



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-09800
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

May 12, 2009

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on January 7, 2008 (Item 4). On December 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E concerning the Applicant. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on December 22, 2008, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on January 13, 2009. The Applicant received the FORM on January 27, 2009, and was given 30 days to submit any additional information. He elected not to submit anything further. The case was

assigned to me on March 24, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

The Applicant is 58 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

### **Guideline F, Financial Considerations**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted all of the allegations under this paragraph. Those admissions are hereby deemed findings of fact.

The Applicant submits that, "All these debts happened after 10/11 2001 and I was Laid off from my job." (Item 3 at 1.) He further states, "I did my best this year (2008) to solve every one of these debts to make arrangements, but it was almost impossible, but I promise that this coming year (2009) I will solve these debts." (Item 3 at 1.)

1.a. The Applicant admits that he is indebted to his State taxing authority in the approximate amount of \$263.00. (Item 7.) This debt has not been paid.

1.b. The Applicant admits that he is indebted to a bank for an account that has been charged off in the amount of \$2,101.00. This debt has not been paid.

1.c. The Applicant admits that he is indebted to the same bank for another account that has been charged off in the amount of \$1,575.00. This debt has not been paid.

1.d. The Applicant admits that he is indebted to the same bank for a third account that has been charged off in the amount of \$2,387.00. This debt has not been paid.

1.e. The Applicant admits that he is indebted to the same bank for a fourth account that has been charged off in the amount of \$2,243.00. This debt has not been paid.

1.f. The Applicant admits that he is indebted to a second bank for an account that has been charged off in the amount of \$2,895.00. This debt has not been paid.

### **Guideline E - Personal Conduct**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in conduct which shows questionable judgment,

lack of candor, dishonesty, or unwillingness to comply with rules and regulations. The Applicant admits both allegations under this paragraph. Those admissions are deemed findings of fact.

2.a. Question 28.a. of Item 4 asks the Applicant whether, within the last seven years, he had been more than 180 days delinquent on any debts. He answered, "No," and did not set forth any of the delinquent debts described under Paragraph 1, above. This answer was, therefore, false.

2.b. Question 28.b. of Item 4 asks the Applicant whether he was currently more than 90 days delinquent on any of his debts. He answered, "No," and did not state any of the delinquent debts described under Paragraph 1, above. This answer was, therefore, false.

The Applicant submitted a written response in his "Answers of Statement of Reasons" (Item 3). That response states, "The explanation to these two answers are both the same. I answered to the best of my knowledge as a 'NO' and now I realized the big mistake I did, I should say 'yes'."

### **Policies**

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” 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. The Applicant, by his own admission, has over \$11,464.00 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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 difficulties arose primarily after 2001, when he was laid off. However, the fact that he has done nothing to pay these debts, and that they have been due and owing for so long, is still troubling. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn . . .), and the individual acted responsibly under the circumstances.” The Applicant argues that many of these debts came from unemployment or underemployment. However, there is no evidence that he has acted responsibly. He states that he was unable to resolve these debts in 2008, but will do so in 2009. A statement that he intends to resolve the indebtedness in the future is not sufficient evidence that he can or will resolve the debts. I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

AG ¶ 20(c) states that it may be mitigating where, “there are clear indications that the problem is being resolved or is under control.” The Applicant’s credit reports show that, in the main, he is making sufficient payments on his current indebtedness. However, as stated above, he has indicated nothing but a desire to resolve his past due indebtedness. This mitigating condition is not applicable.

Based on all of the available evidence, I cannot find that the Applicant has mitigated the allegations under this Guideline. Paragraph 1 is found against the Applicant.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) states that it may be disqualifying where an Applicant engages in the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status,

determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.”

The Applicant’s e-QIP contains false and misleading answers about his financial situation. The Applicant’s statement in his Answer, quoted above, does not sufficiently lessen the security significance of these false answers. None of the mitigating conditions apply. Based on all of the information set forth above, Paragraph 2 is found against the Applicant.

### **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. The Applicant has a history of not paying his debts, and falsified a Government questionnaire concerning those debts. As set forth above, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). In addition, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), or that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial conditions and his personal conduct.

On balance, it is concluded that the Applicant has not successfully overcome the Government’s case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government’s Statement of Reasons.

## 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 THE APPLICANT
Subparagraph 1.a.:	Against the Applicant
Subparagraph 1.b.:	Against the Applicant
Subparagraph 1.c.:	Against the Applicant
Subparagraph 1.d.:	Against the Applicant
Subparagraph 1.e.:	Against the Applicant
Subparagraph 1.f.:	Against the Applicant
Paragraph 2, Guideline E:	AGAINST THE APPLICANT
Subparagraph 2.a.:	Against the Applicant
Subparagraph 2.b.:	Against the Applicant

## Conclusion

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

WILFORD H. ROSS  
Administrative Judge