



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-08702
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro Se*

March 24, 2009

**Decision**

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 December 2, 2008, 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 January 17, 2009, and requested a hearing before an administrative judge. The case was assigned to me on February 3, 2009. The case was originally scheduled for March 3, 2009, but was continued. DOHA issued a Notice of Hearing on February 17, 2009. I convened the hearing as scheduled

on March 10, 2009. The Government offered Exhibits (GE) 1 through 8. Applicant did not object and they were admitted. The Government also offered a demonstrative exhibit that was marked as Hearing Exhibit (HE) I. Applicant testified and offered Exhibits (AE) A through E. Department Counsel did not object and they were admitted. The record was held open until March 19, 2009, to allow Applicant to submit additional documents, which he did. They were marked as AE F through H.<sup>1</sup> Department Counsel had no objections and they were admitted and the record was closed. DOHA received the transcript of the hearing (Tr.) on March 18, 2009.

### **Findings of Fact**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 31 years old. He served in the Army on active duty for six years and in the Army Reserves for two years. He deployed to Bosnia twice and to Honduras. He was honorably discharged as an E-4. He has an associate's degree in network systems technology. He has worked for a federal contractor as a security technician since November 2005. Applicant has been married since 2005. His wife has a medical condition that limits her ability to work. Applicant and his wife live with her parents and pay them rent.<sup>2</sup>

Applicant admitted he was "neglectful" with his finances. He did not have the money to pay his bills. He has attempted to help his family by giving them money to pay their bills. Some of his delinquent debts he was aware of and others he did not know about. He understands that he owes money to creditors, but he needs to pay his daily expenses.<sup>3</sup>

The debt in SOR ¶ 1.a is a judgment (\$3,344) for a debt for a store credit card. He believes the debt in SOR ¶ 1.t is the same debt because he had no other credit cards from the store. The debt became delinquent in approximately 2004. Applicant got the credit card for his wife's parents. He is not sure what they purchased. He spoke to his mother-in-law about the debt, but they are unable to pay it also. Applicant has not paid the debt and his in-laws have not paid it.<sup>4</sup>

The debt in SOR ¶ 1.b is a state tax lien (\$950). Applicant believes that his previous employer was not withholding enough tax from his pay thereby causing the

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<sup>1</sup> AE F consisted of awards, decorations and commendations Applicant received while on active duty, along with a copy of his honorable discharge papers. AE G and H are releases of tax liens. HE II is a copy of Department Counsel's email stating he has no objections to the exhibits.

<sup>2</sup> Tr. 25-27; AE F.

<sup>3</sup> Tr. 23-25.

<sup>4</sup> Tr. 40-42, 68-73.

debt. He stated he did not know he owed the money and believed it was for his 2004 taxes. He filed his taxes on time, but did not have the money to pay them. Applicant provided a release of tax lien notice for 2005. It shows the amount paid as \$949.89. The document is dated November 18, 2008.<sup>5</sup>

The debt in SOR ¶ 1.c is a state tax lien (\$1,048). Applicant believed that his employer was not withholding enough tax from his pay. He believes his wages were garnished to repay the debt. Applicant provided a release of tax line notice for 2003. It shows the amount paid as \$1,084. The document is dated August 1, 2008.<sup>6</sup>

The debt in SOR ¶ 1.d is a credit card debt (\$7,638). He used the credit card to help his girlfriend, now wife, with purchases and paying her bills. He has had no contact with the creditor in the past two years. He has not made any payments since 2003 and has no payment plan to resolve the debt.<sup>7</sup>

The debts in SOR ¶ 1.e is for cell phone service (\$1,177). Applicant believed the original debt was around \$800 and he had the money to pay the debt, but gave it to his mother-in-law so she could pay her mortgage. He has not contacted the creditor to resolve the debt, but will try to pay it off.<sup>8</sup>

The debts in SOR ¶¶ 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, 1.n, 1.o, 1.p, and 1.q are all medical debts. They total approximately \$1,833. All are in collection and are for services provided to both Applicant and his wife. He believes some of the debts are copayments or for appointments that were missed. He stated he did not know he owed them at the time. He tried to talk to the creditors. Some of the debts were for emergency room visits, others he does not know what they were for. He has not paid or resolved any of these debts.<sup>9</sup>

The debt in SOR ¶ 1.r (\$8,182) is for a vehicle that Applicant co-signed for his in-laws. They defaulted on the loan in 2006 and it is in collection. The vehicle has not been repossessed, but rather his mother-in-law has been trying to contact the creditor to return the vehicle. They do not drive the vehicle. The debt is unresolved.<sup>10</sup>

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<sup>5</sup> Tr. 42-44; AE G.

<sup>6</sup> Tr. 44-47; AE H.

<sup>7</sup> Tr. 53-55.

<sup>8</sup> Tr. 55-58.

<sup>9</sup> Tr. 58-64.

<sup>10</sup> Tr. 64-67.

The debt in SOR ¶ 1.s (\$175) is for cable television. Applicant disputes this debt. He believes he paid the bill, but has not contacted the creditor to dispute the debt. He did not provide documentation to show he paid it.<sup>11</sup>

Applicant owes approximately \$20,000 in student loans that are deferred. The deferment will expire in May 2009 and Applicant will be responsible for making payments. He estimated the monthly bill will be approximately \$150.<sup>12</sup>

Applicant has not paid his delinquent debts because he does not have the money. He is afraid to contact the creditors because he can not pay them. Applicant admitted he made mistakes with his finances. He has not had financial counseling.<sup>13</sup>

Applicant's wife testified and stated he has attempted to pay his delinquent debts but the creditors wanted too much money. She acknowledged that three of the debts were incurred by her parents and they have not repaid Applicant. She believes Applicant would never jeopardize his country. He is honest and does not get in trouble. She hopes to get a job soon to help with the family finances.<sup>14</sup>

Applicant's father-in-law testified that Applicant is an outstanding person, who is dedicated to his job and always does the right thing. He has experienced some bumps in life and tries to make the right decision, but made some mistakes. Applicant has tried to help him out financially and he admitted he has not repaid Applicant. Applicant and his wife pay rent to live with their in-laws and they help out with some of the other expenses as needed.<sup>15</sup>

Applicant also provided character letters from supervisors and coworkers. They consider Applicant to be honest, reliable, trustworthy, efficient, competent and courteous. He is a dedicated employee with a positive attitude.<sup>16</sup>

Applicant does not have a budget. It appears his expenses exceed his income. His wife is looking for a job to help with the finances.<sup>17</sup> Applicant's delinquent debts are approximately \$22,438.

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<sup>11</sup> Tr. 67-68.

<sup>12</sup> Tr. 75-77.

<sup>13</sup> Tr. 82.

<sup>14</sup> Tr.84-94.

<sup>15</sup> Tr. 96-100.

<sup>16</sup> AE A.

<sup>17</sup> Tr. 29-40, 77-78.

## 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. 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 and 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and especially considered the following:

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

Applicant has many debts, some that have been delinquent for more than five years. He is afraid to contact the creditors because he does not have the money to pay them. I find both of the above disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the 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;

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

(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.

Applicant's behavior is recent because he has many delinquent debts that remain unpaid. He has not contacted many of his creditors or made nominal attempts to pay his creditors. His conduct casts doubt on his reliability, trustworthiness and good judgment. I find (a) does not apply.

Applicant did not present evidence that his financial problems were the result of conditions beyond his control. He has given money to his in-laws for their bills and co-signed on a vehicle that they then defaulted on. These actions were to the detriment of his financial responsibilities and within his control. His in-laws have not repaid him. I find mitigating condition (b) does not apply. Applicant has not received financial counseling and has not provided evidence of a good-faith effort to pay his creditors. He did satisfy his tax debts, but they were delinquent for years before they were satisfied. He has not provided evidence that the problem is being resolved or under control. I find mitigating conditions (c) and (d) do not apply.

Applicant disputed he owed certain debts. However he has not contacted the creditors recently to resolve his disputes and failed to provide any documentation to support his disputes. Therefore, I find (e) does 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 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 young man who has served his country honorably. He takes care of his wife and helps her family. Applicant has many delinquent debts with no plan or workable budget for resolving them. He may have legitimate disputes, but has not provided any evidence to substantiate his claims or taken any steps to dispute them. He has not contacted his creditors to resolve his delinquent debts, concerned that they will not be willing to work out plans with him. Nor has he been able to convince his in-laws to provide assistance in paying the debts that were incurred for their benefit. 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 from 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.t:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly within 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