h:	Against Applicant
Subparagraphs 1.b - 1.d, 1.f, and 1.i – 1.p:	For 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 continue Applicant's security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge