



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



In the matter of: )  
)  
) ISCR Case No. 09-01378  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

November 30, 2010

**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 completed an Electronic Questionnaire for Investigations Processing (e-QIP) on October 11, 2008. On December 9, 2008, he was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) and provided information about his financial obligations. On January 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted two responses to the SOR, one February 15, 2010, and the other a short time later.<sup>1</sup> He requested that his case be adjudicated on the written record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on July 7, 2010. The FORM contained documents identified as Items 1 through 9. By letter dated July 15, 2010, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on July 23, 2010. His response was due on August 22, 2010. He did not file any information in response to the FORM. On October 20, 2010, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains 15 allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.o.). The 15 allegations total approximately \$22,061. In his Answer to the SOR, Applicant admitted nine Guideline F allegations (¶¶ 1.a., 1.c., 1.d., 1.e., 1.f., 1.g., 1.i., 1.j., and 1.o.). He denied six Guideline F allegations (SOR ¶¶ 1.b., 1.h., 1.k., 1.l., 1.m., and 1.n.). Applicant's admissions are entered as findings of fact. (Item 1; Item 2; Item 3.)

Applicant is 53 years old and is a high school graduate. Since September 2008, he has been employed as a carpenter by a Government contractor. From October 1994 to September 2008, he was employed as a foreman by a private company. He and his wife have been married for 30 years, and they are the parents of three adult children. Applicant has not previously held a security clearance. (Item 4; Item 6.)

When Applicant completed his e-QIP in October 2008, he answered "Yes" when asked if, in the last seven years, he had been over 180 days delinquent on any debt. He also answered "Yes" when he was asked if he was currently over 90 days delinquent on any debt. He reported on his e-QIP that he was delinquent on an \$800 credit card debt incurred in 2003. (Item 4 at 26-27.)

Applicant was interviewed by an Office of Personnel Management (OPM) investigator about his finances on December 9, 2008. The investigator asked Applicant about accounts that were delinquent or in collection status and identified on his credit report of November 13, 2008. Applicant explained that he only identified one account on his e-QIP as delinquent because he did not know which other accounts might be delinquent. In the interview, he acknowledged delinquent accounts identified on the SOR at ¶¶ 1.a., 1.b., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.n.<sup>2</sup> He stated that he didn't

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<sup>1</sup> Applicant's second response to the SOR was not dated. His February 15, 2010, filing was notarized, dated, and signed. (Item 3; Item 2.)

<sup>2</sup> In his answer to the SOR, Applicant admitted the delinquent debts alleged at ¶¶ 1.a., 1.f., 1.g., 1.i., and 1.j. In his answer to the SOR, he denied the debts alleged at ¶¶ 1.b., 1.h., 1.k., 1.l., and 1.n, all of which were identified as unpaid on his credit reports of July 2010, November 2009, and November 2008. Applicant failed to provide documentation to corroborate his denials of the debts. (Item 1; Item 2; Item 3; Item 7; Item 8; Item 9.)

pay the accounts because he lacked the money to do so. He stated that his wife knew about the delinquent accounts, and he stated he intended to pay them at some time in the future.<sup>3</sup> As of the date of the SOR, the debts remained unpaid. (Item 5 at 4-7; Item 7 at 7.)

In his answer to the SOR, Applicant also admitted three delinquent medical debts alleged at SOR ¶¶ 1.c., 1.d., and 1.e. The delinquent medical debts are listed on Applicant's credit report of November 2009. Applicant provided no documentation to establish that the debts had been paid or otherwise resolved. (Item 2; Item 3; Item 8.)

Applicant denied a \$15,000 delinquent debt in collection status alleged at SOR ¶ 1.m. The debt was listed on Applicant's November 2008 and November 2009 credit reports. However, Applicant's July 2010 credit report shows that the debt was settled for a lesser amount in April 2010. (Item 2; Item 3; Item 7; Item 8; Item 9.)

In his answer to the SOR, Applicant admitted the debt alleged at SOR ¶ 1.o., and he asserted that the debt had been paid in full. However, Applicant's credit reports of July 2010 and November 2009 list the debt as charged off and delinquent since November 2004. Applicant failed to provide documentation to establish that the debt had been satisfied. (Item 2; Item 3; Item 7; Item 8.)

On June 4, 2009, in response to DOHA interrogatories, Applicant provided a personal financial statement. He reported a monthly net income of \$2,941 and monthly living expenses of approximately \$1,900. His net monthly remainder is approximately \$1,000. His personal financial statement did not reflect any payments on delinquent debts. Nothing in the record reflects that Applicant has participated in consumer credit counseling. (Item 6 at 5.)

### **Burden of Proof**

The Government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the Government must establish by substantial evidence a *prima facie* case that it is not clearly consistent with the national interest for an applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

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<sup>3</sup> On November 23, 2009, in response to DOHA interrogatories, Applicant signed a statement affirming that he had read the summary of the interview and found it to be true and correct. He made no changes, corrections, or revisions to the investigator's summaries. (Item 5.)

## 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 an 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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 over-arching 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 in seeking to obtain 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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. Applicant has accumulated delinquent debt which has not been paid. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

The guideline also recites 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,” such as “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 “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, security concerns related to financial delinquencies might be mitigated 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 actions to resolve the issue.” (AG ¶ 20 (e)).

The record in this case established that Applicant had satisfied for a lesser amount the \$15,000 debt alleged at SOR ¶ 1.m. Accordingly, this allegation is concluded for Applicant. Applicant’s 14 remaining unresolved delinquent debts total approximately \$7,061.

However, Applicant has a history of financial delinquencies that dates to at least the period of 2003 and 2004. Most of the delinquencies alleged on the SOR remain unpaid and have occurred under circumstances that are likely to recur. Applicant lacks a clear and timely strategy for resolving his delinquent debts. While his most recent credit report reflects that one debt alleged on the SOR has been paid or otherwise satisfied for a lesser amount, the record is silent regarding consumer credit counseling.

Applicant has been employed by his present employer since September 2008, and he worked for another employer from 1994 until he took his present position. The record suggests that Applicant may have lacked financial resources to pay some of his delinquent debts in the past. However, that does not appear to be the case now. His financial statement shows a monthly net remainder sufficient to pay or settle the unresolved delinquent debts listed on the SOR.

In December 2008, Applicant told the OPM investigator that he intended to pay his delinquent debts in the future. Almost two years later, however, all but one of his financial delinquencies remain unresolved. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). While Applicant receives some credit for settling the delinquent debt alleged at SOR ¶ 1.m., 14 of the 15 debts alleged on the SOR remain unresolved. Accordingly, I conclude that none of the Guideline F mitigating conditions apply fully to the facts of Applicant’s case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an 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. He has been steadily employed since about 1994, and he reports a net remainder each month of approximately \$1,000. In his December 2008, interview with an OPM investigator, he stated he would take action to pay or otherwise satisfy his delinquent debts. While one of his debts has been settled, 14 remain unaddressed. Despite some financial strength, Applicant has failed to satisfy most of his delinquent debts, several of which are for relatively small amounts of money. His failure to satisfy his creditors raises security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's 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.l.:	Against Applicant
Subparagraph 1.m.:	For Applicant
Subparagraphs 1.n. and 1.o.:	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.

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Joan Caton Anthony  
Administrative Judge