



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-08392
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro Se*

September 21, 2009

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On May 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 in writing on June 9, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2009. DOHA issued a Notice of Hearing on July 31, 2009. I convened the hearing as scheduled on September 2, 2009. The Government offered Exhibits (GE) 1 through 6. Applicant did

not object and they were admitted. Applicant testified and offered Exhibits (AE) A through D, which were admitted without objection. The record was held open until September 9, 2009, to allow Applicant time to submit additional documents, which he did. They were marked as AE E through H. The Government had no objections and the documents were admitted and the record closed.<sup>1</sup> DOHA received the transcript of the hearing (Tr.) on September 10, 2009.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old and works as an Information Systems Specialist for a federal contractor. He served in the Marine Corps from 1987 to 1993, and was honorably discharge in the pay grade of E-4. He married in 1991, and has three sons, ages 22, 21, and 16.

Applicant had difficulties transitioning from military employment to civilian employment in 1993. His wife was not working when he was discharged. He worked in the security field upon his discharge and then from 1994 to 2001, he was a truck driver. He was laid off in 2001. He worked for a realty company doing information technology until 2005. He was again laid off and toward the end of 2005, he and his family relocated to another state where he thought the cost of living was lower and it would be easier to get a job. It took approximately three to four months for him to find employment, which he did in 2006. He continued working in the information technology field until January 2007. His mother-in-law was sick and a decision was made to relocate to where she was living. He left his job and did not find employment until he was hired by his current employer in April 2007.<sup>2</sup>

In 1999, Applicant's wife inherited her childhood home. Applicant and his wife refinanced the home. When he was laid off, they filed for bankruptcy to save the home from being foreclosed. The bankruptcy was later dismissed and he stated they took a loss on the property. He stated that when they refinanced the home, the mortgage company would only provide them with checks made out to their creditors. The checks totaled \$65,000. He could not figure out how to contact the creditors to give them the checks. He brought the checks to the hearing. The mortgage company later went out of business and the checks were no longer valid. He stated these checks were to be used to pay his creditors.<sup>3</sup>

From 2001 to 2005, Applicant was enrolled in college classes. He was working full-time during this period. He took out student loans to pay for his tuition. The debts in

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<sup>1</sup> HE I.

<sup>2</sup> Tr. 19-23, 57-68.

<sup>3</sup> Tr. 20-22, 34-40, 54-57.

SOR 1.a and 1.b are his student loans. The loans were deferred while Applicant was attending school. He did not contact the loan company when he stopped school or was experiencing financial problems. They are in a default status. He has not made any payments on his student loan debts (total amount alleged \$44,833). It is noted that for a period of time, Applicant's wages were garnished for his student loans. He is not sure when the garnishment started or how many payments he made. The garnishment stopped in August 2009. It is unclear what the current amount owed is on the student loans. He stated he always intended to pay the loans and several months ago his wife contacted the creditor, but they are waiting for them to call back. He stated he was busy working and could not contact the creditors. Applicant provided a post-hearing statement saying he is prepared to negotiate making payments on this account.<sup>4</sup>

In February 2007, Applicant's youngest son was in an accident and was injured. Applicant believes some of the bills alleged on the SOR are for his medical bills. He does not know this for certain. He has not paid the bills. His son recently received an insurance settlement check for \$10,000. Applicant hopes to use that money to pay some of the medical bills. Two medical debts (presumably ¶ 1.g for \$376; the other amount is \$100, but it is unclear which debt on the SOR it pertains to.) are included in his debt consolidation plan.<sup>5</sup>

Applicant was aware that his debts could negatively affect his ability to obtain a security clearance so sometime in December 2008, he contacted a debt consolidation company. He explained to the company that he needed to show the government that he was actively pursuing resolution of his delinquent debts. He told them to include all of his delinquent debts in a payment plan. In his answer to interrogatories, he provided a list of creditors that were to be included in his payment plan. The list includes the debts in SOR ¶¶ 1.g, 1.j, 1.n, 1.q, 1.r, 1.s, 1.u, 1.v, 1.x, and 1.y. It also includes two additional creditors not listed on the SOR. It did not include SOR ¶¶ 1.d, 1.e, 1.f, 1.h, 1.k, 1.l, and 1.m listed on the SOR. The plan required him to start making monthly payments of \$306 per month beginning on January 19, 2009. He learned in January 2009, that one of his sons was in legal trouble. He paid \$750 for bail and \$1,500, as a retainer fee for a lawyer. His son's grandmother helped pay the additional balance for the legal services. Due to this issue, Applicant did not start making his monthly payments as agreed. He contacted the company and arranged to begin the payments in March 2009. During that month, Applicant seriously injured his eye and needed surgery. He was on short term disability and did not go back to work until June 2009. He did not begin the payment plan in March 2009. He again renegotiated the payment plan and anticipated beginning payments on September 17, 2009, with monthly payments of \$336. Applicant provided a statement and an attachment which included a new debt management plan. He stated there are discrepancies in the amounts because the balances either have been

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<sup>4</sup> Tr. 22-33, 44-54; GE 2, 6; AE E.

<sup>5</sup> Tr. 23, 84-88; AE F.

renegotiated as settlement amounts or have been increased to allow for hidden fees or discrepancies.<sup>6</sup>

Applicant does not know what the debt is in SOR ¶ 1.i. (\$346). He thinks it could be an electric bill, but he has not contacted the creditor nor made any payments.<sup>7</sup>

The debt in SOR ¶ 1.o (\$1,970) is a credit card debt that Applicant thought was included in his debt consolidation plan. He did not provide any documented proof. He explained that his intention was to include all of his debts in his plan, but he does not know which debts are in the plan. His updated plan does not include this debt.<sup>8</sup>

The debt in SOR 1.p (\$973) is a credit card debt. He stated he does not know if it is included in his payment plan. He has not made any payments on it. He indicated he used credit cards when he was unemployed. It is not listed in his updated plan.<sup>9</sup>

The debt in SOR 1.t (\$1,602) is a collection account. No payments were made on this account. It does not appear that this debt is included in updated payment plan.<sup>10</sup>

The debt is SOR 1.w (\$330) is a phone bill that is not paid.<sup>11</sup>

The debt in SOR 1.z (\$20,000) is for a defaulted car loan. Applicant stated he bought a 2002 Ford Explorer in 2004 for \$32,000. He defaulted on the loan in December 2005. He stated he was paying the collection agency \$500 a month beginning sometime at the end of 2006 or early 2007. He has not made a payment since March 2009. He stated his wife had been making the payments when she had a job in 2008. She did not work in 2007, so he made the payment when he could. Applicant was interviewed by an Office of Personnel Management Investigator in May 2008. During his interview, he stated he had not made a payment on this loan since 2005. His statements are inconsistent. He noted that his wife received calls from the collection agency, but he could not recall the name. Applicant stated in his updated statement that he is negotiating with the collection company on this debt and his wife was unable to find the receipts for their payments. The debt remains unpaid.<sup>12</sup>

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<sup>6</sup> Tr. 22-26, 40-43, 68-92; AE E, F.

<sup>7</sup> Tr. 92-95.

<sup>8</sup> Tr. 95-98; AE F.

<sup>9</sup> *Id.*

<sup>10</sup> Tr. 98-99; AE F.

<sup>11</sup> Tr. 99.

<sup>12</sup> Tr. 100-111; GE 2; AE E.

Applicant verified that he has not made any payments to the debt consolidation company. He has not made any payments toward his student loans. He has not made payments to any of the other creditors. Applicant's wife is presently unemployed. They have three vehicles. The 2002 Ford Explorer that they defaulted on is still in their possession. They also have another 2002 Ford Explorer that was given to them as a gift, but Applicant explained it barely works. The third vehicle is a 2007 F150 truck that Applicant bought in December 2008, for \$17,000. He stated he makes \$500 a month payments. He does not have insurance on the vehicle, so when he drives it, he does it illegally.<sup>13</sup> Applicant contributes \$280 a month to his 401k. He has not filed his 2008 federal income taxes. He stated the reason for his failure to file was because it has been a hectic year.<sup>14</sup> Applicant does not have a budget and has not had any financial counseling. Applicant explained that because he works it has been difficult to find time to contact his creditors. He has left some of that responsibility to his wife. In Applicant's answer to the SOR, he noted that he works a compressed work schedule so he is off work every other Friday.<sup>15</sup>

Applicant provided character statements that stated he is an honest, hardworking, God-fearing man. He gives freely of his time and is a good friend. His doctor provided a statement that he is a personable man with a serious and disciplined work ethic.<sup>16</sup>

### **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 overarching 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.

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<sup>13</sup> I have not considered this conduct for disqualifying purposes, but will consider it when analyzing the "whole person."

<sup>14</sup> Id.

<sup>15</sup> Tr. 112-134.

<sup>16</sup> AE G, H.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant has a significant history of not meeting his financial obligations. He has more than \$76,700 in delinquent debts that are unpaid. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 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;
- (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"); and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because he has many delinquent debts that remain unpaid. He did not take action to resolve these debts until his security clearance became an issue. I find mitigating condition (a) does not apply. Applicant has had financial problems since he left the Marine Corps more than 16 years ago. He has been unemployed for periods of time. He also has had family responsibilities that affected his finances. His son had legal problems and he had an eye injury and was only receiving disability. These were conditions that were beyond his control and raise the application of mitigating condition (b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. In this case, he made a choice to quit his job and move before he had another job, thereby leaving him unemployed for a period of time. He did not set up a payment plan until he realized his security clearance was an issue. He purchased a vehicle after another was repossessed and before resolving this debt. He has not contacted some of his creditors. I find mitigating condition (b) only partially applies. Applicant has not received any financial counseling. Although he contacted a debt consolidation company and set up a plan, he has not made any payments on the plan. Not all of his debts are included in the plan. He does not have a budget and there are no significant indicators to show the

problem is being resolved and is under control. He has not addressed his delinquent student loans. At this juncture, I cannot find that he has made a good-faith effort to resolve his delinquent debts. I find mitigating conditions (c) and (d) do not apply.

### **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 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 facts and circumstances surrounding this case. Applicant served his country as a Marine. Since being discharged from the Marines in 1993, he has experienced financial problems. He was unemployed for a period of time. He had family medical issues. His son had legal problems. These events were beyond his control. However, after 16 years Applicant has not developed a budget or a sound financial plan to address his financial obligations. He recently set up a payment plan, but until he demonstrates that he has made consistent monthly payments on that plan, it is too early to conclude that his finances are under control. He has not addressed all of his debt, including large debts owed for student loans and a repossessed vehicle. 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 Applicant failed to mitigate the security concerns arising under the guideline for 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.z:	Against Applicant



## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge