



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-10826
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Pro Se

August 31, 2009

**Decision**

---

HOGAN, Erin C., Administrative Judge:

Applicant submitted a questionnaire for sensitive positions (SF 86) on June 5, 2008. On March 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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.

On April 7, 2009, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on May 19, 2009. The FORM was forwarded to Applicant on May 20, 2009. Applicant received the FORM on June 3, 2009. He had 30 days to submit a response to the FORM. He did not submit a response. On August 4, 2009, the FORM was forwarded to the hearing office and assigned to me on that same date. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## **Motion to Amend the Statement of Reasons**

Department Counsel moved to amend the Statement of Reasons pursuant to E3.1.10 and E3.1.13 of the Directive by adding the following allegation:

1.i. You are indebted to the U.S. Department of Education on a student loan account that has been placed for collection in the approximate amount of \$34,117. As of November 24, 2008, this debt had not been paid.

Applicant was served a copy of the proposed amendment within the FORM. He was given 30 days to respond to the FORM as well as the proposed amendment to the SOR. No response was submitted. Applicant was provided adequate notice. The motion to amend the SOR is approved. (Note: Department Counsel labeled the motion to amend the SOR as paragraph 2.i. It should actually be paragraph 1.i and is marked as such.)

## **Findings of Fact**

In his answer to the SOR, Applicant denies all of the allegations in SOR ¶¶ 1.a – 1.h. (Item 3) He did not respond to the motion to amend the SOR. I am treating his lack of response to the motion to amend the SOR as a denial. (Item 2)

Applicant is a 49-year-old employee with a Department of Defense contractor. He seeks a security clearance. He has been employed as a security officer since June 2008. He is married and has three adult children. (Item 4)

Applicant's background investigation revealed the following delinquent accounts: a judgment in the amount of \$8,259 entered against Applicant in October 2002 (SOR ¶ 1.a: Item 5 at 3; Item 6 at 1); a judgment in the amount of \$3,474 entered against Applicant in March 2003 (SOR ¶ 1.b: Item 5 at 3; Item 6 at 1); a \$53 phone account placed for collection in May 2008 (SOR ¶ 1.c: Item 5 at 5; Item 6 at 1); a \$911 cell phone account placed for collection in March 2007 (SOR ¶ 1.d: Item 5 at 5; Item 6 at 1); a \$285 medical account placed for collection in September 2003 (SOR ¶ 1.e: Item 5 at 5; Item 6 at 1); a \$276 account placed for collection in August 2001 (SOR ¶ 1.f: Item 5 at 4); a \$354 cell phone account placed for collection in October 2002 (SOR ¶ 1.g: Item 5 at 6); and a \$4,217 medical account placed for collection in May 2008. (SOR ¶ 1.h: Item 5 at 7). Applicant has approximately \$34,117 in delinquent student loans that were placed for collection in May 2008. (SOR ¶ 1.i: Item 5 at 5, 6; Item 6 at 2).

In his response to the SOR, Applicant claimed the majority of the debts have been paid. He claims that his attorney has filed a motion to vacate two default judgments alleged in SOR ¶¶ 1.a and 1.b. He claims the \$53 debt alleged in SOR ¶ 1.c was a mistaken entry on his credit report. He claims he settled the account alleged in SOR ¶ 1.d. He is disputing the debts alleged in SOR ¶¶ 1.f and 1.g. He claims medical

insurance paid the medical bills alleged in SOR ¶¶ 1.e and 1.h. (Item 3) He did not provide documentation verifying his assertions.

The status of the delinquent student loan account remains uncertain because Applicant failed to respond to the FORM which contained the motion to amend the SOR by adding SOR ¶ 1.i.

Applicant requests that his case be looked at with tempered mercy. He claims he is a law abiding citizen and would not violate or abridge his U.S. status. He will be checking his credit reports from now on. (Item 3)

### **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

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.

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. Between 2001 and 2008, Applicant incurred eight delinquent debts, totaling \$17,829. He also has approximately \$34,117 in delinquent student loans that have been placed for collection.

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) is not applicable. Applicant continued to incur delinquent accounts as recently as May 2008 (SOR ¶¶ 1.c, 1.h, and 1.i). Although Applicant claims most of the accounts have been resolved, he provided no documentation corroborating his assertions.

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) does not apply. Applicant did not explain the cause of his financial problems. It is noted that two debts are medical debts (SOR

¶¶ 1.e and 1.h). However, they account for \$4,502 of the \$17,829 in debt. There is insufficient evidence to conclude FC MC ¶ 20(b) applies.

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. There is no evidence that Applicant attended financial counseling. At the close of the record, the status of Applicant's delinquent accounts remained uncertain. His financial situation is 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 claims most of the delinquent accounts are resolved, he provided no evidence to verify the accounts were resolved. He provided no information pertaining to his largest debt, the \$34,117 delinquent student loan account. It was Applicant's burden to provide sufficient evidence to show his accounts were being repaid or resolved. He provided no evidence to corroborate his assertions.

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 claims he disputed the debts alleged in SOR ¶¶ 1.e, 1.f, and 1.g, he provided no documentation verifying the disputes or substantiating the bases for the disputes. There is insufficient proof to apply FC MC ¶ 20(e).

Applicant has not mitigated the security concerns raised under financial considerations.

### **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):

- (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 has a significant amount of unresolved delinquent debt. He failed to provide sufficient evidence to establish that most of the debts are resolved. He did not provide sufficient evidence of the steps he is taking towards resolving the remaining delinquent debt, including the significant delinquent student loan account. Applicant has not mitigated the security 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

### **Conclusion**

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

---

ERIN C. HOGAN  
Administrative Judge