



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



In the matter of: )  
)  
) ISCR Case No. 09-01917  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry Esquire, Department Counsel  
For Applicant: *Pro se*

June 29, 2010

**Decision**

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DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On December 29, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On January 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 Adjudicative Guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On January 21, 2010, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On March 12, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing 13 Items,

and mailed Applicant a complete copy on March 16, 2010. Applicant received the FORM on March 22, 2010, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On June 2, 2010, DOHA assigned the case to me.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all allegations. Those admissions are incorporated in the following findings.

Applicant is a 41 years old. He is married and has four children. He has worked for a defense contractor since August 1989. He is a crane foreman. (Item 4.)

In January 2009, a government investigator interviewed Applicant to discuss two tax liens, delinquent credit accounts, and a December 2008 foreclosure. Applicant explained that he and his wife stopped paying their mortgage sometime in 2007 when her mortgage business closed and their income decreased. Around that time, he financially helped family members with unforeseen medical expenses and other emergencies. Both situations created additional financial difficulties for him. (Item 8 at 6-7.) He told the investigator that he was resolving a credit card debt and making arrangements to settle other debts. His wife was negotiating a settlement with the Internal Revenue Service (IRS) for the tax lien entered in 2009 and resolving the 2007 state tax lien. (*Id.*)

In February 2009, the IRS sent a letter to Applicant and his wife advising them to file an Offer in Compromise to resolve the outstanding federal tax lien. (Item 3 at 3.) In May 2009, Applicant hired a lawyer to handle his mortgage problems. In September 2009, Applicant executed a Loan Modification Agreement that required him to make monthly payments of \$2,643, beginning on October 1, 2009.<sup>1</sup> He asserted that his payments are current, but did not submit proof that he made those payments over the past several months. (Item 3.)

In July 2009, Applicant completed a set of Interrogatories, in which he acknowledged that the state tax lien for \$1,676 was unresolved and anticipated consolidating the debt "with other debts next month." (GE 10 at 2.) He reiterated his intention to consolidate a charge card debt and two other debts into a repayment agreement. (*Id.*)

In September 2009, Applicant spoke to a debt consolidation company over the telephone for assistance in resolving his debts. After the consult, the company informed

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<sup>1</sup>According to the "Making Home Affordable" documents applicable to the Loan Modification Agreement, Applicant is required during the trial period payment plan to work with an approved housing counseling agency to create a budget and plan to reduce household debts. (Item 3 at 9.) Applicant did not provide documentation that he has done that to date.

him that his budget was unable to accommodate a plan for repaying his delinquent debts.<sup>2</sup> (Item 3 at 12, 13, 14.)

Based on credit bureau reports (CBR) from January 2009, March 2009, October 2009, and March 2010, the SOR alleged seven delinquent debts totaling approximately \$127,924, and consisting primarily of past due mortgage payments and unpaid taxes that started to become delinquent in March 2006.

In his January 2010 Answer, Applicant stated that his 2008 tax refund resolved the 2007 state tax lien of \$1,676, alleged in SOR ¶ 1.a, but that he was waiting for verification. He answered that he was “applying for Offer in Compromise” to resolve the \$45,014 federal tax lien, alleged in SOR ¶ 1.b. He provided no evidence to corroborate his statements that he made the revised mortgage payments per the Loan Modification Agreement, in resolution of the unpaid mortgage amounts alleged in SOR ¶ 1.c and ¶ 1.d.

Applicant’s Answer acknowledged three debts and noted that he was unable to manage them because he could not establish a debt consolidation plan based on his limited income.<sup>3</sup> The \$658 credit card debt, alleged in SOR ¶ 1.e, remains unresolved. The \$490 debt owed to a collections service agency, alleged in SOR ¶ 1.f, is unresolved. The \$305 insurance company debt, alleged in SOR ¶ 1.g, is unresolved.

Applicant provided no evidence concerning the quality of his recent job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be 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, 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

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<sup>2</sup>Applicant’s Answer referenced the date of contact with that agency as “9/14/2008,” but the exhibits submitted reference 2009 as the year of the contact. (Item 3 at 1.)

<sup>3</sup>Applicant did not submit his monthly budget or any other documents related to his financial status.

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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” 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.”

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.

## **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 evidence established security concerns under two Guideline F disqualifying conditions; specifically, AG ¶ 19(a), an “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Based on four CBRs and his admissions, Applicant has been unable or unwilling to satisfy debts that began accruing in March 2006. He demonstrated a four-year history of not meeting significant financial obligations. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut or prove mitigation of those security concerns. The guideline includes four conditions that could mitigate security concerns arising from financial difficulties in AG ¶ 20. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial delinquencies arose in 2006 and remain unresolved to date. The debts are ongoing and not isolated. Because there is insufficient evidence to support a finding that the delinquent indebtedness is unlikely to recur, this condition does not apply.

AG ¶ 20(b) states that it may be mitigating where “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.” Applicant attributed his financial problems to unexpected family obligations and his wife’s business closing. Those may have been circumstances beyond his control; however, he did not offer evidence demonstrating that he attempted to act responsibly while the debts were accruing, or after they accrued, until 2009. This mitigating condition marginally applies.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant established no mitigation under these two provisions. He submitted evidence that he had one telephone session with a credit counseling service in September 2009, after which he learned that the company could not help him. That is some evidence of mitigation under AG ¶ 20(c). However, he did not submit evidence indicating that his finances and delinquent debts are under control. He did not provide substantive evidence that he paid or established a repayment plan for any debt, including his tax liens or the smaller debts of \$658, \$490, and \$305.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

(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 individual with a long employment history with his employer. In January 2009, he learned of the government's security concerns related to his financial obligations. In February 2009, the IRS advised him to file a form to resolve his large tax lien. In January 2010, he indicated that he was "applying for" a tax settlement, but provided no proof that he had filed the requested document. He stated in his Answer that he resolved a state tax lien with a 2008 refund, but had not received verification from the taxing agency. In his Answer, he asserted that he resolved his unpaid mortgage and began making payments on a revised payment amount in October 2009, but did not submit proof of any payments. After learning from one debt consolidation company in September 2009 that his current income would not accommodate delinquent debt payments, he did not take further steps to resolve the smaller debts. In March 2010, the government notified him in the FORM that his file lacked sufficient proof of the resolution of his debts and gave him 30 days to file additional documents to support his request for a security clearance. He did not provide further information.

Applicant has had over a year to substantiate his claims that he was resolving his delinquent financial obligations. He failed to demonstrate financial rehabilitation so a recurrence of his financial problems is likely. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge