



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-01085
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: Pro Se

October 30, 2009

**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted a questionnaire for sensitive positions (SF 86) on September 30, 2008. On March 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, to Applicant. 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 21 and 28, 2009, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on June 26, 2009. The FORM was forwarded to Applicant on June 29, 2009. Applicant received the FORM on July 13, 2009. He had 30 days to submit a response to the FORM. He did not submit a response. On October 8, 2009, the FORM was forwarded to the hearing office. The FORM was assigned to me on that same date.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admits all of the allegations in the SOR. (Item 4)

Applicant is a 36-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as a senior engineer since April 2008. He served on active duty in the United States Air Force from April 1995 to September 2006. He separated as an E-5 with an honorable discharge. He is married and has three children. He indicates on his SF 86 that he has held a Top Secret clearance but does not indicate when he held the clearance and if his security clearance is still active. (Item 6)

Applicant's security clearance background investigation revealed the following delinquent accounts: a \$710 cell phone account placed for collection in May 2008 (SOR ¶ 1.a: Item 8 at 1); a \$2,126 credit card account that was charged off in February 2004 (SOR ¶ 1.b: Item 6 at 11; Item 8 at 2; Item 9 at 6); a \$2,828 account placed for collection in February 2007 (SOR ¶ 1.c: Item 6 at 11; Item 8 at 3; Item 9 at 10); a \$11,569 debt owed after an automobile repossession in October 2007 (SOR ¶ 1.d: Item 6 at 12; Item 8 at 3; Item 9 at 13); a \$1,978 credit card account that was placed for collection in September 2007 (SOR ¶ 1.e: Item 6 at 11; Item 8 at 2, 4; Item 9 at 4); and a \$1,750 account placed for collection in October 2007 (SOR ¶ 1.f: Item 6 at 12; Item 8 at 2; Item 9 at 13).

In December 2001, Applicant filed for Chapter 7 bankruptcy. He listed total assets of \$21,690 and total liabilities of \$32,756. His dischargeable debts were discharged by the bankruptcy court on August 13, 2002. (SOR ¶ 1.g: Item 7; Item 8 at 1; Item 9 at 3)

Other than his admissions, Applicant provided no further evidence in response to the SOR. He did not respond to the FORM. The record does not have information as to the status of Applicant's current financial situation. Applicant did not explain the cause of his financial problems. He did not provide information about his work performance.

### **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 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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations); apply to Applicant's case. The SOR alleges six delinquent accounts, an approximate total of \$20,961. Applicant's Chapter 7 bankruptcy that was filed in December 2001 reveals that he has a history of not meeting financial obligations.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. There are several Financial Considerations Mitigating Conditions (FC MC) that have the potential to apply to Applicant's case. They are:

FC MC ¶ 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);

FC MC ¶ 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);

FC MC ¶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);

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts);

FC MC ¶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).

None of the mitigating conditions apply. Applicant provided no mitigating evidence. He had the burden to mitigate the security concern raised under financial considerations. He did not meet his burden. The financial considerations concern is found against Applicant.

## 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 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 has had difficulties meeting his financial obligations since 2001 when he filed for bankruptcy. He received a financial fresh start when his debts were discharged in August 2002. He continues to have difficulty with his finances and provided no evidence explaining the cause of his financial problems and what steps he is taking to resolve the situation. Applicant did not provide enough evidence to support mitigation of the financial considerations 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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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ERIN C. HOGAN  
Administrative Judge