



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 09-02636
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esq., Department Counsel  
For Applicant: *Pro se*

July 26, 2010

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate Guideline F (financial considerations) security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 12, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations) and J (criminal conduct) for 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on July 28, 2009. Department Counsel was prepared to proceed on November 24, 2009. The case was previously assigned to another administrative judge on December 1, 2009, and was reassigned to me on December 15, 2009 due to caseload considerations. DOHA issued a notice of hearing

on January 7, 2010, scheduling the hearing for January 26, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which were received without objection. The Applicant did not offer any exhibits, and he testified on his own behalf. DOHA received the hearing transcript (Tr.) on February 3, 2010.

### **Procedural Issue**

The Government withdrew the allegations in SOR ¶ 2. (Tr. 8, 12-13.) Accordingly, I entered findings “For Applicant” on this allegation. The allegation will not be discussed further.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a., 1.j., 1.k., 1.m., 1.n., 1.o., 1.q., 1.r., 1.x., and denied the remaining allegations. His admissions and denials were accompanied with explanations. His admissions along with explanations are accepted as findings of fact.

### **Background Information**

Applicant is 36 years old, and has applied for a position as a background investigator for a defense contractor. He seeks a security clearance, which is required to qualify for such a position. (GE 1, Tr. 22, 20-21.)

Applicant graduated from high school in June 1991. After high school, he attended a community college “for a couple of years.” He completed reserve police officer courses in 1997, and later completed a certificate program in law enforcement in 2000. He was a reserve police officer from September 1997 to February 2001, and became a full-time police officer from February 2001 to March 2008. His employment as a police officer ended by resignation in lieu of being involuntarily terminated. After leaving the police department, Applicant was unemployed from March 2008 to October 2008. He was briefly employed as a security officer supervisor from October 2008 to May 2009, at which time he was laid off. Applicant has been unemployed since then. He has been attending college since October 2008, which he is financing on a student loan. (GE 1, Tr. 15-19, 27-31, 64-66.)

Applicant married in April 1999, separated in February 2007, and divorced in May 2009. (GE 1, Tr. 21.) He has twin 15-year-old stepdaughters and a 13-year-old stepson, who are the children of his former spouse. He has a 13-year-old daughter from a previous relationship, and an 8-year-old daughter born during his marriage. Applicant is responsible for providing support to his two biological children. His 13-year-old daughter has been living with him for approximately two years. Applicant testified that her mother has a substance abuse problem and is under investigation for welfare fraud. (Tr. 22-26.)

## **Financial Considerations**

Applicant's background investigation addressed his financial situation and included the review of his September 2008 e-QIP, and his October 2008, June 2009, November 2009, and January 2010 credit reports. Applicant's SOR identified 24 separate debts totaling \$31,297. (SOR ¶¶ 1.a. – 1.x.) (GE 1 – 5, Tr. 9.)

Applicant has been living on \$1,440 monthly unemployment benefits since he was laid off in May 2009. Since separating from his former spouse, he had lived rent-free at his grandparent's house. Applicant attributes his financial difficulties to his former spouse's mismanagement of the family finances, costs associated with his separation and divorce, and unemployment. He remains responsible for providing child support for his 8-year-old daughter, which is deducted from his unemployment checks. He is not, however, paying child support for his 13-year-old daughter, who lives with him. Applicant has no other source of income or assets other than his unemployment benefits. (Tr. 33-41, 66-70.)

Applicant does not have a budget *per se*, but rather pays his bills "as they come and [tries] to cope" adding "[t]hat's basically the best I [can] do." (Tr. 42.) He does not pay property taxes on his grandparents' house, which are paid by his mother who is the legal owner of the house. When he needs medical treatment, he goes to Mexico as a less expensive option than treatment in the U.S. His daughters qualify for medical treatment through their state health insurance program. Applicant estimates that after he pays all his monthly bills, he has "maybe a hundred bucks." He does not have a savings account and on the day of his hearing, he had \$363 in his checking account. (Tr. 42-44, 70-71.)

Applicant's 24 debts include a variety of creditors – credit card companies, phone and utility companies, a child support arrearage, and a number of medical bills. Most of these debts became past-due in 2006-2007. Applicant did not appear at his hearing with documentation to support his claim that any of the alleged debts belonged to his former spouse. Furthermore, he did not provide any documentation that he had contacted his creditors or attempted to resolve any of the alleged debts to include the ones he acknowledged were his. In short, all 24 debts alleged remain unaddressed. (GE 2-5, Tr. 44-64.) At his hearing, Applicant admitted that all of the debts alleged, to include the ones he denied, were established by the Government's evidence. (Tr. 71-72.) Applicant's plan is to pay his creditors when he gets a job. (Tr. 72.)

## **Character Evidence**

Applicant did not submit any character evidence.

## **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 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, 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.

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 for 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline F (financial considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is established by his admissions and evidence presented. As indicated in SOR ¶¶ 1.a. to 1.x., he has 24 delinquent debts totaling \$31,297 that have been in various states of delinquency for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through (e) are potentially applicable:

(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;

(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;

(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;

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

(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.

Applicant's conduct does not warrant application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. Therefore, his debts are a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Applicant receives only partial credit under AG ¶ 20(b), because his first unemployment initially began as a result of his own misconduct

following his resignation from the police department in lieu of being involuntarily terminated. His separation and divorce as well as his subsequent unemployment contributed to his current situation, but were not the major precipitant.

His failure to remain in contact with his creditors; however, does not show that he acted responsibly under the circumstances.<sup>1</sup> The remaining mitigating conditions under AG ¶¶ 20(c) – (e) are not applicable. Applicant did not receive financial counseling, he did not initiate a good-faith effort to repay his creditors or otherwise resolves his debts, nor did he demonstrate through documented efforts that he had a reasonable basis to dispute any past-due debts.

### **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.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists 24 debts totalling \$31,297. These debts remain unresolved and have been in various states of delinquency for several years. Applicant, apparently, maintained an acceptable state of financial responsibility before his separation from the police department and his initial period of unemployment. However, based on the evidence he presented, he has not made any documented effort to resolve his debts such as contacting creditors, at a minimum. His current financial situation appears grim and his plan is to pay his creditors when he gets a job. In the interim, he remains unable to address his financial liabilities.

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<sup>1</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

The mitigating evidence under the whole-person concept is insufficient to overcome Applicant's current situation. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the concerns arising from his financial considerations.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has not fully mitigated or overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

### **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: Subparagraphs 1.a. - 1.x.:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline J: Subparagraph 2.a.:	FOR APPLICANT For Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is denied.

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Robert J. Tuidor  
Administrative Judge