



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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-----, ----- ) ISCR Case No. 08-10897  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 11, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant accrued 15 delinquent debts totaling over \$26,000, in addition to more than \$237,000 in delinquent first and second mortgage loans that are in foreclosure proceedings. This followed his 2001 Chapter 7 bankruptcy discharge. He demonstrated no effort to resolve any of these debts except a very recent filing of another Chapter 7 bankruptcy petition, and provided no evidence to establish ongoing solvency or otherwise mitigate financial security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on May 25, 2005.<sup>1</sup> On July 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended;

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines 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 in writing on August 4, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on September 9, 2009. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on September 14, 2009, and returned it to DOHA. He submitted further evidence and comments in response to the FORM on October 27, 2009, well past the October 14, 2009, deadline, and expressed some objections to the accuracy of Department Counsel's factual assertions. Department Counsel received Applicant's FORM response (AFR) on November 2, 2009, and included it in the record with a memorandum of the same date in which he expressed no objection to its consideration despite its untimeliness. I received the case assignment on November 12, 2009.

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor, where he began working in November 2004. He has no military service, and this is his first application for a security clearance. He is married for the fourth time, with six children now living with him, and four others who live elsewhere.<sup>5</sup> In his response to the SOR, he formally admitted each allegation. Applicant's admissions, including his responses to the SOR and FORM, and to DOHA interrogatories, are incorporated in the following findings.

Applicant filed for Chapter 7 bankruptcy relief in March 2001, with \$87,767 in total liabilities. The proceedings resulted in discharge of his debts in July 2001, the same month his second divorce became final and two months before his third marriage. The record contains insufficient information about the circumstances that led Applicant to seek bankruptcy relief in 2001 to support findings about its causes or reasonableness. His SF 86 reflected continuous employment from 1990 to the time the bankruptcy was filed, with the exception of five months of unemployment from April to September 2000.<sup>6</sup>

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<sup>3</sup>Item 4.

<sup>4</sup>The Government submitted ten Items in support of the SOR allegations.

<sup>5</sup>Item 5 at 1, 5-6, 13-14, 18; AFR at 3.

<sup>6</sup>Item 7; Item 5 at 7-10.

Applicant's third wife had a severe substance abuse problem. She spent so much money supporting her addictions that Applicant had to use credit cards and loans that he could not afford to repay in order to keep the family fed and housed. He purchased a home with a \$232,000 mortgage loan in April 2005. In May 2007, he took out a second mortgage loan for \$95,700. In October and November 2007, he began defaulting on his multiple credit card and mortgage debts. Not including his mortgage loans, he had 15 delinquent debts totaling \$26,034, as listed in the SOR. All of these debts were incurred in his name only, but his wife had access to the funds. By September 2008, the outstanding balance on the second mortgage was \$107,658, and the home was in foreclosure.<sup>7</sup>

Applicant offered no evidence of payment toward, or other attempt to resolve, any of these debts. In August 2009, he and his fourth wife filed his second Chapter 7 bankruptcy proceeding. Although he provided no schedules or other documentation concerning which debts he is seeking to discharge, the bankruptcy would presumably cover all of the SOR-listed debt, as well as thousands of dollars Applicant said that he owes in legal and other professional fees as a result of his third divorce proceedings.<sup>8</sup>

The record contains no evidence about Applicant's current income, living expenses, or ability to resolve his delinquent debts and avoid incurring additional ones.<sup>9</sup> He provided no evidence concerning the quality of his recent professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

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<sup>7</sup>Item 4 at 4-5; Item 6 at 3-7; Item 8 at 4, 12; AFR at 4.

<sup>8</sup>Item 4 at 4-5; Item 10; AFR at 4-5.

<sup>9</sup>Department Counsel cites Item 6 as the source of his comments about Applicant's Personal Financial Statement at page 7 of the FORM. That information was not included in Item 6 or elsewhere.

guidelines in the context 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 the 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, “[t]he 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 as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under three Guideline F DCs, as set forth in AG ¶ 19: “(a) inability or unwillingness to

satisfy debts;” “(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;” and “(c) a history of not meeting financial obligations.”<sup>10</sup> Applicant has been unwilling or unable to satisfy any of his SOR-listed delinquent debts since late 2007, and failed to provide any evidence of his willingness or ability to do so in the future. DC 19(a) is clearly established. He has demonstrated a long history of not meeting financial obligations dating back to his first bankruptcy, including a failure to address any of his delinquencies after becoming aware of the security concerns raised by such conduct. Security concerns under DC 19(c) are also supported on this record. However, this record contains no evidence to establish that Applicant’s debts were caused by frivolous or irresponsible spending on his part. The evidence indicates that his third wife’s substance abuse was the principal source of his financial problems over the past three or four years. To the extent he participated in that arrangement while trying to make their marriage succeed, he is responsible for the debts he incurred. His actions in that regard have not been shown to be frivolous, however. Accordingly, DC 19(b) is not supported by the evidence.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial difficulties. Under MC 20(a), disqualifying conditions 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 financial irresponsibility is recent, involves numerous creditors, and continues to date. He remains substantially in debt, and he provided no evidence concerning his current financial situation that would support a finding that delinquent indebtedness is unlikely to recur. The evidence does not support application of this potentially mitigating condition.

Under MC 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.” Applicant has worked continuously in his current position over the past five years, but his only effort to address any of these delinquencies is to file for Chapter 7 bankruptcy relief for the second time in nine years. He offered no evidence that any debt was incurred due to causes beyond his control. Although his income funded his third wife’s substance abuse, he originated each SOR-listed debt in only his name. He also did not demonstrate that he responsibly reduced non-essential spending in reaction to his mounting debts. Applicant did not establish mitigation of his presently delinquent debts, or of his financial history as a whole, under this provision.

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 MC 20(c). Similarly, MC 20(d) applies where the evidence

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<sup>10</sup>FORM at 6.

shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant established minimal mitigation under these two provisions because he offered no evidence of financial counseling, and failed to address any delinquency other than filing for bankruptcy after responding to the SOR. Moreover, the absence of evidence demonstrating his current solvency or ability to resolve his outstanding delinquencies precludes findings of “clear indications that the problem is being resolved or is under control,” or “a good-faith effort.” Insufficient evidence was presented to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues to date.

### **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 relevant facts and circumstances surrounding this case. Applicant is a mature individual who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. He established a consistent pattern of financial irresponsibility dating back at least nine years, with no evidence of any efforts to resolve his outstanding obligations other than seeking to be excused from meeting his freely assumed financial obligations for a second time in that period.

Applicant failed to demonstrate financial rehabilitation or evidence of solvency from the present time forward, so recurrence and worsening of his financial concerns were not shown to be unlikely. He continues to bear financial obligations for significant past debt and ongoing living expenses. He accordingly remains subject to pressure, exploitation, or duress. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns.

Overall, the record evidence creates substantial doubt as to Applicant's present 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.r:	Against 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.

DAVID M. WHITE  
Administrative Judge