



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00630  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

September 14, 2009

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s financial considerations security concern. Clearance is denied.

On February 16, 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. 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.

Applicant answered the SOR on April 9, 2009, admitting all of the allegations except subparagraphs 1.f and 1.p. He requested a hearing, and the case was assigned to me on May 27, 2009. On June 11, 2009, a notice of hearing was issued scheduling the case for July 17, 2009. The hearing was conducted as scheduled. I received four

government exhibits, 14 Applicant exhibits, and Applicant's testimony. At Applicant's request, I left the record open at the conclusion of the hearing to allow him to submit additional exhibits. By the close of the record, he had not submitted any supplementary exhibits. The transcript was received on July 15, 2009.

### **Preliminary Rulings**

I. At the hearing's conclusion, Department Counsel moved to amend the SOR as follows:

- 1.t. You failed to timely file your state and federal income tax returns for tax year 2008.

Applicant did not object, and I granted the motion. Applicant then admitted the allegation.

II. SOR subparagraph 1.f alleges Applicant owes a debt to an unidentified medical provider. This allegation is overbroad because it does not identify a specific creditor. Although an SOR does not have to satisfy the strict requirements of a criminal indictment, it must still place an applicant on adequate notice of the allegations so that he may have a reasonable opportunity to respond and prepare a defense.<sup>1</sup> Subparagraph 1.f. does not meet this threshold; therefore, I conclude that it is not justiciable.

### **Findings of Fact**

Applicant is a 39-year-old man with two teenage children. His marriage of 17 years ended in divorce in 2008, and his ex-wife has physical custody of the children.

Applicant served in the U.S. Navy from 1989 to 1999. He was honorably discharged. While in the Navy, he earned five Navy Achievement Medals, and one Navy Commendation Medal (Tr. 14). Since leaving the Navy, he has worked for various government contractors as a database administrator. Currently, he earns \$78,000 yearly.

Applicant is highly respected on the job. According to his team leader, his performance is stellar (Exhibit B). A senior-level supervisor, whose familiarity with Applicant's work quality spans more than 15 years, characterizes him as a "Subject Matter Expert, always willing to help out . . . coworkers" (Exhibit C).

As of January 2009, Applicant had accrued approximately \$43,000 of delinquent debt. Four of the delinquencies resulted in judgments against Applicant; they include a late car note (SOR subparagraph 1.o), late payments owed to a child care center (SOR subparagraph 1.p), and two judgments for back rent (SOR subparagraphs 1.q and 1.r).

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<sup>1</sup>ISCR Case No. 03-07826 (App. Board, June 17, 2005) at 3.

Other delinquencies include debts owed to a check cashing company (SOR subparagraph 1.a), medical institutions (SOR subparagraphs 1.b and 1.c), utility companies (SOR subparagraphs 1.d, 1.e, 1.g), department stores (SOR subparagraphs 1.h, 1.i, 1.n), and credit card companies (SOR subparagraphs 1.j - 1.m, and 1.s).

Applicant attributes his financial problems to his 2007 marital separation and subsequent divorce in 2008 (Tr. 12). He has satisfied the debt listed in SOR subparagraph 1.s, in the amount of \$4,440, through a wage garnishment (Exhibits E, K, L). Also, he satisfied two unlisted delinquencies, totalling \$1,833, through wage garnishments (Tr. 21; Exhibits H - I).

Applicant admits that the company that financed his automobile purchase obtained a judgment for \$21,234, as SOR subparagraph 1.o alleges, but he disputes the amount due. As of the hearing date, the creditor was in the process of selling the car at auction, and had not established a deficiency amount (Tr. 32).

Applicant acknowledges that his children had attended a day care center that obtained the \$713 judgment, as listed in SOR subparagraph 1.p (Tr. 33). However, he contacted both the day care center and its regional headquarters, and neither had a record of any delinquency (Tr. 33).

Applicant has not contacted the other creditors or organized any payment plans (Tr. 36). His wage garnishments absorbed all of his disposable income (Tr. 42). The last garnishment, however, was released in May 2009. Now that Applicant has completed paying the creditors through the wage garnishments, he is prepared to begin satisfying his remaining delinquencies. He intends to apply the monthly \$1,600 he had used to pay these garnishments toward the remaining delinquencies (Tr. 40-41).

The week before the hearing, he met with a credit counselor (Tr. 41, 52). They discussed the development of a payment plan and a budget, but had not finalized either (*Id.*). As of the hearing date, Applicant had filed neither his state nor federal income tax returns for tax year 2008, nor had he had filed for extensions (Tr. 50). Although he anticipates getting refunds, he has not filed his returns because he “[hasn’t] taken the time to do it” (*Id.*).

### **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. 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.”

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.

## **Analysis**

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

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Although Applicant’s marital separation and divorce contributed to his financial problems, the only progress he has made toward satisfaction of his delinquencies has been through wage garnishments. Also, he consulted a credit counselor just two weeks before the hearing. Moreover, Applicant, as of the hearing date, had neither filed his 2008 state and federal income tax returns, nor had he filed for extensions. Consequently, AG ¶ 20(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,” is inapplicable.

Applicant deserves credit for consulting a credit counselor. However, the recency of this step and his failure to file his federal or state income tax returns limit the applicability of 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,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Applicant contacted his children’s day care center and their corporate headquarters to inquire about the alleged judgment in their favor, as alleged in SOR subparagraph 1.p. Neither had any record of a delinquency. AG ¶ 20(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,” applies to SOR subparagraph 1.p. I resolve it in Applicant’s favor.

### **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 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.

Applicant’s financial problems were mostly caused by his 2008 divorce. His progress at debt satisfaction has occurred solely through wage garnishment. Also, I was troubled by his failure to file his federal or state income taxes. The negative security implication of this failure was compounded by the fact that he probably was going to receive refunds - money which could have been applied to his delinquent debts. Upon evaluating this case in the context of the whole person concept, I conclude Applicant has failed to mitigate the financial considerations security concern. Clearance is denied.

### **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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g - 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q - 1.s:	Against 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. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge