



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 08-09939  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 25, 2009

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on June 19, 2008. On January 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on February 3, 2009, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on March 2, 2009.<sup>1</sup> Applicant received a complete file of relevant material (FORM) on March 10, 2009, and was provided the opportunity to file

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<sup>1</sup>The Government submitted eight items in support of its contention.

objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant submitted additional information. The case was assigned to me on March 19, 2009. Based upon a review of the case file, eligibility for access to classified information is denied.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by adding ¶ 1.p, alleging Applicant is indebted to a provider in the approximate amount of \$2,194 on a medical account that was placed for collection. As of July 12, 2008, this debt had not been paid. Applicant did not object to the amendment in his response to the FORM. He did not deny the allegation. The Motion to Amend the SOR is granted.

### **Findings of Fact**

In his Answer to the SOR, dated February 13, 2009, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.g, and 1.h, of the SOR (Item 4). He denied the remaining allegations based in part on identity fraud. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 41-year-old employee of a defense contractor. He graduated from high school, and attended college from 1993 until 1997. Applicant served in the U.S. Army from January 1986 until December 1989. He served in the National Guard from February 1990 until December 1991 and again from March 1992 until October 1996. He held a secret clearance while in the military (Item 4). He is divorced and has one son (Item 5).

Applicant worked as an electronics technician for a defense contractor from February 2005 until May 2008. He has continued the same senior level electronics work with his current employer since May 2008. (Item 5). He reports that he worked in the electronics field since 1997. From December 2002 until October 2003 and from September 2001 until January 2002, Applicant was unemployed (Item 5).

The SOR, as amended, alleges 16 delinquent debts, including a 2000 tax lien, and school loans, totaling approximately \$86,000 (Items 6, 7 and 8). The accounts were charged-off or in collection from approximately 2004. The delinquent debts are confirmed by his credit reports (Items 7, 8).

Applicant admitted that the accounts in allegations ¶¶ 1.b, 1.c, 1.g, and 1.h are delinquent accounts. He stated that 1.b and 1.c were paid but the creditor has not shown the account as paid. He did not provide documentation to support this statement. He also admitted that the two delinquent student loans are his responsibility. They total almost \$61,000. In his answer, dated February 13, 2009, he denied the other accounts

because they were accounts opened without his consent. He explained that he notified the credit bureaus (Item 4).

In his letter dated December 17, 2008, (included with his interrogatories) he stated that he has been in touch with his creditors to “catch up” on payments. He explained that he has not been able to arrive at an agreeable resolution. He also explained that he could not provide any applicable documentation for the clearance investigation (Item 6). Applicant tried to apply for a loan to satisfy his commitments but was denied due to his credit score (Item 6).

Applicant’s answer to the FORM does not include any documentation of payment for any of the accounts he admits are his responsibility. He listed a garnishment for delinquent student loans on his security clearance application and an entry on his personal financial statement for payment of \$100 a month toward the loans but he again submitted no documentation to support the claims.

Applicant denied the other allegations in the SOR because “accounts were fraudulently opened by a prior roommate”. He also explained that his ex-wife was responsible for the tax lien.

Applicant’s answer to the FORM reiterated his earlier statement that he contacted the credit bureaus and told them of identity theft by a prior roommate some time in 2003 or 2004. He explained that he is at the mercy of the three credit bureaus to investigate the allegations and correct the accounts in a timely manner. Applicant suggests that an updated credit report would verify that “many of the accounts in question would show that they were fraudulently opened.” Applicant attached two letters from creditors that verify that the accounts were fraudulently placed in his name. The accounts are allegations 1.j and 1.k. Applicant also included letters from TransUnion and Experian, dated March 2009 that reveal an Initial Security Alert has been placed on his credit file for a period of 90 days.

The current status of Applicant’s delinquent debts is as follows: the collection debts and charged off accounts from late 2003 until the present are delinquent and not paid. Applicant did not report receiving financial counseling. He did not provide any documentation to support his position concerning the debts alleged.

Applicant’s current net monthly income is \$2,218. He reported monthly expenses of \$1,700 a month on his personal financial statement. This included a child support payment of \$400. He listed the Department of Education loan (\$111,000) as one debt in repayment for \$100 a month on the personal financial statement, dated November 2008. He listed monthly payments to other creditors totaling \$300. His net remainder is listed as \$218 (Item 6).

## 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, 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<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on numerous accounts totaling approximately \$86,000. He admitted to several delinquent debts. His credit reports confirm his debts. 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.<sup>o</sup> Applicant still has significant delinquent debts from 2004. He has not acted responsibly. His conduct over the last six months with his creditors does not remove security concerns or doubts about his current reliability, trustworthiness, and good judgment. He has approximately \$84,000 in delinquent debt. This mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where 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.<sup>o</sup> As noted above, Applicant reported two periods of unemployment. He did not provide any explanation as to how this impacted his ability to pay his debts. He blames the majority of the delinquent debt on fraudulent use by his roommate. He did not provide any information that he acted responsibly in identifying and resolving these debts. He submitted a 2009 letter that he sent to the credit reporting service concerning an Initial Security Alert but this does not substantiate claims from 2004. I find this mitigating condition does not apply.

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<sup>o</sup>

is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not received counseling. He provided little or no information. His earlier promises in his answer to the SOR to pay in the future do not constitute evidence of financial reform or resolution of debts. His efforts are not sufficient to carry his burden in this case. I conclude these mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows “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.” In this case, Applicant disputed the majority of the debts but did not provide documented proof to substantiate the claim of fraud except to the accounts alleged in 1.j and 1.k. This mitigating condition applies to those two debts but does not apply to the remaining debts.

### **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 common sense 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 reports that the majority of the debts are due to fraud. However, he has not provided any documentation to support the claim. The record contains scant information concerning Applicant. He chose to have his case decided on the written record. His answer to the SOR and submissions to the FORM are not sufficient for him to meet his burden in this case.

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 has not mitigated the security concerns arising from his 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:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	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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NOREEN A. LYNCH  
Administrative Judge