



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



In the matter of: )  
)  
) ISCR Case No. 08-09913  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Tom Coale, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 30, 2009

**Decision**

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DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On March 1, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 2, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On July 15, 2009, Department

Counsel prepared a File of Relevant Material (FORM) containing nine Items, and he mailed Applicant a complete copy the following day. Applicant received the FORM on July 22, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant submitted a statement on August 20, 2009. Department Counsel had no objection to the document, which I marked as Applicant Exhibit (AE) 1 and admitted into the record. On September 3, 2009, DOHA assigned the case to me.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the allegations contained in Paragraphs 1.a, 1.b, and 1.e of the SOR. He denied the allegations contained in Paragraphs 1.c and 1.d.

Applicant is 44 years old and married. From September 1984 to October 2004, he served on active duty in the U.S. Air Force. He was a technical sergeant at the time of his retirement. He has held a Top Secret security clearance from 1985 to the present. Since retiring from the Air Force in October 2004, he has worked as a senior network engineer for a defense contractor. (AE 1)

Applicant's delinquent debts accrued between 2002 and 2006. He attributes them to several factors: a remote year-long tour to Korea, another five-month deployment, a decrease in his housing allowance, and his wife's failure to properly manage their money while he was gone. In October 2007, he was in a motorcycle accident and then placed on a short term disability, further diminishing his income. (AE 1)

In February 2008, Applicant completed a set of Interrogatories regarding delinquent debts and subsequently discussed his finances with a government investigator. (Item 8) He disclosed that his net monthly income is \$6,953 and expenses are \$2,800, including his rent. He makes monthly payments of \$2,150 on financial obligations and debts, including delinquent accounts. He has approximately \$2,000 remaining at the end of the month. (Item 8) He and his wife are attempting to investigate and resolve their financial problems. (AE 1) He has not received any financial counseling or engaged any debt consolidation services. He thinks his financial situation is manageable. (Item 8 at 5)

Based on credit bureau reports (CBR), dated March 2007, February 2008, and October 2008, Paragraph 1 of the SOR alleges five delinquent debts, totaling \$47,751, which accrued from late 2002 through the middle of 2008. (Items 5, 6, 7) The status of the debts is as follows:

1. Applicant admitted owing the \$118 medical debt listed in SOR ¶ 1.a. He believes it should be paid by the motorist who hit him in October 2007. (Item 3 at 3) He has been trying to resolve it since February 2009. (Item 8 at 2) It remains unresolved.

2. Applicant admitted owing the \$1,300 department store debt listed in SOR ¶ 1.b. In February 2009, he said he was contacting the company about it. (Item 8 at 3) He said that he paid it in 2007, but did not supply any proof of payment. (Item 3 at 3)
3. Applicant denied owing the \$21,954 credit card debt listed in SOR ¶ 1.c. He is unfamiliar with the account. (Item 3 at 3) In February 2009, he said his wife was working with the credit reporting bureau, but had not contacted the creditor. (Item 8 at 3) It remains unresolved.
4. Applicant denied owing the \$10,698 credit card debt listed in SOR ¶ 1.d. He is unfamiliar with the account. (Item 3 at 3) In February 2009, he said his wife was working with the credit reporting bureau, but had not contacted the creditor. (Item 9 at 4) It remains unresolved.
5. Applicant acknowledged the \$13,681 credit card listed in SOR ¶ 1.e. (Item 3 at 3) He said that he paid the debt off in May 2009, but did not submit any evidence of payment.

### **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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable clearance decision.” 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.”

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 an 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.

## **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. Based on three CBRs and his statements, Applicant has been unable or unwilling to satisfy debts that began accruing in 2002. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation. The guideline 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 multiple financial problems arose six to seven years ago, and

continued accruing into 2008. Because the problems are ongoing and not isolated, this condition does not apply.

AG ¶ 20(b) states that mitigation can occur when “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.” Applicant attributed his financial delinquencies to periods of deployment, decreased income, and a period of disability. Those were circumstances beyond his control. However, he did not offer any evidence that he attempted to responsibly manage the debts as they were accruing, which is necessary to support the full application of this condition.

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” is potentially mitigating under AG ¶ 20(c). Applicant did not obtain credit counseling or submit proof that his financial problems are under control, as required under AG ¶ 20(c). Hence, it does not apply. AG ¶ 20(d) applies when the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant asserted that he paid two debts, but he did not provide evidence of such payment. Based on his service history and candid remarks throughout the record, I find his statements credible regarding the debts listed in SOR ¶ 1. b (\$1,300) and SOR 1 ¶ 1.e (\$13,681). Hence, AG ¶ 20(d) applies to those two, but not the other three debts that remain unpaid or unresolved. He denied owning the three debts, but did not produce documentation indicating that he successfully disputed the debts. Such evidence is necessary to trigger mitigation under AG ¶ 20(e), which applies when “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.”

### **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). They include the following:

- (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 44 years old and honorably served this country in the military for 20 years. He has worked for a defense contractor for the past five years and has held a security clearance since 1985. In February 2009, the Government sent him a set of Interrogatories, alerting him to financial delinquencies that could adversely affect his security clearance. In his response to the Interrogatories, he said that he and his wife would be resolving some of the debts, particularly those that were unknown to him. In June 2009, he received the SOR, detailing the specific debts in question. In mid-July 2009, he received the FORM, notifying him that he had an additional 30 days to respond and submit documentary evidence pertinent to his debts. Despite having six months to investigate and address the Government's concerns, he took no action on three of the alleged debts. His failure to responsibly respond to those concerns calls into question his judgment and reliability. Given his long military history and previous experience with the security clearance process, I find it troubling that he did not take more aggressive steps to address all of the Government's specific concerns when he learned of them.

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 his financial issues.

### **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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with 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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SHARI DAM  
Administrative Judge