



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



In the matter of: )  
)  
) ISCR Case No. 08-11322  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

February 18, 2010

**Decision**

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, Applicant's clearance is denied.

**Statement of the Case**

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-Qip) (SCA, GE 1) on August 18, 2008. On September 24, 2008, Applicant was interviewed by an investigator of the Office of Personnel Management (OPM) concerning overdue financial debts he had accumulated. In his interrogatory answers dated March 6, 2009, Applicant checked "Yes," that he agreed with and adopted the investigator's summary of the September 24, 2008, interview, and that it could be used in evidence (GE 2). On June 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's undated answer to the SOR was received by DOHA on June 29, 2009. DOHA issued a notice of hearing on August 31, 2009 for a hearing on September 16, 2009. The hearing was held as scheduled. At the hearing, five exhibits (GE 1 through 5) were admitted in evidence without objection to support the government's case. Applicant testified. The record remained open until September 30, 2009 (Tr. 47) to allow Applicant an opportunity to submit additional evidence. No evidence was submitted. DOHA received the transcript on September 24, 2009. The record closed on September 30, 2009.

### **Findings of Fact**

The SOR alleges financial considerations (Guideline F), based on two judgments and ten debts totaling \$163,873. The largest delinquent account is a foreclosed mortgage. The other delinquent debts are credit cards, a telephone debt, a landlord-tenant debt, department store debts, and a check cashing debt. Applicant admitted ¶¶ 1.a., 1.b., 1.c., and 1.l. He denied ¶¶ 1.d., 1.e., 1.f., 1.g., 1.h., 1.i, 1.j., and 1.k. Applicant provided no documentation to support his denials.

Applicant is 35 years old. Following four months of unemployment, Applicant was hired by a defense contractor in August 2008 at his current job as a lead technician. He has held a security clearance since June 1994 (GE 1). He is married with no children.

### **Financial Considerations**

Applicant's financial problems began in July 2007, after he and his former wife purchased a house (GE 5 at 8). Around the time of purchase, Applicant testified that he and his former wife had over a 700 credit score because they always paid their bills on time (Tr. 43). A month after purchasing the house, he bought and installed a water filtration system (GE 5). Two months after purchasing the house, he obtained a loan for repairs to the house (*Id.*; Tr. 26). Shortly, after obtaining the loan, his former wife left him. When she filed for divorce, he had to retain an attorney (Tr. 19). In April 2008, he lost his job and was unemployed for four months (GE 1 at 12). The 12 accounts, including the two judgments, became delinquent between October 2007 and August 2008. Applicant indicated he has been trying to sell the house since July 2008 (Tr. 29), but he provided no documentation to support his testimony.

The delinquent account in ¶ 1.a. represents a water purification system Applicant purchased for the house that subsequently went into foreclosure (¶ 1.j.). The filtration creditor filed a judgment for \$6,779 in November 2008. The delinquent account in ¶ 1.b. represents a loan Applicant obtained in September 2007 to renovate his house. The creditor filed a judgment against Applicant in December 2008 for \$8,305.

At the hearing, Applicant's reason for denying ¶ 1.e. was that he paid his landlord extra money to allow Applicant's pet to live in his apartment (Tr. 13-14). But, in his interview in September 2008, he stated that he moved into an apartment even though the carpet from the previous tenant had not been replaced. Because he needed accommodations immediately, he agreed with the landlord to accept the apartment "as is." After he moved out of the apartment, a new landlord charged him for damage to the apartment carpet. He informed the new landlord about his agreement with the old landlord, but the agreement could not be located (*Id.*).

¶ 1.i. is a deficiency balance of \$8,354 for a vehicle that belonged to his wife. According to Applicant, she was obligated to pay the debt under a divorce decree (Tr. 15). Applicant did not present the divorce decree to support his claim. In addition, Applicant and his former wife signed the auto installment loan in a joint capacity (GE 5).

Regarding ¶ 1.j., Applicant claimed he had mortgage insurance to cover the foreclosure on his house. No documentation was presented (Tr. 15-17, 19).

The delinquent account identified in ¶ 1.l was caused by Applicant's former girlfriend who started using drugs in December 2006. Applicant indicated she cleared out his checking account to support her habit (Tr. 39). He found out about the \$736 debt after two checks he wrote for groceries were returned for insufficient funds (Tr. 40-41). Applicant provided restitution for both checks (*Id.*).

Applicant has had no financial counseling, and has not attempted to consolidate payment of his debts in a debt plan (GE 2 at 5). He does not have a checking or savings account, and does not use a bank (Tr. 30).

On various occasions within the last year, Applicant testified that he called several creditors, asking them whether they would reduce the delinquent balances or formulate a payment plan, but has received no reply (Tr. 25). About a month before the hearing, Applicant asked some attorneys about Chapter 7 bankruptcy, and wanted to know whether filing a petition would reduce his chances of obtaining a security clearance (Tr. 22-23).

### **Whole Person Information**

Applicant provided no character evidence about his job performance or his reputation in the community where he lives.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information. These

guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept." Finally, 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. Reasonable 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 sensible, 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.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

## **Analysis**

### **Financial Considerations**

¶ 18. The Concern. "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

There are two disqualifying conditions under AG ¶ 19 that must be considered. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) is applicable because of the substantial amount of debt Applicant is unable to pay. AG ¶ 19(c) (*a history not meeting financial obligations*) must also be considered due to Applicant's history of not meeting his obligations.

The first four mitigating conditions are potentially applicable. AG ¶ 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 reliability, trustworthiness, and good judgment*) must be removed from consideration because the 12 debts fell delinquent in the last three years. Applicant's failure to take any kind of documented action raises continuing doubt about his reliability and judgment.

Applicant's unemployment from April to August 2008, and his divorce, were events beyond his control, and deserve consideration under the first prong of AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*). But the mitigating condition also requires the individual to act responsibly under the circumstances. Applicant has been employed about a year. Yet, he has provided no documented evidence of attempting to address the listed delinquencies. He receives limited mitigation under AG ¶ 20(b).

Applicant has had no financial counseling as defined by AG ¶ 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*). He is familiar with Chapter 7 bankruptcy, but he has taken no steps toward that course of action. AG ¶ 20(c) does not apply as there is no indication Applicant's indebtedness is being resolved or is under control. Applicant receives no consideration under FC MC ¶ 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) because of his lack of action in handling his overdue debts and judgments. The financial guideline is found against Applicant.

### **Whole Person Concept**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant was 33 years old when he bought the water purification system and applied for the loan to renovate his house. Buying the system and obtaining the loan within months of purchasing his house indicates that more responsible decisions could

have been made before landing in such deep debt. Even though Applicant had a favorable credit score before he purchased his house in July 2007, he still should have evaluated the equally important issue of whether he could afford the purchase by managing the additional costs of maintaining a home.

Applicant stated he tried several times to reduce the debt balances or establish payment plans with the creditors. Regarding his largest debt, he said he had mortgage insurance which would have extricated him from financial responsibility for the mortgage. Failure to produce evidence of mortgage insurance or of contacting the creditors, i.e., a log written by Applicant tracking his efforts to contact the creditors, impeaches Applicant's claims of attempting to deal with his indebtedness. With no documentation and no evidence of financial counseling, Applicant has not met his burden of demonstrating his security worthiness. The financial guideline is resolved against him.

### **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 (Financial Considerations, 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.	Against Applicant
Subparagraph 1.k.	Against Applicant
Subparagraph 1.l.	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. Clearance is denied.

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Paul J. Mason  
Administrative Judge

