



**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*

June 7, 2010

**Remand Decision**

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information 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 Office of Personnel Management (OPM) investigator about 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 adjudicative guidelines (AG).

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 I through 5) were admitted in evidence without objection to support the government's case. Applicant testified. The record remained open until September 30, 2009 to allow Applicant an opportunity to submit additional evidence. (Tr. 47) No evidence was submitted. DOHA received the transcript on September 24, 2009. The record closed on September 30, 2009.

On February 18, 2010, I issued a Decision denying Applicant's request for a security clearance based on financial considerations (Guideline F). Applicant appealed my adverse decision. The Appeal Board subsequently issued a Remand Decision on May 7, 2010. The Appeal Board indicated that at the close of the hearing I kept the record open for two weeks for Applicant to submit documentation to support his case in mitigation (Tr. 45-46), and Applicant did not submit any documentation within the time allowed. Decision at 2. Next, the Appeal Board stated that Applicant filed an appeal brief on April 5, 2010 "containing new evidence that raised the possibility that Applicant submitted a document which never reached the Judge." (footnote omitted) (Appeal Board Decision at 2) The Appeal Board concluded "that an equitable resolution of this case would be for the Applicant to present the document to the Judge." (*Id.*) In a footnote, the Appeal Board found that Applicant's appeal brief includes new evidence that post-dates my decision (February 18, 2010), and is inadmissible on remand. (*Id.*)

I issued an Order on May 14, 2010, directing Applicant to submit the "document" (referred to in the Appeal Board's Decision) to me by May 24, 2010. I received no reply.

In reply to my Order dated May 14, 2010, Department Counsel submitted its Response on May 24, 2010. The Response is a nine-page document (six of the nine pages are Applicant's Appeal Brief) consisting of a two-page response by Department Counsel, a cover letter (April 6, 2010) from the Chairperson of the DOHA Appeal Board, a one-page appeal brief (April 5, 2010) from Applicant, a three-page Consent Final Judgment of Dissolution of Marriage dated July 23, 2008, a one-page receipt dated March 12, 2010, from an unlisted creditor, and a one-page copy of a check written by Applicant's wife on March 25, 2010. The entire nine-page exhibit shall be admitted into evidence as Remand Exhibit (RE 1). The record in this case closed on May 24, 2010.

In Department Counsel's Response to my Order, he indicated he had reviewed his files and found no documents submitted to his office after the hearing. The only documents he received were those Applicant submitted in his six-page appeal brief filed with the Appeal Board on April 5, 2010. Department Counsel registered his objection to the admission of any documents contained in the Applicant's appeal brief. Department Counsel's objection is overruled regarding the July 2008 Consent Final Judgment of Dissolution of Marriage (Dissolution Decree), specifically the references to the house (¶

1.j) and the 2002 van (§ 1.i). I support my ruling with Applicant's testimony at the hearing where he referred to the Dissolution Decree while explaining he and his former wife were to equally split the proceeds or loss of a sale of their house, and under the decree, his former wife was required to accept responsibility of the van. (Tr. 15, 16, 18-19) Department Counsel's objection is granted regarding the two payment documents because both documents are dated after February 18, 2010, the date I issued the original decision.

I shall assume that Dissolution Decree, or part of the decree, is the "document" the Appeal Board is referring to in their May 7, 2010, decision directing that the equitable resolution of the case calls for Applicant to present the "document" to me.

### **Findings of Fact**

The SOR alleges financial considerations (Guideline F), based on two judgments and ten debts totaling \$163,873. The correct amount of delinquent debt is \$179,738. The largest delinquent account is a foreclosed mortgage (§ 1.j, \$151,000). 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.i. He denied §§ 1.d, 1.e, 1.f, 1.g, 1.h, 1.l, 1.j, and 1.k. Applicant provided no documentation to support his denials.

Applicant is 36 years old. Following four months of unemployment, he 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 (§ 1.j.) that subsequently went into foreclosure. 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.*) The delinquent account is found against Applicant.

¶ 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) The Dissolution Decree shows that Applicant's wife is responsible for the 2002 van. I find for Applicant under ¶ 1.i.

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

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.*) The delinquent account is not listed in the March 2009, credit report. (GE 4) I find ¶ 1.l in Applicant's favor.

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 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)

### **Character Evidence**

Applicant was advised that he could submit character references from his job. (Tr. 44-45) Applicant provided no character evidence about his job performance or his reputation in the community where he lives.

The information Applicant submitted in RE 1 shows the following:

1. Dissolution Decree (executed July 23, 2008). On the first page, last paragraph, Applicant and his former wife were ordered to place the house (¶ 1.j) on the market for sale by July 31, 2008, and were to share equally in the proceeds or loss from the sale. Applicant explained the mortgage company (¶ 1.j) foreclosed on the house in December 2009, and had not completed processing the private mortgage insurance. According to Applicant, when the company completed the process, they would send Applicant a statement reflecting the balance had been paid. No documentation was provided to show proof that Applicant had mortgage insurance or that the house was foreclosed in December 2009, or the current status of negotiations to pay off Applicant's share in the house.

2. Dissolution Decree (executed on July 23, 2008). The second page, first full paragraph, shows that Applicant's former wife was to be the sole owner of the 2002 van (¶ 1.i).

3. Applicant identified a new finance company that is administering the loan for his 2004 truck, also referred to in the divorce decree on the second page, first full paragraph. Applicant claimed he is ahead by a month on his truck payments. In support of his claim of being current on his 2004 truck payments, he provided a one-page document (attachment to his Appeal Brief) showing he had paid \$2,585 to a creditor on March 12, 2010. However, the creditor's name on the attachment is different from the finance company he mentioned in his Appeal Brief. Further, the creditor is not listed in the SOR. Even if the creditor was listed in the SOR, the documentation post-dates my February 18, 2010 decision, and is inadmissible on remand.

4. Applicant also provided a copy of a check his wife wrote on March 25, 2010, to the telecommunications company (original creditor) identified in ¶ 1.c. The amount of the check is \$45.00. The check copy constitutes new evidence because it post-dates my decision in this case. This evidence is inadmissible on remand.

5. Regarding ¶ 1.e, Applicant stated he was retaining counsel to handle the case with the apartment and the soiled carpet. Again, no documentation was provided. The debt remains unresolved.

6. Applicant stated he was still continuing to deal with creditors to clear his credit record. Applicant provided no information to show how he was dealing with his creditors to clear his record.

### **Policies**

The administrative judge's ultimate goal is 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."

On remand, I reiterate my finding that there are two disqualifying conditions under AG ¶ 19 that are applicable. 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*) does not apply because there are 12 debts that became delinquent between October 2007 and August 2008. Applicant provided the Dissolution Decree showing that he and his former wife were to split the proceeds or loss from a sale of the house (¶ 1.j). However, except for Applicant's claim, there is no evidentiary support in the record that Applicant has mortgage insurance, or the house was officially foreclosed in December 2009, or that the lender was negotiating

with Applicant's mortgage insurance company to pay off the deficiency balance. Because the Dissolution Decree supports Applicant's claim that his wife is responsible for the 2002 van, a finding will be made in his favor under ¶ 1.i. Appellant's failure to act on 10 of the remaining delinquent accounts continues to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant receives no mitigation under AG ¶ 20(a).

Applicant's unemployment from April to August 2008, and his divorce, were events beyond his control that warrants mitigation 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*). However, following his marriage dissolution in July 2008, Applicant found his current employment in August 2008 and has been working for about a year. The mitigation Applicant receives under the first prong of AG ¶ 20(b) is reduced dramatically by the lack of documented action to satisfy the remaining debts. In addition, my favorable finding under ¶ 1.i (2002 van) is based on the July 2008 Dissolution Decree. My favorable finding under ¶ 1.I is based on the fact that the delinquent account does not appear on Applicant's March 2009 credit report. Applicant has taken no affirmative action since August 2008 to address the other delinquent debts. Considering the entire record, Applicant receives limited mitigation under ¶ 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. Although Applicant is no longer responsible for the van (¶ 1.i) and the delinquent account in 1.I, AG ¶ 20(c) does not apply as there is no clear indication Applicant's indebtedness is being resolved or is under control. Applicant receives limited consideration under ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) based on the restitution he provided to the bank identified in ¶ 1(I). Considering the evidence as a whole, the limited mitigation Applicant receives under AG ¶¶ 20(b) and 20(d), is not enough to overcome his financial delinquencies under AG 19(a) and 19(c). 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 obtained a loan to renovate his house. Buying the system and receiving 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 carefully evaluated the equally important issue of whether he could afford the house purchase while also managing the additional costs of the filtration system and the loan to renovate the house.

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, the December 2009 foreclosure, and/or negotiations with the mortgage insurance company to have the mortgage paid, undercuts the credibility of Applicant's claims about the present status of the house. Declaring that he has hired a lawyer to pursue the damaged carpet allegation in ¶ 1.e carries little weight without documentation. Similarly, I can assign no weight to Applicant's unsupported statement that he is continuing to handle his creditors to restore his credit/credit score when he has provided no documentation to support his claims. Having weighed and balanced all the evidence, including the Dissolution Decree, I resolve ¶ 1.i in Applicant's favor. I also correct my original finding (Decision, February 18, 2010) in ¶ 1.l to be for Applicant. From an overall standpoint however, it is likely Applicant's current financial problems will persist in the future. See, ¶ 2(a)(9). Applicant has not met his ultimate burden of persuasion under the financial guideline.

### **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.	For Applicant



Subparagraph 1.j.  
Subparagraph 1.k.  
Subparagraph 1.l.

Against Applicant  
Against Applicant  
For Applicant

**Conclusion**

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

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Paul J. Mason  
Administrative Judge

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