



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-10235
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 9, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed and certified a security clearance application (SF-86) on May 2, 2008. On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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.

Applicant answered the SOR on April 16, 2009, and he requested a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on May 6, 2009. The FORM contained documents identified as Items 1 through 8. By letter dated May 7, 2008, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on May 13, 2009. His response was due on June 12, 2009. He submitted additional information within the required time period. On June 29, 2009, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains four allegations of financial delinquency under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.d.). In his Answer to the SOR, Applicant admitted all four of the Guideline F allegations of financial delinquency and provided additional information. Applicant's admissions are entered herein as findings of fact. (Item 1; Item 3.)

Applicant is 45 years old, married, and employed full-time by a government contractor. In 2003, he started a small communications business, which he operated in his free time. Because of an economic slowdown, he decided to close the business at the end of 2008. He has not previously held a security clearance. (Item 4; Item 5.)

In December 2008, Applicant responded to DOHA interrogatories about his financial situation. He reported a total net monthly household income of \$4,305, which included \$2,200 from his job as a government contractor, his wife's net monthly income of \$1,142, and \$963 from his communications business.<sup>1</sup> His total monthly expenses were \$2,295. Additionally, he reported a first mortgage monthly payment of \$1,212, a second mortgage monthly payment of \$374, and a monthly payment of \$140 on a closed credit card account which totaled \$5,010. His monthly net remainder was \$284. (Item 5.)

Applicant's assets include \$264,000 in real estate, \$3,133 in a 401K plan, and two automobiles valued at \$8,350. (Item 5.)

The delinquent debts, alleged in the SOR and admitted by Applicant, total approximately \$23,270. In 1997, Applicant opened an account with the creditor identified at SOR ¶ 1.b. The account was charged-off in January 2009. With his answer to the SOR, Applicant provided documentation, dated April 7, 2009, to corroborate his statement that he had settled the debt of \$6,398 alleged at SOR ¶ 1.b. (Item 1; Item 3 at 2; Item 7.)

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<sup>1</sup> Applicant's statement that he was closing his communications business in December 2008, suggests that this source of monthly income would then end. (Item 5 at 5.)

Applicant denied being more than 30 days past due on the debt alleged at SOR ¶ 1.c., and he asserted that he would be current on the debt as of May 1, 2009. He also provided documentation, dated April 7, 2009, from the creditor identified at SOR ¶ 1.c which stated that he had not been over 60 days past due on his debt to that creditor since December 2007. (Item 1; Item 3 at 1, 3.)

With his answer to the SOR, Applicant stated that he had telephoned the creditor identified at SOR ¶ 1.a. and was attempting to resolve the debt, which totaled approximately \$16,128. His credit reports for July 15, 2008 and February 12, 2009, showed that the account had been opened in 2003, reported delinquent in 2008, and charged off and closed by the creditor in February 2009. In his response to the FORM, Applicant provided documentation showing that the debt had grown to \$16,687. He also provided a document showing that he had entered into a payment plan with the creditor and had made one payment of \$300 in May 2009. (Item 3; Item 7; Item 8; Response to FORM.)

Applicant offered documentation to establish that on March 5, 2009, his credit card had been charged to satisfy the debt alleged at SOR ¶ 1.d. Department Counsel found Applicant's assertion that the credit card payment satisfied the debt unpersuasive because the account number on the satisfaction letter did not match the account number identified for the account on Applicant's July 15, 2008 credit report. In his response to the FORM, Applicant provided a document corroborating his statement that the debt had been satisfied in full on April 15, 2009. (Item 3 at 4; FORM at 3; Response to FORM at 1, 3-5.)

The record does not reflect that Applicant has received financial counseling.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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.

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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. For a period of several years, Applicant accumulated substantial delinquent debt and did not pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

Several mitigating conditions could apply to Applicant's case. If the financially delinquent 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," then AG ¶ 20(a) might apply. If "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," then AG ¶ 20(b) might apply. If "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," then AG ¶ 20(c) might apply. If "the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts," the AG ¶ 20(d) might apply. Finally, if "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," then AG ¶ 20(e) might apply.

Applicant has a history of unresolved financial delinquencies. He did not take action to resolve three of his financial delinquencies until after he received the SOR, suggesting inattentiveness, lack of sufficient resources to pay his delinquent debts, or a lack of good faith in dealing with his creditors.

In his financial statement, he indicated he was closing his communications business in December 2008, an action which would decrease his monthly income by approximately \$963. He reported in his response to the FORM that he had negotiated a payment plan with the creditor to whom he owes over \$16,000, and he had made an initial monthly payment of \$300 on the debt. His financial statement, however, reflects a monthly remainder of \$284, before deducting \$963 in monthly income lost when he closed his business. This raises a concern that Applicant lacks the financial resources to follow through with the payment plan he negotiated with the creditor identified in SOR ¶ 1.a.

Applicant's financially delinquent behavior happened in the past. However, the delinquencies occurred under circumstances that are likely to recur. Applicant appears to lack sufficient resources to pay or settle his delinquent debt of over \$16,000. The record does not reflect that the circumstances that gave rise to his delinquencies were beyond his control. Applicant has not sought consumer credit counseling. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not mitigate the facts of Applicant's case.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his or her conduct and all relevant 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. Applicant is a mature adult. To his credit, after being put on notice by DOHA of his financial delinquencies, he made an effort to settle or resolve them. It is not clear that he has sufficient monthly resources to sustain the \$300 a month commitment he has made to resolve his \$16,000 delinquent debt. His promise to resolve a debt when he appears to lack sufficient funds to do so raises security concerns about his judgment and reliability. He has not established a reliable track record of timely and consistent payment of his debts over time.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

## **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

Subparagraphs 1.b. through 1.d.: For 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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Joan Caton Anthony  
Administrative Judge