



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-09824 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Pro Se

August 31, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 10, 2008. On March 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concern 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 April 6, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 28, 2009. The case was assigned to me on June 1, 2009. On June 22, 2009, a Notice of Hearing was issued, scheduling the hearing for July 15, 2009. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered no exhibits. The record was held open until July 29, 2009, to allow Applicant to submit additional documents. No additional

documents were submitted. The transcript (Tr) was received on July 22, 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 the allegation in SOR ¶ 1.a, and denies all remaining allegations.

Applicant is a 47-year-old who was hired by the defense contractor in September 2007. He will be employed full-time if he receives a security clearance. He currently is starting up his own record label which is based out of his home. He served on active duty in the United States Navy from October 1979 to May 1986. From May 1986 to May 1988, he was in the inactive reserve. He was an aviation structural mechanic. He received an honorable discharge. He held a security clearance while in the military and during previous post-military employment with the Veteran's Administration. He is a high school graduate and is a certified Microsoft systems engineer. He is married and has three children, two sons, ages 26 and 21, and a daughter, age 26. He and his wife care for a 17-year-old foster child. (Tr at 5-8, 26-30, Gov 1)

On April 10, 2008, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in order to apply for a security clearance. A subsequent background investigation revealed that Applicant has financial issues. The SOR alleged 14 delinquent accounts totaling approximately \$93,097.06.

The debts include:

SOR ¶ 1.a, \$15,734 judgment related to an automobile which was voluntarily repossessed in October 2005. Applicant says that he has occasionally paid towards this debt. After the judgment was entered against him, he agreed to pay \$100 a month towards this debt. He has not been able to make payments toward this debt. (Tr at 17, 37-42; Gov 2 at 7; Gov 3 at 2; Gov 5 at 4)

SOR ¶ 1.b, \$12,542 credit card account that was charged off in August 2002. Applicant claims that this was a corporate account and it has been removed from his credit report because the debt is more than seven years old. No payments were made towards this account. (Tr at 53-54; Gov 2; Gov 3 at 2; Gov 4 at 1; Gov 5 at 5)

SOR ¶ 1.c, \$4,936 bank account placed for collection in April 2008. Applicant claims this account was removed from his credit report because it was more than seven years old. No payments have been made towards this account. (Tr at 55; Gov 2 at 8; Gov 3 at 3; Gov 5 at 8)

SOR ¶ 1.d, \$6,997 account used to purchase a piano and furniture for a business that he started several years ago. The account was placed for collection in April 2008. Applicant claims this account was removed from his credit report because it was more

than seven years old. No payments have been made towards this account. (Tr at 56-59; Gov 2 at 8; Gov 3 at 3; Gov 5 at 7)

SOR ¶ 1.e, \$94 telephone account placed for collection in November 2007. Applicant claims this is the same debt as the debt alleged in SOR ¶ 1.f. He disputes this debt because he canceled the telephone service. It cannot be determined this is a duplicate of SOR ¶ 1.f due to conflicting account numbers. Debt remains unresolved. (Tr at 60-62; Gov 2 at 7; Gov 3 at 3; Gov 4 at 1; Gov 5 at 7)

SOR ¶ 1.f, \$94 telephone account placed for collection in November 2007. Applicant claims this is the same debt as the debt alleged in SOR ¶ 1.e. He disputes this debt because he canceled the telephone service. It cannot be determined this is a duplicate of SOR ¶ 1.e due to conflicting account numbers. Debt remains unresolved. (Tr at 60-62; Gov 3 at 3; Gov 4 at 1)

SOR ¶ 1.g, \$1,960 credit card account placed for collection in April 2004. Applicant claims this account was closed in good standing. Debt remains unresolved. (Tr at 62-63; Gov 2 at 8; Gov 3 at 3; Gov 5 at 12)

SOR ¶ 1.h, \$1,969 credit card account placed for collection in July 2002. Applicant claims he has never had an account with this company. Applicant claims he has always disputed this account. It was recently removed from his credit report. Debt remains unresolved. (Tr at 63-64; Gov 2 at 8; Gov 3 at 4; Gov 5 at 8)

SOR ¶ 1.i, \$107 cable account for missing cable equipment placed for collection in October 2006. Applicant claims that he was charged for a cable box that he had returned. He claims to have disputed the account on his credit report. Debt remains unresolved. (Tr at 64-65; Gov 2 at 8; Gov 3 at 3; Gov 4 at 1; Gov 5 at 9)

SOR ¶ 1.j, \$12,332 credit union account placed for collection in July 2004. Applicant claims this is the same debt as SOR ¶ 1.a. It cannot be determined this is the same debt as SOR ¶ 1.a based on the record evidence which includes conflicting account numbers. Debt remains unresolved. (Tr at 66; Gov 3 at 3; Gov 5 at 6, 11)

SOR ¶ 1.k, \$6,456 credit card account placed for collection in November 2002. Applicant claims this was a corporate credit card for a nonprofit where he was employed from October 1997 to April 2003. He was the founder of the nonprofit and the chief executive officer. The nonprofit closed. He admits that as an officer of the corporation, he was personally responsible for the account. He claims that the account may have been removed from his credit report because it is more than seven years old. No payments were made towards this account. Debt remains unresolved. (Tr at 66-71; Gov 2 at 4, 8; Gov 3 at 5; Gov 5 at 12)

SOR ¶ 1.l, \$8,821 credit card account placed for collection in April 2008. The account has been delinquent since January 2002. Applicant disputes this account and the dispute is noted on his credit report. He disputes the account because he claims

more than seven years have passed and it should be removed from his credit report. Debt remains unresolved. (Tr at 71-72; Gov 2 at 8; Gov 3 at 6; Gov 4 at 2; Gov 5 at 11)

SOR ¶ 1.m, \$10,708.41 credit card account. Applicant disputes this account because he claims that he had only one credit card with this company. It cannot be determined that this account is resolved based on the record evidence. (Tr at 73; Gov 2 at 8; Gov 3 at 6; Gov 5 at 9)

SOR ¶ 1.n, \$10,708 credit card account placed for collection in August 2002. Applicant claims this account is current. A credit report dated April 23, 2008, indicates this account was paid. Allegation is found for Applicant. (Tr at 75; Gov 5 at 5)

Applicant claims that his credit is now clear because most of his debts are over seven years old. The only debt that he claims responsibility for is the judgment in SOR ¶ 1.a. He has not been able to make payments towards that debt because of unemployment and sporadic employment. He was unemployed from June 2004 to December 2004. He received unemployment compensation during this time. He started his own information technology service but work was sporadic. In 2005, he worked for the Air Force as a contract employee. His contract ended on September 2006. (Tr at 17-18, 30-35)

Aside from occasional sporadic employment, Applicant has been unemployed since September 2006. Currently, he is only able to pay his utility bills, regular bills, and groceries. He is unable to make payments towards his other debts. Aside from the money that he receives for taking care of his foster child, he has no regular income. His wife does not work. (Tr at 41-42, 46)

Applicant states that four generations of his family have served in the military. His daughter is on active duty serving in Iraq. He would never do anything to jeopardize this country. (Tr at 18)

### **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.

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); and FC DC ¶19(c) (a history of not meeting financial obligations) apply to Applicant's case. Applicant encountered financial difficulties since 2001 as a result of some failed businesses and sporadic unemployment. The SOR alleges 14 delinquent accounts, totaling over \$93,000.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifts 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. Financial Considerations Mitigating Condition (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. Most of Applicant's delinquent accounts remain unresolved. It is unlikely that Applicant will be able to resolve his accounts in the near future based on his current income and the amount of the debt. Applicant's financial issues raise questions about his reliability and good judgment.

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, due to Applicant's history of sporadic employment. However, Applicant neglected his debts during periods that he was employed. His approach has been to passively wait for the seven-year period to pass so that the debts would be removed in accordance with the Fair Credit Reporting Act rather than pay his financial obligations. I cannot conclude that he has acted responsibly under the circumstances. For this reason, FC MC ¶ 20(b) is given 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 still has significant financial problems which are unlikely to be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant accepts responsibility for the judgment alleged in SOR ¶ 1.a, he has not been able to make regular payments towards this debt because of his under-employment. He has made no payments towards the remaining accounts. Applicant's plan to resolve his delinquent accounts is to wait for them to be removed from his credit report after seven years in

accordance with Section 605 of the Fair Credit Reporting Act. However, the Appeal Board has held that the fact that debts will be removed from an applicant's credit history in the near future does not preclude their review for security purposes:

...the removal of those debts from his credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant's credit history does not turn on whether Applicant's debts could or could not be legally listed on a credit report after the passage of seven years. ISCR 02-14950 at 4 (App. Bd. May 15, 20030; See ISCR Case 98-0111 at 3 (App. Bd. November 13, 1998).

For the reasons mentioned above, Applicant has not demonstrated a good-faith effort to resolve his debts.

FC MC ¶20(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) does not apply. While Applicant disputes several debts, he has not provided sufficient evidence to conclude that there is a reasonable basis to dispute the legitimacy of the debts.

Applicant's significant financial issues remain. He did not meet his burden of proof to mitigate the security concerns raised under Guideline F.

### **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 Applicant's active duty service in the United States Navy. I considered his history of unemployment and under-employment. The majority of Applicant's accounts remain unresolved. His financial problems are not likely to be resolved in the near future. Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. He did not mitigate the 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 |
| Subparagraph 1.n:         | For 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.

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ERIN C. HOGAN  
Administrative Judge