



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-09773 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Pro Se

July 29, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF 86), on June 17, 2008. On February 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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 March 3, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 1, 2009. The case was assigned to me on May 15, 2009. On June 1, 2009, a Notice of Hearing was issued, scheduling the hearing for June 16, 2009. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4 without objection. Applicant testified and offered no exhibits. The record was held open until July 1, 2009 to allow Applicant to submit additional documents. Applicant timely submitted two documents. Appellant Exhibit (AE) A is a

20-page document. Department Counsel's response to AE A is marked as Hearing Exhibit (HE) I. AE B is a three-page document. Department Counsel's response to AE B is marked as HE II. The transcript was received on June 24, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 54-year-old share point administrator employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since June 2008. He attended two years of community college. From September 1985 to February 1990, he served in the National Guard. This is his first time applying for a security clearance. He is married and has two sons, ages 34 and 16. (Tr at 5-6, 17; Gov 1)

On June 17, 2008, Applicant completed a Questionnaire for Sensitive Positions (SF 86). (Gov 1) He disclosed several delinquent debts in response to section 27 and 28 on his questionnaire. A subsequent background investigation confirmed that Applicant had the following delinquent accounts: a \$9,243 balance resulting from an automobile repossession that was placed for collection in August 2002 (SOR ¶ 1.a: Gov 2 at 9; Gov 3 at 4; Gov 4 at 1); a \$57 medical account that was placed for collection June 2008 (SOR ¶ 1.b: Gov 2 at 10; Gov 3 at 4); a \$125 medical account that was placed for collection in February 2007 (SOR ¶ 1.c: Gov 3 at 8); a \$35 medical account that was placed for collection in November 2007 (SOR ¶ 1.d: Gov 2 at 11; Gov 3 at 8); and a \$100 medical account that was placed for collection in March 2006. (SOR ¶ 1.e: Gov 2 at 10)

Additional delinquent accounts include: a \$53 medical account that was placed for collection in November 2007 (SOR ¶ 1.f: Gov 2 at 11); a \$513 credit card account that was charged off in October 2001 (SOR ¶ 1.g: Gov 3 at 5); a \$1,618 credit card account that was placed for collection in June 2008 (SOR ¶ 1.h: Gov 3 at 5); a \$119 medical account that was placed for collection in March 2003 (SOR ¶ 1.i: Gov 3 at 6); and a \$6,671 credit card account that was placed for collection in May 2008. (SOR ¶ 1.j: Gov 3 at 7, 10)

Additional delinquent accounts include: a \$4,179 credit card account that was placed for collection in May 2008 (SOR ¶ 1.k: Gov 3 at 7, 10); a \$1,669 credit card account placed for collection in April 2008 (SOR ¶ 1.l: Gov 3 at 8); and two medical accounts totaling \$150 that were placed for collection in August 2006. (SOR ¶ 1.m: Gov 3 at 9)

Applicant's financial difficulties began in April 2001. He was laid off from a job where he earned \$75,000 a year. After he was laid off, he received unemployment compensation of \$225 a week but it did not meet the family expenses. He found

employment in October 2001 but his annual income was reduced to \$36,000. His employer did provide health insurance. Applicant worked in this position for six years. He was unable to pay his older debts because of his reduced income. He currently earns \$75,000 in his current job. (Tr at 18, Gov 2 at 4)

Applicant's wife suffers from chronic health problems and is unable to work. She had surgery in 2005. They have incurred several medical bills in relation to his wife's treatment. Of the 13 debts alleged in the SOR, seven of the debts are medical bills. (Tr at 18, 34-35; Gov 2 at 4)

In response to interrogatories on December 26, 2008, Applicant provided a personal financial statement. His net monthly income is \$4,457. Monthly expenses include: a mortgage payment: \$1,105, groceries: \$1,100, utilities: \$900, clothing: \$120, car expenses: \$300, medical: \$160, insurance: \$27. His total monthly expenses are \$3,712. Applicant also owes his son \$8,800. The debt arose from a failed joint small business venture. He pays him \$200 a month towards this debt. He owes the IRS approximately \$11,538. This is a debt owed for tax year 1999. Applicant was working as a 1099 contractor and made a mistake with regard to paying his taxes. The IRS applies his income tax refunds towards this debt and he currently makes \$230 monthly payments towards this debt. The total amount he pays out each month is \$4,142. After expenses, he has \$315 left over each month. (Tr at 22-23, 33; Gov 2 at 6)

In 2004, Applicant and his wife moved in with his mother-in-law. All three of their names are on the mortgage. They attempted to refinance their home in order to use the money to pay off their bills but they did not qualify. They decided that they had no alternative but to file for bankruptcy. During the hearing, Applicant testified that he filed for bankruptcy in January or February 2009. The record was held open until July 1, 2009, to allow Applicant to submit a complete copy of his bankruptcy filing. In his post-hearing submission, he indicated that they had not filed for bankruptcy but had retained a bankruptcy law firm on January 26, 2009. He provided a receipt indicating that he paid the bankruptcy firm a retainer to represent him. (Tr at 19-21; AE A at 20) In a later submission, Applicant provided a list of creditors that were to be listed in his bankruptcy case. The bankruptcy law firm provided this list. (AE B) At the close of the record, it is unclear whether Applicant's bankruptcy case has been filed and whether the bankruptcy will be under Chapter 7 or Chapter 13.

Seven people wrote reference letters on Applicant's behalf. The general manager of Applicant's company wrote that during his 13-month period of employment, Applicant has had access to sensitive company records to include proprietary and commercially sensitive intellectual property. He describes Applicant as mature, stable, and professional. He does not question Applicant's integrity, loyalty or commitment. (AE A at 2) Another co-worker describes Applicant as reliable and utterly loyal. Applicant can always be counted on to do the right thing. (AE A at 3)

The national treasurer of a nonprofit organization that supports and funds the families and children of deceased special operations military personnel states that

Applicant volunteers as the web-master for the organization. He states that Applicant spent countless hours working to improve and maintain the security of the club's internet connections without compensation. He recommends Applicant as a man of high character who can be trusted. (AE A at 4)

Other references describe Applicant as "level-headed, industrious with an unusually active and rigorous work ethic"; "forthright knowledgeable and dependable, yet, easy to work with"; and "a consummate professional." (AE A at 5-7) His oldest son, a Staff Sergeant in the Army, states that his father has a giving and generous nature. His honesty is above reproach. (AE A at 8)

A performance evaluation from Applicant's previous place of employment, dated July 16, 2007, indicates Applicant exceeded the standards. The evaluation describes Applicant's strengths as being "a leader, an outstanding technician, and a hard working, dedicated team player." (AE A at 14-19)

### **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.

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.

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); FC DC ¶19(c) (a history of not meeting financial obligations); and FC DC ¶ 19(e) (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) apply to Applicant's case. Applicant has accumulated 13 delinquent accounts since 2001, an approximate total balance of \$24,532.

The government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following Financial Considerations Mitigating Conditions (FC MC) potentially apply to Applicant's case: FC MC ¶ 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) does not apply. All of Applicant's delinquent accounts were unresolved at the close of the record. Applicant incurred numerous delinquent accounts over an eight-year period. While Applicant retained a bankruptcy attorney with the intent to file for bankruptcy in January 2009, a formal filing has not occurred at the close of the record. It cannot be determined at this time that Applicant's debts will be discharged in bankruptcy. Given his history of financial irresponsibility, it is too soon to conclude Applicant developed a track record of financial stability. FC MC ¶ 20(a) does not apply.

FC MC ¶ 20(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) applies, in part. Applicant's financial problems are the result of being laid off in 2001, a seven month period of unemployment, and significant reduced income upon finding employment. His wife's medical issues also created additional expenses. The second prong to consider under FC MC ¶ 20(b) is whether Applicant acted responsibly under the circumstances. While circumstances beyond Applicant's control contributed to his inability to pay his debts. He has been gainfully employed since October 2001. In June 2008, Applicant received a significant increase in pay but claims he was unable to resolve any of his accounts. While his wife's illness created additional medical expenses, he had health insurance since October 2001. Of the 13 delinquent accounts in the SOR, seven accounts were medical accounts placed for collection, all of which were under \$150. Applicant had the ability to resolve these accounts. For this reason, I give FC MC ¶ 20 (b) less weight.

FC MC ¶20(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) does not apply. Applicant has not received financial counseling. He is in the process of filing for bankruptcy but the outcome of such a filing is uncertain.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. At the close of the record, Applicant retained a bankruptcy firm but had not filed for bankruptcy. While bankruptcy is a legitimate way to resolve one's debts, it is too soon to conclude that his debts will be discharged. Considering his past financial history it is also too soon to conclude Applicant will remain financially solvent even if his debts are discharged in bankruptcy. More than half the delinquent debts were under \$150. They were medical accounts. Several accounts had balances as low as \$35, \$57, \$53, and \$100. Applicant could have made the effort to resolve these accounts. In June 2008, he received over a \$30,000 annual pay increase when he started his current job, yet he made no effort

towards resolving these minimal accounts. It is premature to conclude Applicant made a good-faith effort to resolve his delinquent accounts.

### **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 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. I considered the favorable comments of Applicant's manager, co-worker, former co-workers and friends. I considered Applicant's loss of employment in 2001 and his acceptance of a job with a significantly reduced income. I considered his wife's chronic health issues. While Applicant is in the process of filing for bankruptcy, he has not formally filed. An additional concern was raised because Applicant made no attempt to resolve the accounts that were under \$150 after receiving a significant raise in June 2008 when he became employed in his current position. While Applicant may develop a track record of financial responsibility in the future, it is premature to conclude his financial situation has been resolved. Applicant has not mitigated the security concerns raised under 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:         | Against Applicant |
| Subparagraph 1.c:         | Against Applicant |

|                   |                   |
|-------------------|-------------------|
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | Against Applicant |
| Subparagraph 1.l: | Against Applicant |
| Subparagraph 1.m: | Against 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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ERIN C. HOGAN  
Administrative Judge