



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



In the matter of: )  
)  
) ISCR Case No. 09-00205  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: Duan Haywood Johnson, Personal Representative

September 30, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant is financially overextended and does not have the means to overcome his financial problems. He lacks a track record of financial responsibility. He failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 12, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (SF 86). On March 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

dated January 2, 1992, as modified and revised.<sup>1</sup> The SOR alleges a security concern under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On April 14, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on June 3, 2009. DOHA issued a notice of hearing on June 12, 2009. The hearing was convened as scheduled on June 26, 2009. The government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf, presented the testimony of one witness, and submitted Applicant Exhibits (AE) 1 through 3, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 7, 2009.

### **Procedural Issue**

Applicant received 15 days advance notice of the date of his hearing. Department counsel telephonically contacted Applicant in June 2009 to ascertain a convenient date to schedule Applicant's hearing. Applicant chose to have his hearing on July 26, 2009. At his hearing, Applicant indicated he had sufficient time to prepare for his hearing, and that he was ready to proceed (Tr. 20-22).

### **Findings of Fact**

Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 33-year-old physical security officer employed by a defense agency. He is single, and has never been married. He has four children, ages 14, 11, 10, and 7, apparently from three different mothers (GE 1). He is under a court order requiring him to make payments to the state's child support enforcement system for his two younger children, apparently from the same mother. He has had his wages garnished since May 2000 to cover his child support obligations (GE 1, § 27). SOR ¶¶ 1.e and 1.f alleged child support arrearages totaling approximately \$12,700. Applicant explained he fell behind on his child support obligations because of his periods of unemployment and underemployment (Tr. 66).

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<sup>1</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of the revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

The oldest child's mother never required Applicant to provide consistent child support. Applicant testified he provides his oldest child's mother with some money occasionally when they see each other (Tr. 67). The second oldest child lives with Applicant's parents. Applicant did not state whether he contributes financially to the child's upbringing.

Applicant started having financial problems in the 1990s (Tr. 60). He attributed his current financial problems to three main causes: his level of education, his inability to find a good paying job, and his periods of unemployment and underemployment. Because of his limited income, he could not afford to pay both his past financial obligations and his day-to-day living expenses.

Applicant attended college from June 2005 to April 2007, and completed an associate's degree in criminal justice. He worked part-time while attending college (Tr. 58). He paid for his education by taking six student loans (alleged under SOR ¶¶ 1.i through 1.n), and owes approximately \$27,316 (AE 1). In April 2009, Applicant consolidated his six student loans under an income contingent repayment plan (AE 1). In June 2009, his consolidated student loan repayment plan was deferred until November 2009, because he was unemployed.

Applicant was employed during the following periods: from August 2001 to April 2002 (night stocker); June 2002 to March 2003 (platform assembler); March 2003 to June 2005 (ink jet operator); February 2006 to February 2007 (retail salesman); December 2007 to April 2008 (production worker); and from August to April 2009 (security guard). He has been employed by a government contractor since early May 2009.

He was unemployed from April 2002 to June 2006; from May 2005 to February 2006; from February 2007 to December 2007 (He was fired from his job for failure to follow a safety regulation that required him to use dangerous machinery with a spotter (GE 1, § 22).); from April 8 to August 2008; and during approximately two weeks during April 2009. Applicant received interim access to classified information in August 2008. His interim access was terminated in April 2009, because of the pending SOR and his financial problems. When his interim access was terminated, Applicant was laid off. Applicant started working for a government contractor approximately two weeks after he was laid off. Applicant received unemployment benefits when unemployed.

In his August 2008 security clearance application, Applicant disclosed having his wages garnished to cover his child support obligations and that he had financial problems. His background investigation addressed his financial status and included the review of August 2008, September 2008, and March 2009 credit bureau reports (CBRs), and Applicant's security clearance application.

The SOR alleges 16 delinquent and/or charged off accounts, totaling approximately \$39,000, which have been delinquent for a number of years. In his response to the SOR, Applicant admitted these were his debts and that they are

outstanding. The debts are also established by the admitted CBRs. Seven of the alleged delinquent debts can be considered as small debts since they are for less than \$500.

At his hearing, Applicant presented the testimony of his younger brother. He has worked for over four years as a security guard for a government agency and possesses a secret level clearance (Tr. 37). He also works part-time for government contractors as a security guard. Applicant and his brother lived together from January 2007 to March 2009. They have always had close personal contact. They have worked for the same government agency from August 2008 to April 2009. Applicant is considered to be a very good guy. Applicant attended college because he wants to help the youth and make a better life for himself and his family. Applicant did not discuss his financial problems with his brother or seek his brother's financial counseling or assistance. Applicant's brother recommended Applicant receive access to classified information. In his opinion, Applicant's work and professionalism have been above reproach. Applicant considers himself to be a valuable employee.

Applicant has not participated in any financial counseling (Tr. 64-65). He claimed he visited a debt consolidation company around February-April 2009. However, he did not follow up on the debt consolidation program, and he has done nothing about it since then. Applicant failed to submit a working budget, evidence of lifestyle changes, or a plan to resolve his ongoing financial problems. Applicant participated in a background interview around July-August 2008 (Tr. 86). He was advised then by the investigator to resolve his financial problems. He was hired by a government agency in August 2008, and held his job until April 2009. Except for consolidating his student loans, Applicant presented no documentation showing he had paid, properly disputed, or made any efforts to contact his creditors in an attempt to resolve any of his other debts. Applicant is not aware of what is required of him to show that he is reliable, trustworthy, and financially responsible.

Applicant expressed remorse for his financial problems. He claimed he was not deliberately ignoring his financial obligations, and that he was making efforts to resolve his financial problems. He failed to present evidence of such efforts. Applicant also stated he was just trying to stay afloat paying his bills, paying his girlfriend's bills, and paying back his girlfriend and his father's loans.

Applicant highlighted that he served well a government agency during the last seven months. He believes that because of his job performance and education, his financial problems do not make him a security risk or concern. There is no evidence that Applicant ever compromised or caused others to compromise classified information.

### **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 controlling 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>2</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.

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<sup>2</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

## **Analysis**

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

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged 16 delinquent and/or charged off debts that have been delinquent for a number of years. The debts are Applicant’s debts as established by the evidence and Applicant’s admissions. Applicant consolidated his six student loans (SOR ¶¶ 1.i-1.n) and requested a deferment on his consolidated student loan payment because he was unemployed for two weeks. His child support debt and arrearages are being collected through a wage and unemployment benefits garnishment. Other than his student loan consolidation and his payment of child support obligations through a court imposed garnishment of wages, Applicant presented no evidence he has paid, settled, or properly disputed any of the alleged debts. Applicant does not have the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant established circumstances beyond his control contributing to his inability to pay his debts, i.e., his periods of unemployment and underemployment. I find AG ¶ 20(b) applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented little evidence of debt payments, contacts with creditors, settlement or negotiations of debts, or that he has properly disputed any of his debts. I also find he is financially overextended and his financial problems are not under control.

AG ¶¶ 20(a), (c), (d), and (e) do not apply because Applicant's financial problems are not yet under control. He also failed to show he made good-faith efforts to resolve his debts. AG ¶ 20(f) does not apply.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant is financially overextended. He lacks the income to bring his debts to current status.

### **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 the 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is attempting to correct his

financial situation by investing in his future through his education. He has successfully worked for a defense agency and now as employee of a defense contractor for approximately eight months. There is no evidence he has ever compromised classified information or committed any security violations. Applicant expressed remorse for his financial mistakes and promised to repay his creditors. He established circumstances beyond his control contributing to his inability to pay his debts. These factors show responsibility, good judgment, and mitigation.

Applicant has been employed since 2001, except for the previously mentioned periods of unemployment in between jobs. His wages and unemployment benefits have been garnished since 2000 to force him to comply with his child support obligations for two of his children. His third child lives with his parents. It is not clear whether Applicant contributes financially to his third child's welfare. His fourth child lives with the child's mother. Applicant provides limited and irregular financial support to this child. On balance, I conclude Applicant presented little evidence of having a track record of financial responsibility. He presented little documentary evidence of efforts to pay his child support obligations or to resolve his debts. There are no clear indications that his financial problem is being resolved or is under control. His inability to pay even relatively small debts shows he is financially overextended. He does not have the financial means to resolve his financial problems. Applicant's favorable evidence is insufficient to mitigate the security concerns arising under the financial considerations 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h, and 1.o and 1.p:	Against Applicant
Subparagraphs 1.i through 1.n:	For Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge