



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



In the matter of: )  
)  
) ISCR Case No. 09-00468  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 28, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 11, 2008. On March 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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 23, 2009, Applicant answered the SOR in writing and elected to have his case decided on the record in lieu of a hearing. On May 27, 2009, he requested a hearing before an administrative judge. The case was assigned to me on June 9, 2009. I convened a hearing on July 15, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced sixteen exhibits, which were identified and marked as Applicant's Ex. A through P and admitted to the record without objection.

At the conclusion of the hearing, I left the record open for one week, until close of business July 22, 2009, so that Applicant could provide additional information for the record. Applicant timely filed 14 additional documents, which were marked as Ex. Q through Z and AA through DD. Applicant's post-hearing submissions were admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on July 23, 2009.

### **Findings of Fact**

The SOR contains sixteen allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.p.). In his Answer to the SOR, Applicant admitted thirteen of the allegations (¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., 1.g., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., and 1.p.); he denied three allegations (¶¶ 1.f., 1.h., and 1.o.). Applicant's admissions are admitted as findings of fact. (Answer to SOR; Tr. 46-65, 83-96, 112-133.)

Applicant seeks a security clearance. He is 32 years old and, since September 2008, he has been employed as an enterprise management engineer by a government contractor. He has been married to his wife for five years, and they are the parents of three young children. Applicant's annual gross salary is approximately \$75,000. His wife, who is not employed outside of the home, manages the family's finances. (Ex. 1; Ex. R; Tr. 68-69, 109, 138, 146-147.)

Applicant is a high school graduate. He attended college for a time and estimates that he achieved sophomore or junior status. Since September of 1997, he has worked for a variety of employers as a computer technician and specialist. From December 2004 until September 2008, he worked for a municipal government as a security engineer. His highest annual salary in that job was \$70,000. (Ex. 1; Tr. 70-75, 137-140.)

In 2005, when his annual salary was approximately \$65,000, Applicant and his wife purchased a home, which was financed by a first mortgage of approximately \$125,000 and a second mortgage of approximately \$30,000. In 2006, Applicant's mother, who lived in a neighboring state, fell ill and required two surgeries in one month. During this time, Applicant and his wife drove frequently to his mother's home to be with her. Applicant found that he needed to use his disposable income to purchase gasoline

for the trips to visit his mother, and he fell behind in paying some of his financial obligations, including his home mortgages. He contacted the mortgagor and requested a reduced payment plan. The mortgagor complied, and after about nine or ten months on the payment plan, Applicant was able to catch up and became current on his mortgage payments. In mid to late 2007, Applicant again fell behind in his mortgage payments, and after four months on a payment plan, he became current again on his mortgages. In September 2008, Applicant resigned from his job. He took a position with his current employer and moved his family to another city. He was unable to sell his house, and he did not have sufficient funds to pay his mortgages. (Tr. 48-49, 135-137.)

In his Answer to the SOR, Applicant admitted he was over 180 days past due in the approximate amount of \$10,946 on the \$125,776 mortgage and over 180 days past due in the approximate amount of \$1,860 on the \$30,962 mortgage. (SOR ¶¶ 1.j. and 1.k.) The lender has offered to accept a deed in lieu of foreclosure from Applicant and his wife, but the final terms of the agreement were not in place at the time of his hearing, and the debts were not resolved. When he completed his e-QIP in September 2008, Applicant reported his mortgage delinquency of \$125,776 and stated: "This is the only thing that is past due on my credit report." (Tr. 49-50, 123.)

Applicant's credit report of September 30, 2008 revealed 13 debts in collection status. Those debts were alleged at SOR ¶¶ 1.a. to 1.g., SOR ¶ 1.i., and SOR ¶¶ 1.l., to 1.p. Additionally, the SOR alleged at ¶ 1.h. that Applicant was 30 days past due in making a payment of \$137 on a debt of \$2,423. (Ex. 4; SOR.)

In February 2009, Applicant responded to DOHA interrogatories and provided a monthly budget and a long-range plan to satisfy his delinquent debts. He stated that he intended to pay the \$105 delinquency alleged at SOR ¶ 1.b. in March 2009 and the \$163 delinquency alleged at SOR ¶ 1.g. in April 2009. He further stated he intended to pay the \$367 delinquency alleged at SOR ¶ 1.d. with three monthly payments of \$123 in May, June, and July of 2009; he intended to pay the \$476 delinquency alleged at SOR ¶ 1.p. in four monthly payments of \$120 from August through November 2009; he intended to pay the \$726 delinquency alleged at SOR ¶ 1.n. in seven monthly payments of \$110 from December 2009 to June 2010; and he intended to satisfy the \$1,024 delinquency alleged at SOR ¶ 1.m. with eight monthly payments of \$128 from July 2010 to February 2011. (Ex. 2 at 4-5.)

In his response to DOHA interrogatories, he also expressed his intention to satisfy the \$1,595 delinquency alleged at SOR ¶ 1.i. in 12 monthly payments of \$133 between March 2011 and 2012, and he expressed his intention to satisfy the \$2,035 delinquency alleged at SOR ¶ 1.e. in 15 monthly payments of \$136 between April 2012 and June 2013. (Ex. 2 at 5.)

In his April 23, 2009, answer to the SOR, Applicant stated that he intended to pay the debt alleged at SOR ¶ 1.b. in July 2009. He stated that he intended to pay the debt alleged at SOR ¶ 1.g. in August 2009. He stated he was currently paying the debt

alleged at SOR ¶ 1.d, and he stated he had paid the debt alleged at SOR ¶ 1.f. (Answer to SOR.)

At his July 15, 2009, hearing, Applicant stated that he intended to satisfy his smaller debts first and pay the larger debts in the future. He stated he did not intend to contact his creditors until he was ready to pay them. As his Ex. A, he provided a third iteration of his plan to satisfy his debts. He acknowledged that none of the three plans indicated how he intended to satisfy the \$2,240 debt alleged at SOR ¶ 1.a. He also acknowledged that he had not contacted the creditor identified in SOR ¶ 1.a. In his third plan describing his intention to pay the creditors identified on the SOR, he stated that the \$105 delinquent debt alleged at SOR ¶ 1.b. would be satisfied in June 2009. He stated that the debt had been incurred in 2001 or 2002. He reported that his wife was planning to hand a check for \$105 to the creditor. As a post-hearing document, he provided a receipt corroborating a payment of \$25 on the debt on July 21, 2009. (Ex. A; Ex. U; Tr. 57, 83-84, 8-93.)

Applicant stated that, in addition to the debt alleged at SOR ¶ 1.a., he intended to pay the following delinquent debts alleged on the SOR at some future date: SOR ¶¶ 1.c. (\$649), 1.e. (\$2,116), 1.i. (\$1,595), 1.m. (\$1,024), 1.n. (\$726), and 1.p. (\$476). He stated he planned to pay the \$163 delinquency alleged at SOR ¶ 1.g. in August 2009. He provided documentation to corroborate that he had paid the \$624 delinquent debt alleged at SOR ¶ 1.l., and he provided documentation to corroborate a payment of \$20 on the \$367 delinquent debt alleged at SOR ¶ 1.d. He claimed he had paid the \$235 debt alleged at SOR ¶ 1.f., but he failed to provide documentation to corroborate payment. Additionally, he claimed he had disputed the \$137 delinquent debt alleged at SOR ¶ 1.h.<sup>1</sup> and the \$58 delinquent debt alleged at SOR ¶ 1.o., but he failed to provide documentation to corroborate his disputations. (Ex. M; Ex. CC; Tr. 57-65.)

Applicant is paid once a month. His net take-home pay is \$4,076.45. His monthly fixed expenses are as follows: rent: \$1,600; groceries: \$500; clothing: \$100; gas: \$100; electricity: \$130; water: \$65; trash collection: \$20; telephone: \$156; and cell phones for himself and his wife: \$210. He estimates his monthly out-of-pocket medical expenses are about \$20. He budgets \$100 for miscellaneous expenses. (Ex. R; Ex. 2; Tr. 52, 145-149.)

Additionally, in 2008, Applicant's mother signed a purchase agreement on his behalf for a new 2008 model automobile which cost \$28,000. Applicant pays \$600 a month directly to the automobile creditor. He estimates that his additional monthly car expenses include \$260 for gas for his automobile and his wife's automobile, \$150 for automobile insurance, and \$10 for oil changes and maintenance. (Tr. 149-155, 157.)

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<sup>1</sup> Applicant claimed that he had paid the creditor over \$4,000 to satisfy this debt and he denied he owed the remaining \$137. However, he failed to provide documentation to corroborate his claim. (Ex. Y; Tr. 114-115.)

Applicant's net remainder at the end of each month is approximately \$55. He lacks sufficient resources to pay additional medical bills which arose when his third child was born. These debts are outstanding, and his mother subsidizes his income each month by paying about \$100 of those medical bills. Additionally, Applicant owes a tax debt of \$14,000, including interest and penalties, to the Internal Revenue Service, and he has agreed to pay \$200 each month to reduce his federal tax debt. When asked where he obtained the money to pay the tax debt, he stated: "[W]e take it out of groceries, we take it out of utilities, whatever we don't use. And we've never been late. We do - - - what is it - - - rob Peter to pay Paul." (Ex. S; Tr. 157-161.)

Applicant presented six letters of character reference from supervisors, co-workers, and former colleagues. The letters of character reference emphasized Applicant's dependability, excellent technical skills, strong work ethic, and professionalism. (Ex. F; Ex. G; Ex. H; Ex. I; Ex. J; Ex. K.)

Applicant has not sought or received professional consumer credit counseling. (Tr. 172-173.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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. 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, 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 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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying.

Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Additionally, under AG ¶ 19(e), a security concern can be raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” Applicant accumulated substantial delinquent debt, was unable or unwilling to pay his creditors, and consistently spent beyond his means. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that spanned the period from at least 2001 or 2002 to the present time. When his mother fell ill and required surgeries in 2006, Applicant drove great distances to visit her, and this cost him money in gasoline. Fortunately, Applicant’s mother recovered, and he has, for the most part, been steadily employed since that time. His annual income is approximately \$75,000.

Applicant is financially overextended, and he has few resources available to pay his delinquent debts at this time. He hopes to pay most of his creditors in the future, but he has difficulty meeting his basic expenses each month, a situation that casts doubt on his ability to plan realistically for the future. He provided documentation to corroborate that he had paid a debt of \$624, alleged at SOR ¶ 1.i. He failed to provide documentation to prove that he had satisfied a debt of \$235, alleged at SOR ¶ 1.f. He also failed to provide documentation to corroborate that he had contested debts alleged at ¶¶ 1.h. and 1.o.

Applicant has not received financial counseling. He relies on his wife to manage his income, and he relies on his mother to provide him with extra money to meet his expenses. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He was financially over-

extended and had very little money left at the end of each month. In spite of this, he purchased a new automobile for \$28,000 in 2008, and his automobile expenses consume a substantial portion of his monthly disposable income. He uses money budgeted for food or other basic living expenses to pay his federal tax debt each month. He has no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that none of the Financial Consideration mitigating conditions applies to the facts of Applicant's case.

### **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 is a mature adult of 32 years. His supervisors and colleagues consider him to be diligent, hard-working, and professional. They appreciate his technical skills and dependability.

Applicant's financial problems began at least seven years ago. He has not pursued financial counseling. Despite an annual income of \$75,000, he has not taken affirmative action to live within his means and to pay or resolve his substantial delinquent debts. His lack of attention to his financial delinquencies continues to raise security concerns. Despite a steady income for several years, he failed to budget his income to satisfy his many delinquent debts. Instead, he continued on a pattern of overextension. He has a low net remainder at the end of every month, and he appears unable to meet his financial obligations, raising concerns about his judgment and potential financial vulnerability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's judgment, eligibility and suitability for a security clearance. For



these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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. - 1.k.:	Against Applicant
Subparagraph 1.l.:	For Applicant
Subparagraphs 1.m. - 1.p. :	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. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge