



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



In the matter of: )  
)  
) ISCR Case No. 09-02416  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 12, 2010

**Decision**

DAM, Shari, Administrative Judge:

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

On August 7, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 28, 2009, 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 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 September 17, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On October 14, 2009,

Department Counsel prepared a File of Relevant Material (FORM) containing eight Items, and mailed Applicant a complete copy the following day. Applicant received the FORM on October 27, 2009, and had 30 days from its receipt to file objections and submit additional information. He did not submit further evidence or correspondence in response to the FORM and expressed no objection to my consideration of the evidence submitted by Department Counsel. On February 17, 2010, DOHA assigned the case to me.

### **Findings of Fact**

In his response to the SOR, Applicant admitted all allegations. Those admissions and his statements in response to DOHA interrogatories are incorporated in the following findings.

Applicant is a 32-year-old employee of a defense contractor, where he began working in June 2007. He is married and has a 5-year-old stepchild. He has no military service and has never held a security clearance. He was unemployed from February 2007 to June 2007. Prior to that, he was employed in low-paying positions. (Item 4.)

In September 2008, a government investigator interviewed Applicant about his delinquent debts. He indicated that his financial problems were the result of low wages, periods of unemployment, and mismanagement of funds. With his current job, he thought he would be able to manage his expenses and to begin paying his delinquent debts. (Item 6 at 6.)

In May 2009, Applicant completed a set of Interrogatories regarding delinquent debts listed on credit bureau reports (CBR), dated August 2008 and March 2009. In response to questions about the 15 delinquent debts, he claimed that he made a \$200 payment on the \$2,960 debt (SOR ¶ 1.j), and unsuccessfully contacted two other creditors, including the creditor for his student loan to “avoid default.” (Item 5 at 6.) He did nothing regarding the other twelve debts. (*Id.*) He repeatedly stated, “I will seek financial counseling.” (Item 5 at 3.) He also submitted his budget, which recorded his net monthly salary as \$2,164 and monthly expenses as \$1,805, leaving him about \$350 at the end of the month for other expenses. (Item 5.)

Based on said CBRs, the SOR alleged 15 delinquent debts, totaling approximately \$21,000, including a \$15,600 student loan. The debts became delinquent between August 2002 and October 2008. (Item 7; Item 8.) Applicant offered no corroborating evidence of any payment toward, or other attempt to resolve these debts.

Applicant did not submit any evidence of a plan to resolve his delinquent debts and avoid incurring additional ones. He 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 revised Adjudicative Guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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 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.

Department Counsel argued that the evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) an "inability or unwillingness to satisfy debts;" and AG ¶ 19(c) "a history of not meeting financial obligations." Based on two CBRs and his statements, Applicant has been unable or unwilling to satisfy debts that began accruing in 2002. He demonstrated a seven-year history of not meeting financial obligations, as well as a lack of good judgment and reliability. The evidence is sufficient to raise these two potentially 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 2002 and remain unresolved to date. Because the ongoing problems are not isolated and there is no 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 periods of unemployment and underemployment, which may have been circumstances beyond his control prior to June 2007, when he started his current position. He also admitted that he made poor decisions related to his finances, and did not offer any evidence that he attempted to act responsibly while the debts were accruing or after they accrued. This MC 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 failed to present evidence that he received credit counseling and/or that his financial problems are under control, as required under AG ¶ 20(c). He did not provide evidence that he paid, attempted to pay, or has established a repayment plan for any debt, whether a \$16 debt (SOR 1.a.) or the \$15,600 student loan (SOR 1.i.). AG ¶ 20(d) 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 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, who is responsible for his voluntary choices and conduct that underlie the security concerns set out in the SOR. He established a consistent pattern of financial irresponsibility dating back to 2002, with no evidence of efforts to resolve his outstanding obligations despite learning of the Government’s concerns in September 2008, and stating in the May 2009 Interrogatories that he intended to address them.

Applicant failed to demonstrate financial rehabilitation from the present time forward, so recurrence and worsening of his financial concerns cannot be said to be unlikely. 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.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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge