



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-00651
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro Se*

September 8, 2009

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On May 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 in writing on June 10, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2009. DOHA issued a Notice of Hearing on July 28, 2009. I convened the hearing as scheduled on August 18, 2009. The Government offered Exhibits (GE) 1 through 4.

Applicant did not object and they were admitted. Applicant testified and did not offer any documentary evidence. The record was held open until August 25, 2009, to allow Applicant an opportunity to submit documents. He did so timely, and it was marked as Exhibit (AE) A, which was admitted without objection.<sup>1</sup> DOHA received the transcript of the hearing (Tr.) on August 25, 2009.

### **Procedural Issue**

The Government moved to amend the SOR by striking SOR ¶ 1.b because it was a duplicate of ¶ 1.a. There was no objection and the motion was granted. For simplicity the allegations will not be renumbered and ¶ 1.b will not be considered.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.f. He denied the remaining allegation in ¶ 1.c. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 29 years old. He earned a bachelor's degree in 2003. He has been working for his current employer, a federal contractor, since August 2008. He is divorced and has one child, for whom he provides child support. He served in the Army Reserve from 1997 to 2009 and was honorably discharged.<sup>2</sup>

In 2004, Applicant resigned from his job and moved to a new city (City A). He had difficulty finding a new job, but was confident he could get one. He was out of work a couple of months. In June 2004, Applicant purchased a house in City A. He used \$20,000 from his savings as a down payment. He got a job in July 2004 in a different city (City B), so he moved. His sister (Sister C) lived in the house in City A and was responsible for making the mortgage payments.<sup>3</sup>

Applicant bought a second house in City B, where he now worked. He did not put a down payment on the house. He obtained a mortgage with an adjustable rate of interest (ARM). He obtained two loans for the house with an 80% and 20% financing split. Sister C experienced financial difficulties and could not afford the \$1,300 mortgage payment on the house in City A. She fell four months behind in payments. Applicant paid the back payments and told his sister she would have to move out. A second sister (Sister D) moved into the house and took over the mortgage payments. She and her husband experienced financial difficulties and fell behind in paying the mortgage. They were three months delinquent. Applicant obtained an equity line of credit for \$30,000

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<sup>1</sup> HE I.

<sup>2</sup> Tr. 63-66.

<sup>3</sup> Tr. 28-32.

(SOR ¶ 1.g) and used this money to pay the mortgage, do repairs on the house and pay other bills. He then rented the house to non-family members.<sup>4</sup>

In 2006, Applicant's uncle was in an accident. His mother asked him to lend her money so she could visit her brother. He gave her two credit cards to finance her expenses. She made travel and hotel purchases of approximately \$6,000 and \$8,900 using the credit cards. He also gave her approximately \$7,000 in cash. She was supposed to make the minimum payments on the credit cards, until she could pay them in full. She incurred these bills over a six-month period. Applicant was aware that she was not making any payments during this time. He thought she would keep her promise and make payments, but she did not. She never paid anything. He paid one of the credit cards and still owes about \$4,400 on the remaining card. This debt is not on the SOR.<sup>5</sup>

When Applicant missed a payment on the equity loan (SOR 1.g) on the house in City A, his interest rate increased and he could not make payments on his other debts, including the credit card debts his mother incurred. After two years, his ARM on the City B house increased. He had anticipated when he bought the house with the ARM that he would refinance the mortgage at a later date at a lower rate. Instead, the conventional rates had increased and he was unable to refinance the loan at a lower rate. He could not afford to keep the house in City A. He later realized he could no longer afford the house in City B.<sup>6</sup>

In 2006, Sister C told Applicant she would help their mother pay the credit card debt his mother incurred in his name. In order to get the job she needed to help pay this debt she would need a car. So Applicant co-signed on a car loan for Sister C because she could not obtain a loan in her name. The car cost \$17,000. The agreement was that Applicant would pay \$100 a month for six months to help her with the car payments and she was responsible for the remaining amount. Applicant stated he knew he could not afford the full payment. Sister C did not make payments for five months. Applicant made payments to catch-up. She told him she would try and make the payments, but did not. The loan company contacted him and he advised them he could not afford the car and they repossessed it. He understood he would likely owe the deficiency balance. SOR 1.c (\$9,609) is the car debt. Applicant settled the debt for \$4,000. He paid the settlement with a tax refund.<sup>7</sup>

SOR ¶ 1.a is the 20% equity loan on the City B house. SOR ¶ 1.d is the 80% mortgage on the City B house. SOR ¶ 1.g is the equity loan on the City A house. SOR ¶ 1.f is the mortgage for the City A house. Applicant has an agreement with the creditor in

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<sup>4</sup> Tr. 32-39.

<sup>5</sup> Tr. 21-26, 39, 84-88. This debt will not be considered for disqualifying purposes but will be considered when considering Applicant financial history and analyzing the "whole person."

<sup>6</sup> Tr. 41-42, 47, 73-74.

<sup>7</sup> Tr. 43-46, 68-71; Answer to SOR.

SOR ¶ 1.a to pay \$854 a month for 12 months to settle the debt. He has made four payments so far.<sup>8</sup>

Applicant settled the debt in SOR ¶ 1.g (\$32,000) for \$1,300 a month for six months. He stated he has made five payments. He provided documents to show four payments have been made.<sup>9</sup>

Applicant stated that the properties in SOR ¶¶ 1.d (\$154,000) and 1.f (\$146,000) were foreclosed and sold. There is no balance remaining on them.<sup>10</sup>

SOR ¶ 1.e is a credit card debt for an account opened in 2006, and defaulted in late 2007 or early 2008. Applicant stated the account was sold and he has attempted to determine the collection creditor, but has been unsuccessful. He stated he last attempted to contact the creditor in February 2009. He intends to pay this debt. He is attending school and his employer reimburses him for the amount of his student loan he obtained to go to school. He will use the student loan money to pay his debts after his company reimburses him. Then he plans to pay off the student loans.<sup>11</sup>

Applicant has a budget on a spread sheet. He has not attended formal financial counseling, but has read things on his own and has had financial classes when he attended college. He also familiarized himself, when he was in the military, with financial issues because he was responsible for advising young soldiers about potential financial pitfalls.<sup>12</sup>

Applicant has about \$2,400 in savings. He owns a Roth IRA that has about \$5,000 and a 401k with about \$4,000. He makes monthly contributions to his 401k account. He has one active credit card.<sup>13</sup>

## 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.

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<sup>8</sup> Tr. 37-41, 50-55; GE3; AE A.

<sup>9</sup> Tr. 52-55, 58; AE A

<sup>10</sup> Tr. 47-50, 61-63.

<sup>11</sup> Tr. 59-61, 90-93.

<sup>12</sup> Tr. 84-86.

<sup>13</sup> Tr. 80-81.

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 overarching adjudicative goal is a fair, impartial and common-sense 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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant defaulted on mortgages for two houses he purchased. He defaulted on a car loan and has a credit card debt that remains unpaid. He was unable or unwilling to pay his debts because he was financially overextended. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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; and
- (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.

Applicant has a history of poor judgment and irresponsible behavior when dealing with his finances. He bought a house while unemployed. He then purchased a second house. His sister was responsible for making mortgage payments and failed to do so. He then co-signed on a loan for this sister to purchase a car, which she then failed to make the payments on. He already was aware of her unreliability in making payments on the mortgage. He gave his mother unlimited use of two of his credit cards. He was aware she was not making payments on the cards as promised, but continued to allow her to increase the debt. He obtained an ARM knowing the rates could increase, but he expected them to decrease and then planned to refinance the loan. When they increased he could not afford the mortgage payments. Applicant has since defaulted on the mortgages on two houses which were then foreclosed. He defaulted on the car loan and defaulted on one of the credit cards. Applicant's financial problems are still current because he is still resolving a credit card debt. Although many of his debts involved his family, he was aware of their erratic financial history. These financial problems were ultimately a result of behavior within his control. He did not act responsibly under the circumstances, but rather continued to use poor judgment which further exacerbated his financial woes. I find mitigating conditions (a) and (b) do not apply.

Applicant stated he is somewhat self-taught regarding financial issues and in the past was responsible for counseling young soldiers to ensure they did not get into financial problems. Therefore, this is not a case of a person being duped, but rather is a situation where he took financial risks by assuming more debt than he could handle and repeatedly relying on family members to make payments, even when he was aware of their past irresponsible actions. Applicant has payment plans to settle two of his debts, but he still owes a large debt that he has not made any payments on. I find mitigating condition (d) partially applies because of his settlement payments. I find mitigating condition (c) does not apply because even though it is apparent to Applicant that he has made serious financial mistakes, he has not sought financial counseling to help him prevent future errors. Applicant has developed a consistent pattern of poor financial decisions that left a wake of foreclosure, defaults and delinquent debts. Without a consistent record of responsible behavior it is too early to conclude the problem is under control or being resolved.

### **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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense 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 served in the military and was honorably discharged. He consistently pays his child support. He has developed a pattern of poor decision making and irresponsible behavior regarding his finances that raises questions about his judgment, reliability and trustworthiness. He repeatedly overextended his finances and then defaulted on his obligations. The debts he settled were for less than he actually received. He has not developed a consistent track record of responsible behavior. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

### **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.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly not in the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge