



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02308
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro Se*

January 27, 2010

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant signed a security clearance application (SF-86) on November 19, 2008. On July 14, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In a response notarized on September 8, 2009, Applicant admitted all 24 of the allegations set forth in the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated September 22, 2009. Applicant received the FORM on October 10, 2009, but declined to respond to its contents. On January 8, 2010, the Director, DOHA, forwarded the case for assignment to an administrative judge. The case was assigned to me on the same day.

Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

### **Findings of Fact**

Applicant is a 43-year-old male who is self employed as a truck driver. He has contracted to work for the same major trucking company since 2006. Applicant earned a bachelor of science degree in 1986. Divorced in 2001, he has since remarried. Applicant is the father of four children, none of whom presently reside with him.

In choosing an administrative determination, Applicant chose to rely on the written record. The facts he submitted with regard to his financial situation are mostly derived from two documents, his September 2009 Response to the SOR, in which he concisely admitted all allegations regarding 24 delinquent debts, and his May 2009 Response to Interrogatories. Because the information provided was brief, the facts of record are scant.

In the fall of 2002, Applicant was farming and fell approximately twenty feet from a grain storage facility.<sup>1</sup> As a result, he suffered serious injuries requiring two separate surgeries to his lower left leg and ankle.<sup>2</sup> Due to the injuries and his surgeries, Applicant was unable to work. His unemployment benefits eventually expired and he had no disability insurance upon which to rely. In sum, he was unemployed from October 2002 through July 2005. During this time, bills went unpaid as debts mounted.

Over the years, Applicant has “tried to set up several payment plans with many of [his creditors], only [to find out] that either the amounts have been charged off or the debts have been sold to yet some other company.” He no longer receives any bills from his creditors and he has “no contact information regarding many of [the] outstanding balances,” many of which concern medical care or legal fees.<sup>3</sup> He states that his handling of his current financial situation does not reflect the way he was raised, noting that he always does his best to follow rules, exercise self control, and live within his means. He plans to continue investigating these accounts with the hope of repaying all of his debts.<sup>4</sup>

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). In addition

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<sup>1</sup> Elsewhere in the record, Applicant implies he received medical care which led to financial obligations in 2001. Compare Item 3 (Response to the SOR, dated Sep. 8, 2009) and Item 4 (Response to Interrogatories, dated May 17, 2009).

<sup>2</sup> Item 3, *supra*, at note 1.

<sup>3</sup> *Id.* Of the debts at issue, at least 10 are related to medical care and cumulatively represent about \$1,800.

<sup>4</sup> *Id.*

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>5</sup> The burden of proof is something less than a preponderance of evidence. <sup>6</sup> The ultimate burden of persuasion is on the applicant. <sup>7</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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." <sup>8</sup> "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." <sup>9</sup> Any reasonable doubt

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<sup>5</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>6</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>7</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>8</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>9</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>10</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Guideline (Financial Considerations) is the most pertinent to the case. Applicable conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

### Analysis

Under Guideline F:<sup>11</sup> "Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Here, Applicant admitted that he has numerous delinquent accounts, some of which date back to at least 2002. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and FC DC AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant was unemployed from October 2002 through July 2005 due to a serious farming accident that necessitated two surgeries and adversely impacted his ability to work. He relied on unemployment compensation until his eligibility was exhausted. Although Applicant failed to provide any specific facts regarding his search for employment after his benefits expired, he noted that he tried to work with his creditors to develop payment plans. Consequently, there is sufficient information to conclude that Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) applies.

Applicant's delinquent debts are multiple in number and remain unpaid. There is no evidence he now carries disability or unemployment insurance as a safeguard against future injury. Meanwhile, he continues working at a job that is highly dependent on his physical well-being. Given these factors, Financial Considerations Mitigating Condition (FC MC) 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*

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<sup>10</sup> *Id.*

<sup>11</sup> Revised Adjudicative Guideline (AG) ¶ 18.

doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Applicant stated that he attempted to establish repayment plans with his creditors. He failed, however, to elaborate on those attempts or submit evidence reflecting these efforts. Similarly, he failed to provide evidence that he has received financial counseling. Therefore, neither FC MC AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) nor FC MC AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) applies.

Applicant's 2002 injury and subsequent period of unemployment help mitigate the creation of those debts acquired between 2002 and 2005. He failed to provide any documentary evidence, however, as to his attempts to address those debts. He failed to provide any documentary evidence as to his current efforts toward locating contact information for those institutional creditors with which he has lost contact. Applicant also failed to provide evidence as to any defined scheme or plan to repay his creditors once they have been located. Consequently, while security concerns regarding the creation of the delinquent debts may be deemed mitigated, security concerns remain unmitigated with regard to their present unaddressed status.

### **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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors. Applicant is a mature man who is self-employed. He earned a bachelor's

degree. He suffered a major accident which left him unable to work for a significant period of time. At least some of the debts at issue were apparently incurred as a result of medical care provided after his injury.

In requesting an administrative determination, however, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient evidence to supplement the record, clearly articulate his position, and carry his burden in this process. He failed to offer evidence of financial counseling. He failed to provide documentation regarding either his past efforts toward addressing his delinquent debts or his future plans for satisfying those obligations. Indeed, while his statements regarding his accident provide some insight into his situation, he provided little more than general allusions as to his hopes of addressing the debts at issue. Consequently, financial considerations security concerns remain.

There are no facts bringing Applicant's loyalty to the United States into question. His reliance on a less than comprehensive written record, however, leaves significant questions unresolved under Guideline F. Having failed to meet his burden, I conclude it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

### **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
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant

Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge