



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



In the matter of: )  
)  
) ISCR Case No. 08-09757  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel

For Applicant: *Pro Se*

December 16, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations, and the whole person analysis. His eligibility for a security clearance is denied.

Applicant executed and signed a security clearance application (SF-86) on March 11, 2008. He resigned his SF-86 on February 19, 2009. On July 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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 July 29, 2009, Applicant answered the SOR in writing and requested a hearing before an administrative judge. The case was assigned to me on August 31, 2009. I convened a hearing on October 5, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced six exhibits, which were identified and marked as Applicant's Ex. A through F. All of Applicant's exhibits were admitted without objection. I left the record open until October 13, 2009, so that Applicant could provide additional information for the record.

On October 23, 2009, Applicant filed six additional documents, which were marked as Ex. G through L and admitted into evidence without objection. DOHA received the transcript (Tr.) of the hearing on October 13, 2009.

### **Findings of Fact**

The SOR contains eight allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.h.). In his Answer to the SOR, Applicant denied the eight allegations. The Government conceded that its documents established that the delinquent debt in SOR ¶ 1.e. was satisfied before the SOR was issued and was therefore alleged in error. (Ex. 5 at 30; Tr. 107-108, 160-161.)

Applicant is 43 years old and employed as a program manager by a government contractor. In 2001, he received a Bachelor of Science degree in management information. He has worked for his present employer for approximately 1½ years. From 1987 to 1995, he served in a state National Guard unit. In 1995, he enlisted in another branch of military service, where he served in the active reserves until 2001. He was first awarded a security clearance in 1993. (Ex. 1; Tr. 46-47, 53-54, 59.)

Applicant has been married and divorced twice. He is the father of four daughters. His first daughter was born in 1984. Applicant and the child's mother did not marry. Applicant married another woman in 1988. He and his wife had a daughter, born in 1989. Applicant and another woman had a child together in 1993. In 1995, Applicant and his wife had another daughter together. In 1996, Applicant and his wife divorced. (Ex. 1; Tr. 47-49.)

Applicant married for the second time in 2002. He and his second wife separated in September 2007 and divorced in July 2009. No children were born to the marriage. Applicant pays approximately \$800 a month in child support to the mothers of the two younger daughters, who are now 16 and 14. (Tr. 47-48, 52.)

From 1997 to 2001, Applicant was self-employed as a computer consultant. He did not manage the business receipts carefully, and, as a result, he underpaid his state income taxes and incurred tax liens. He entered into a payment plan and satisfied about \$10,000 of an estimated \$20,000 in delinquent taxes. His financial problems continued, and, in February 2002, he petitioned for Chapter 7 bankruptcy. He was granted a discharge of his debts in August 2002. The debts discharged in the bankruptcy totaled approximately \$39,000. Applicant's 2002 bankruptcy was alleged at SOR ¶ 1.g. (Ex. 1; Ex. F; Tr. 84-85, 107-111, 115-121.)

In July 2007, Applicant purchased a home as an investment property. To purchase the home, he took out three loans: a first mortgage for \$38,000; a home improvement loan for \$20,000; and an additional line of credit tied to the first mortgage for \$7,000. His plan was to refurbish the property and then sell it. (Ex. 3 at 1; Tr. 122-123.)

In September 2007, Applicant and his second wife separated. He was ordered to pay her \$700 a month in spousal support. He paid the spousal support for one or two months, and then fell into arrearages that amounted, at the time of his divorce, to \$2,617. The divorce decree provided that any arrearages owing at the time of the divorce would be waived. Applicant is responsible for paying his former wife \$700 in spousal support until February 2010. (Ex. C; Tr. 51-52, 75-76, 85-86.)

In November 2007, Applicant's employer advised him that he would be transferred to another unit in the company. Applicant did not accept the transfer, and he had to leave the company. His annual gross salary was then approximately \$50,000. He moved to another location and worked part-time as a consultant for the firm which now employs him full time. (Tr. 77-80.)

Applicant's mortgage on the investment property went into foreclosure. He had been offered a payment plan to prevent foreclosure, but he lacked sufficient funds to participate in the payment plan. About one year ago, Applicant sent a monthly payment of \$459 to the mortgagee. The check was not accepted and was returned. As of the date of his hearing, he owed \$38,375 on his first mortgage and \$20,000 on the home improvement loan,<sup>1</sup> which had also foreclosed. The home mortgage debt is alleged at SOR ¶ 1.d., and it remains unsatisfied. (Ex. 4; Tr. 97-98, 129.)

The SOR alleged at ¶ 1.a. that Applicant owed \$7,070 to the creditor who provided him with a line of credit tied to his first mortgage. In his answer, Applicant denied the debt. At his hearing, he explained that he owed the debt but had been making payments on the debt. He provided a payment agreement showing that he had committed to pay \$500 in July 2009 and \$547.56 each month beginning August 2009. Additionally, he provided a copy of the front and back of a check he had made out to the creditor on September 24, 2009, for \$547.56. He did not provide proof of payment of

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<sup>1</sup> The home improvement loan debt was not alleged in the SOR.

\$500 in July 2009, and he did not provide proof of payment of \$547.56 in August 2009.<sup>2</sup> (Ex. A; Tr.61-70.)

The SOR alleged at ¶ 1.b. that Applicant was indebted to a state agency for a collection account in the amount of \$4,279. Applicant identified this delinquency as his spousal support arrearage debt. He provided documentation to corroborate his statement that the arrearage debt had been extinguished by his final decree of divorce, dated July 24, 2009. (Ex. B at 26; Tr.73.)

The SOR alleged at ¶ 1.c. that Applicant owed a debt of \$2,434 to a state social service agency for arrearages in his child support. Applicant provided documentation to establish that the agency had garnished his wages to satisfy the debt, and it had been paid down so that only \$257 of the original debt remained to be satisfied. (Ex. B at 18; Tr. 88-97.)

The SOR alleged at ¶ 1.f. and ¶ 1.g. that Applicant owed two state tax liens of \$560 each. At his hearing, Applicant provided documentation to establish that both liens had been satisfied in April 2007. (Ex. E at 8-10; Tr. 112-114.)

Applicant's net monthly salary is \$3,393. His monthly rent is \$1,150, which he pays to his mother, with whom he lives.<sup>3</sup> In addition, he has the following monthly fixed expenses: groceries: \$200; clothing and dry cleaning: \$150; cable: \$100; car insurance for his car and his mother's car: \$250; life and other insurance: \$250; spousal and child support: \$1,500;<sup>4</sup> miscellaneous: \$100. (Tr. 140-146.)

On the personal financial statement he provided in response to DOHA interrogatories in November 2008, Applicant identified two credit card debts and a charge card debt that he paid regularly. The first credit card obligation identified by Applicant (Debt A) reflected a balance of \$4,000. Applicant reported that he paid the creditor \$150 each month on the debt. The second credit card obligation (Debt B) reflected a balance of \$2,500, and Applicant reported that he also paid the creditor \$150 each month on that debt. The third debt, a charge card (Debt C), reflected a balance of \$1,000. Applicant reported that he paid that creditor \$100 a month. These debts were not alleged as delinquent on the SOR. (Ex. 2 at 4; Ex. 4 at 2.)

At his hearing, Applicant stated that he paid \$547 each month on the line of credit debt alleged at SOR ¶ 1.a. He also stated that he made monthly payments of \$100 on Debt A, \$60 on Debt B, and \$50 on Debt C. Applicant's monthly fixed expenses

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<sup>2</sup> In a post-hearing submission, Applicant provided a letter from the lender stating that his balance on the account on October 13, 2009 was \$5,475.63. (Ex. I.)

<sup>3</sup> Applicant stated that his mother did not need his rent to pay her mortgage, and she sometimes excused him from his monthly rental obligation. (Tr. 140-141, 145-146.)

<sup>4</sup> In February 2010, Applicant will no longer be obliged to pay \$700 each month in spousal support.

and his monthly debt payments leave him with a net monthly remainder of -\$1,064. (Tr. 125-128, 147-149.)

Applicant noted that his \$700 spousal support obligation would end in February 2010. He also observed that his child support obligation for his 16-year-old daughter would end on 2011, and his child support obligation for his 14-year-old daughter would end in 2013. He acknowledged that he provided his 19-year-old daughter with \$100 each month and would likely provide some reduced support to his other daughters after he was no longer obligated to provide them with child support. (Ex. 2 at 4; Tr. 150-151.)

Applicant does not have a second job. He had consumer credit counseling between 10 and 15 years ago, but he has had no financial counseling since that time. (Tr. 155-156.)

Applicant provided letters of character reference from two co-workers who found him to be trustworthy and reliable. His employer provided a letter for the record stating that his salary would be increased from \$50,000 a year to \$110,000 a year if he were granted a security clearance. (Ex. D; Ex. G; Ex. H; Tr. 56.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an 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 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, the administrative judge applies these guidelines 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.

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. . . .” 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying.

Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Additionally, “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis” can also raise concerns about an applicant’s financial stability and ability to protect classified information. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. His monthly budget shows a negative monthly remainder of -\$1,064. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant’s financial difficulties date at least to his bankruptcy in 2002. In 2007, he purchased a house as an investment. That same year, he and his second wife separated, and he lost his job when he elected not to accept a transfer. He could not meet his mortgage payments on the house, and he was unable to sell it because of the downturn in the housing market. While Applicant was directly affected by the downturn in the real estate market and was subject to events beyond his control, he also elected to purchase a property to renovate and sell as an investment. When his employer sought to transfer him to another unit in the company, he left his job, knowing that he was responsible for two mortgages on his investment property as well as spousal and child support. Applicant acquired another job within months of leaving his job in 2007. He has been employed by his present employer for 1½ years. The \$38,000 mortgage debt alleged at SOR ¶ 1.d. remains unsatisfied, and Applicant’s expenses exceed his income each month by over \$1,000.

To his credit, Applicant provided documentation that established that he had payment plans in place for the debts alleged at SOR ¶¶ 1.a. and 1.c. He also provided documentation to corroborate his statement that he no longer owed the spousal support arrearage alleged at SOR ¶ 1.b. Additionally, he provided documentation to corroborate

his assertions that the tax liens alleged at SOR ¶¶ 1.f. and 1.g had been satisfied. The 2002 Chapter 7 bankruptcy alleged at SOR ¶ 1.h. is not, in itself, a disqualifying condition under the Directive.

Applicant's spousal and child support obligations, his mortgage payments, and his monthly fixed expenses and credit card debt payments caused him to become financially overextended. His monthly expenses exceed his income, and he has few resources available to pay them at this time. He hopes to pay his creditors in the future, but his current financial situation casts doubt on his ability to plan realistically for the future.

Applicant has not received financial counseling for many years. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He has no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that while AG ¶¶ 20(b) and 20(d) apply in part to Applicant's case, none of the other Financial Considerations mitigating conditions applies to the facts of Applicant's case.

### **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 the facts and circumstances surrounding this case. Applicant is a mature adult of 42 years. His skills and abilities are appreciated by his employer and co-workers. He has acted in good faith to resolve many of his delinquent debts.

However, his financial problems date to at least 2002, when he was granted a discharge in bankruptcy and thereby acquired a fresh start in his financial life. In spite of



recent serious financial difficulties, he has not sought financial counseling. His lack of attention to his financial delinquencies continues to raise security concerns.

Applicant is unable to meet his financial obligations and finds that his expenses exceed his income by approximately \$1,000 each month. He has a \$38,000 mortgage debt that is unresolved. He only recently began making payments on his line of credit of \$7,000. He owes \$20,000 on a home improvement loan. While his mother sometimes allows him to put off paying his monthly rent to her, his financial situation remains precarious. It is not clear that he can continue to meet his obligations to satisfy the debt alleged at SOR ¶ 1.a. or that he has the financial resources to satisfy the mortgage debt alleged at SOR ¶ 1.d. He has not sought additional employment to supplement his income, and he lacks a realistic plan to satisfy his financial obligations, raising concerns about his judgment and potential financial vulnerability.

Applicant may find it beneficial to seek professional financial counseling and legal advice about resolving his debts and acquiring financial stability in the near term. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of his case, the Financial Considerations adjudicative guideline, and the whole person analysis, that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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. through 1.c.: For Applicant

Subparagraph 1.d.:                 Against Applicant

Subparagraphs 1.e. through 1.h.: For 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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Joan Caton Anthony  
Administrative Judge