



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00780  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro se*

December 10, 2009

**Decision**

CURRY, Marc E., Administrative Judge:

Between 2001 and 2008, Applicant accrued approximately \$28,000 of delinquent debt, generating a security concern under Guideline F, Financial Considerations. To date, he has made minimal progress toward its satisfaction. Applicant has failed to mitigate the security concern. Clearance is denied.

**Statement of the Case**

On May 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing a security concern 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.

DOHA received Applicant's answer to the SOR on June 30, 2009, admitting all of the allegations except SOR subparagraphs 1.b and 1.c. The case was assigned to me on August 31, 2009. On September 10, 2009, a notice of hearing was issued scheduling the case for September 25, 2009. Applicant waived his right to 15 days notice of hearing and the hearing was conducted as scheduled. (Tr. 8). I received four government exhibits, two Applicant exhibits, and Applicant's testimony. At Applicant's request, I left the record open to allow him to submit additional documentation. Within the time allotted, he submitted three additional exhibits that I incorporated into the record. The transcript was received on October 2, 2009.

### **Findings of Fact**

Applicant is a 48-year-old man who has been married for eight years. A previous marriage ended in the divorce in the late 1990s. Applicant has two children from his first marriage, ages 18 and 16, and two children from his current marriage, ages seven and six.

Applicant has an associate's degree in drafting, and is currently working toward a bachelor's degree in facility management. (Tr. 19). He has been working for a defense contractor as a facility manager for the past 18 months (Government Exhibit (GE) 1 at 4). His job duties include, among other things, developing software that enables facility managers to "manage the facility correctly by square footage, personnel, who's renting [and] all the telecom equipment" (Tr. 39).

Applicant served in the U.S. Army from 1980 to 1992 (Tr. 19). During this period, he served honorably in four overseas combat theaters, and he earned multiple awards including five Army Achievement Medals and a National Defense Ribbon (Tr. 21).

When Applicant left the Army, he found employment with what was then a small Internet services provider (Tr. 86). In the nine years Applicant worked there, it grew into one of the largest companies in the world (Tr. 88). As the company grew, Applicant's income grew. By 2001, he was earning more than \$200,000 per year (Tr. 88). His income enabled him to buy two homes without financing (Tr. 89). When Applicant and his first wife divorced, he agreed to give her one of the homes instead of paying child support (Tr. 93).

During 2001, Applicant's mother grew seriously ill. In approximately May 2001, he quit his job, sold his remaining house, and relocated to Puerto Rico to care for her (GE 1 at 3; Tr. 23).

When Applicant left his job, he held stock in his former employer's company in excess of \$170,000 (Applicant's Exhibit (AE) A at 3). He supported himself with this stock for the next five years (Tr. 86). He also used this income to pay for his mother's medical care (Tr. 96). Although he was born and raised in Puerto Rico, his Spanish-speaking skills had diminished over the years (Tr. 96). This hampered his ability to

maintain steady employment. By 2005, Applicant had depleted his investment income (Tr. 97). He then used credit cards to support his family (Tr. 97).

In January 2006, he obtained a job on the U.S. mainland and relocated to a rental property (GE 1 at 5). Later that year, Applicant attempted to buy a rental property (Tr. 106). He then discovered a \$15,300 state tax lien from tax year 2001 on his credit report (SOR subparagraph 1.a). He testified that the state, by billing him for all of tax year 2001, overtaxed him because he only lived in the state for “a couple of months” that year before moving to Puerto Rico (Tr. 109-112). However, on his security clearance application, he indicated that he lived in the state through all of 2001 before moving to Puerto Rico (GE 1 at 3).

Shortly after discovering the state tax lien in 2006, Applicant contacted a representative from the state tax department to resolve the tax dispute (Tr. 109). The representative asked him to submit proof supporting his contention that he did not live in the state for all of tax year 2001 (Tr. 109). Approximately a month after talking to the tax representative, Applicant lost his job<sup>1</sup> (Tr. 109). He then decided to “take care of [his] family and . . . pay nothing” (Tr. 109).

Applicant filed his 2001 federal income tax return timely but incorrectly, resulting in an outstanding tax deficiency (Tr. 112). By October 2008, this tax deficiency had increased to approximately \$8,800, as alleged in SOR subparagraph 1.k (Answer; Tr. 112).

This past year, Applicant renewed his efforts to resolve the state tax delinquency and began taking steps to resolve the federal tax delinquency (Tr. 23; 109-112). By May 2009, he had filed an amended federal tax return and arranged a payment plan to satisfy the IRS delinquency (AE B). Since June 2009, he has been paying the IRS \$215 monthly under the plan (AE B at 2; AE D-E). According to a representative from the state taxing authority where Applicant lived in 2001, he needs to submit a copy of his original federal 2001 tax return along with a copy of the amended one. Also, the state taxing agency representative reiterated that he needs to submit proof supporting his contention that he did not live in the state for all of 2001 (Tr. 28). The state taxing authority will then re-calculate the amount he owes (Tr. 25).

Applicant has not yet received a copy of his original 2001 federal tax return from the IRS. Also, he has yet to submit documentation supporting his contention that he did not live in the state for all of 2001. The state tax delinquency remains outstanding (Tr. 25, 29).

SOR subparagraph 1.b is a delinquent electric bill, for approximately \$2,000, from Applicant’s residence in Puerto Rico (Tr. 29). Applicant contests this bill. He contends that the date-of-usage listed on the bill (2006-2008) does not correspond to

---

<sup>1</sup>Applicant’s security clearance application does not list any employment gaps. During cross-examination, he admitted falsifying his employment history because he “didn’t want to show unemployment” (Tr. 53).

the period when he lived in Puerto Rico (Tr. 29; 111). Applicant has called the utility company several times (Tr. 111). His efforts to resolve this dispute have been unsuccessful, and he has no plans of paying the delinquency (Tr. 112). He presented no documentary evidence to show he has formally disputed this account.

SOR subparagraph 1.c is a delinquency owed to a cell phone company for \$127. Applicant opened the account in 2007, then closed it because of dissatisfaction with service area coverage (Tr. 31). Applicant contends the company returned his deposit in full when he closed the account, and that he owes them nothing (Tr. 31). Also, he contends that he disputed it online (Tr. 31). He provided no evidence substantiating his dispute.

SOR subparagraphs 1.d through 1.i alleged delinquent medical bills Applicant accrued in 2006, when he and his daughter suffered severe ear infections that required hospitalization (Tr. 32-34). He had no health insurance when these bills accrued (Tr. 65). Applicant has not begun paying these delinquencies, and has not contacted the creditors (Tr. 69). He will begin paying them after he satisfies the bigger delinquencies (Tr. 33-34, 69). Collectively, they total approximately \$1,400.

SOR subparagraph 1.j is a debt owed to an auto insurance company for \$121 (GE 2 at 9). Applicant used this insurance carrier through March 2006 before switching to another insurance carrier (GE 2 at 9). The delinquent amount represents the amount due from the final month of service. Applicant believed he had paid this creditor “free and clear” when he switched insurance carriers (Tr. 36). Currently, he has made no steps to resolve it.

Applicant has not received any financial counseling (Tr. 64). He maintains a budget (GE 2 at 10). Depending on the price of gasoline and the amount of money he spends to help his wife satisfy one of her credit card debts, he has between \$300 and \$500 of monthly disposable income (*Id.*; Tr. 78-82, 102). Applicant anticipates receiving a large bonus at the end of the year (AE C; Tr. 73). He intends to apply it to his delinquent debts.

## **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, Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

## **Analysis**

### **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 delinquencies triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Between 2001 and 2008, Applicant accrued approximately \$28,000 of delinquent debt. Nearly all remain currently outstanding. 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 current reliability, trustworthiness, or good judgment,” does not apply.

Applicant contends that his largest delinquency, the 2001 state tax debt, accrued because the state erroneously billed him for an entire year when he lived in the state for two months. Applicant indicated on his security clearance application; however, that he lived in the state for all of 2001. Applicant also contends that the SOR debts incurred after 2006 grew delinquent because of a lengthy unemployment period. Applicant’s security clearance application, however, reflects no unemployment period, and at the hearing, Applicant admitted falsifying his security clearance application because he did not want to show unemployment periods.

Applicant’s lack of credibility undermines the probative value of his explanations concerning any of the SOR allegations that he disputed. His admitted falsification of his employment history, in particular, undermines his contention that unemployment contributed to his financial difficulties. Neither 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,” nor 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,” apply.

Applicant contacted the IRS and made payment arrangements to resolve his federal income tax delinquency. Since June 2009, he has steadily made monthly payments consistent with the plan. AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies in part.

Applicant, however, has not begun satisfying any of the other delinquencies, nor has he participated in any financial counseling. Instead, his long-term plan to eliminate his delinquencies is predicated on a bonus he anticipates receiving. 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 under control” does not apply.

### **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.

Although Applicant has recently begun paying one of his delinquent debts, he still has approximately \$26,000 of delinquent debt that remains outstanding. Applicant contends that he will begin satisfying the smaller delinquencies after he satisfies the state and federal tax delinquencies. Without a demonstrated track record of financial reform, Applicant’s projected plan has minimal probative value.

In assessing Applicant’s security-clearance worthiness, I was troubled by inconsistencies between his testimony and information he provided on his security clearance application. This lack of credibility undercuts his contention that he will satisfy his delinquencies. Upon evaluating this case in the context of the whole person concept, I conclude Applicant has not mitigated the financial considerations security concern.

### **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

### **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