



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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-----, ----- ) ISCR Case No. 08-08140  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

June 19, 2009

**Decision**

WHITE, David M., Administrative Judge:

Applicant repaid some of his delinquent debt, but did not demonstrate his ability to repay more than \$90,000 in remaining delinquent debt. He provided insufficient evidence to mitigate resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on February 12, 2008. On February 4, 2009, 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 March 18, 2009, 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 April 8, 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 April 14, 2009, and returned it to DOHA. He timely submitted additional material concerning repayments toward his debts, and made no objection to consideration of any evidence submitted by Department Counsel, in a letter dated May 11, 2009, that was received by DOHA on May 13, 2009. On May 15, 2009, Department Counsel indicated that he did not object to the admissibility into evidence of anything submitted by Applicant. I received the case assignment on May 28, 2009.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He is married, with no children. He has been employed in his present capacity since January 2008. He has no prior military service.<sup>4</sup> In his response to the SOR, he admitted the truth of all allegations in SOR ¶¶ 1.a through 1.h, without further explanation.<sup>5</sup> He provided additional information and explanation concerning these debts in his response to the FORM. Applicant's admissions are incorporated in the following findings.

Applicant graduated from college with a degree in Mass Communications/Public Relations in 1996. From 1996 to 2005, he worked as a "Chemical Process Technician/Warehouse Material Handler" for a manufacturing company. During this time, he worked to increase his qualifications for employment in the information technology (IT) field. To this end, he took additional college courses and various operating system training/certification programs. Finally, in 2003, he received another bachelor's degree in Computer Information Systems. In June of that year, he also purchased a home with a mortgage totaling \$260,652. He continued to seek IT employment until 2005, when he was finally offered a temporary position at \$30,000 per year. He decided to accept this position despite the 50% reduction in salary that was involved, because his manufacturing job lacked any upward mobility. His initial IT employment did not turn out well or lead to a permanent position, and after 15 months he left for another tech firm position that paid him \$55,000 per year.<sup>6</sup>

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<sup>2</sup>Item 3.

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

<sup>4</sup>Item 4.

<sup>5</sup>Item 3.

<sup>6</sup>Answer to FORM at 1-2; Item 5 at 4.

Throughout this period, Applicant used credit cards and loans to meet education and living expenses that exceeded his income. His mortgage loan was never delinquent, but he was unable to repay many unsecured debts on time. He did make some partial payments toward some of them, but continues to owe substantially more than he can afford to repay. Particulars concerning the SOR-listed debts are as follows:

SOR ¶ 1.a involves a credit card account that was charged off by the original creditor in April 2006, in the amount of \$38,461, and transferred to another creditor. The debt grew to \$39,680 by December 5, 2008, despite Applicant's periodic payments of \$100 to \$200 toward the debt between November 2006 and May 2009. After his latest payment, the amount due is \$35,111, and he is being charged 23.99% interest.<sup>7</sup>

The debts alleged in SOR ¶¶ 1.b and 1.f involve the same credit card debt as reported on two different credit bureau reports (CBRs). As of December 5, 2008, this debt was \$16,946. It was charged off and placed for collection by the original creditor after it became delinquent in August 2005. Applicant made three \$100 payments to the collection agency toward this account in January, February, and April 2009.<sup>8</sup>

SOR ¶ 1.c describes a consumer loan account that was placed for collection after it became delinquent in September 2005. The balance due as of December 5, 2008, was \$14,176. Applicant offered no evidence of any payments toward this debt.<sup>9</sup>

Applicant had two delinquent student loans as alleged in SOR ¶¶ 1.d and e. These loans, incurred in connection with Applicant's second bachelor's degree, were combined for an original total loan amount of \$12,597. On December 5, 2008, both loans were reported 150 days past due in the total amount of \$9,028, as alleged and admitted. Since January 2009, Applicant has made four payments toward this debt, totaling \$1,650. These payments have brought the loan into a current status, with \$145 monthly payments due going forward toward the remaining \$7,608 balance.<sup>10</sup>

Applicant owed \$16,390 on another charged-off credit card debt as alleged in SOR ¶ 1.g. This debt also became delinquent in August 2005, and was charged off in June 2006. Applicant documented no payments toward this debt, but in January 2009, he retained an attorney for \$950 to negotiate a repayment agreement for him. He reported no progress toward resolution, however.<sup>11</sup>

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<sup>7</sup>Item 5 at 4; Item 6 at 1; Answer to FORM at 3 and entry A.

<sup>8</sup>Item 5 at 4, 5; Item 6 at 3; Answer to FORM at 4, 5 and entry B.

<sup>9</sup>Item 5 at 16; Item 6 at 3; Answer to FORM at 4.

<sup>10</sup>Item 6 at 3; Answer to FORM at 4 and entry D.

<sup>11</sup>Item 5 at 4; Answer to FORM at 5 and entry G.

Finally, Applicant defaulted on another educational loan from a bank in the amount of \$7,948. His last payment toward this loan was in March 2006, and it was charged off by the creditor in October 2006. Applicant submitted an IRS Form 1099-C from a bank with a different name showing cancellation of \$7,624 in debt on October 2, 2008, implying that this reflected cancellation of this obligation. However, the account number does not match the one shown on the CBR, and neither the creditor's name nor the debt amount match either. Accordingly, it does not establish extinguishment of this debt.<sup>12</sup>

In sum, the evidence establishes that Applicant still has five outstanding delinquent debts totaling at least \$90,271, not including the formerly delinquent student loan debt of which \$7,608 remains outstanding. He provided no information concerning his current monthly income or expenses from which to determine whether he will continue to spend more than he earns or have any legal means by which he could reduce his outstanding debt. He showed no evidence of financial counseling or other efforts to learn better financial management, and 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 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.

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<sup>12</sup>Item 5 at 5; Answer to FORM at 5 and Entry H.

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. Department Counsel cited both of these conditions in his argument, and both are supported on this record. Applicant documented a few payments toward some of his delinquencies. However, he did not demonstrate the ability to pay these debts going forward, and has a lengthy history of not meeting his financial obligations. More than \$90,000 in delinquent debt remains outstanding as of date the record closed. The evidence supporting these disqualifying conditions requires a closer examination and balancing of resulting security concerns with any potentially mitigating matters, and shifts 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. He remains substantially in debt and his current financial situation precludes a finding that delinquent indebtedness is unlikely to recur. 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, that the debts were unavoidable, or caused by anything other than spending more than he earned. 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). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” There is no evidence of financial counseling, but some mitigation under these provisions was established by his recent and commendable efforts to resolve some of his delinquencies and bring his student loans into current status. However, the record is devoid of evidence supporting his ability to follow through on repayment of more than \$90,000 in outstanding debts, and insufficient responsible performance has occurred to date to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues in large 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 \$90,000 in debt, and did not meet his burden to prove an ongoing ability to repay it. None of his debt was shown to have arisen for reasons beyond his control. His actions in repaying some debts were commendable, but insufficient on balance to support a finding that such financial irresponsibility will not recur. His debts continue to create substantial potential for pressure, coercion, or duress. 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 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:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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