



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02926
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 30, 2010

**Decision**

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LYNCH, Noreen A., Administrative Judge:

On December 8, 2009, 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 revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

On December 28, 2009, Applicant answered the SOR. He requested a decision on the record in lieu of a hearing. Department Counsel submitted the government's written case on January 27, 2010. Applicant received a complete file of relevant material (FORM) on February 4, 2010, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the government's case. Applicant submitted a letter dated March 14, 2010. DOHA assigned the case to me on March 19,

2010. Based upon a review of the case file, pleadings, and exhibits, Applicant's eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.d, 1.f, 1g, and 1.i. He denied the remaining factual allegations. He submitted additional information to support his case.

Applicant is a 30-year-old employee of a defense contractor. He graduated from high school in 1998, and earned an undergraduate degree in economics in December 2004 (Item 4). He is currently attending courses at a university. He is married and has one daughter, who was born in 2007. He has been with his current employer since November 2008. He has never held a security clearance.

Before Applicant's current employment, he worked for several companies. He also had periods of unemployment. In January 2008, Applicant was laid off until April 2008. During that time, he received unemployment. He was employed from April 2008 until October 2008 as a real estate loan officer. His pay was based on commission, and he did not earn sufficient income to support his family. He decided to resign from that position to take a job in the construction field. At the time, Applicant's wife did not work as she was on unpaid maternity leave (Item 3).

Applicant's reduced income in 2008 caused him to miss payments on his accounts. The delinquent debt of \$130 for a credit card (SOR 1.a); the delinquent debt of \$6,553 for a credit card (SOR 1.b), and a charged-off phone account for \$253 (SOR 1.c) are not paid although Applicant intended to settle them. The largest delinquent debt, for \$29,311 (SOR 1.d), is the result of a second mortgage. His primary mortgage is past due in the amount of \$3,020 (SOR 1.f). Applicant's charged-off auto loan for \$10,601 (SOR 1.g) is the result of a 2008 voluntary repossession. Applicant is past due on another auto loan for \$399 (SOR 1.e). Applicant admitted that he owes approximately \$50,000 in delinquent debts (Item 3). The delinquent debt on a TV account for \$830 (SOR 1.i) is also admitted, but not paid. He intended to resolve these debts by various payment plans, but he did not produce any documentation.

Applicant denies that his student loans (SOR 1.h through 1.k are delinquent. He produced documentation that the loans are currently in forbearance until March 2010 (Item 5).

Applicant's net monthly income (including his wife's current income) is approximately \$4,470 (Item 6). He has a small savings account. He has not obtained any financial counseling.

In March 2010, Applicant and his wife met with an attorney to seek advice on filing a Chapter 13 bankruptcy. They developed a plan to address the delinquent accounts that are listed in the SOR. The plan will be discharged in five years. The

projected monthly plan is \$630. Applicant is confident that he will be able to resume payment levels on his mortgage (\$1,153) and his daily expenses. He will have no car payment. Applicant is scheduled to meet later in March 2010 to “officially file” the Chapter 13 bankruptcy.

### **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 and mitigating conditions, which must be considered 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, 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 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 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 (EO) 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 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 guideline notes several conditions that could raise security concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. By his own admission, Applicant accumulated delinquent debts on many accounts totaling approximately \$50,000. His credit reports confirm the debts. He has decided to file for Chapter 13 bankruptcy. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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.<sup>o</sup> Applicant still has significant unresolved delinquent debts. Applicant intends to file for Chapter 13 bankruptcy in March 2010. This mitigating condition does not apply.

Under AG & 20(b), the disqualifying condition may be mitigated 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.<sup>o</sup> Applicant has had several periods of unemployment. When he lost his jobs and could not find work, he incurred delinquent debts. In 2008, when he found employment, he was receiving a steady salary. At that point, he did not pay his delinquent debts or arrange for a repayment plan. He disputed the student loans because they were in forbearance. He is ultimately responsible for the accounts. Applicant has not acted responsibly in paying his accounts under the circumstances. This mitigating condition applies in part.

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 the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not received formal financial counseling according to the record evidence. He has not resolved the majority of his delinquent debts. He has now decided to file for Chapter 13 bankruptcy. This is a legal means of resolving debts, but his filing is not official, and he has yet to start the bankruptcy payment plan. His debts are not discharged. His efforts are insufficient to carry his burden in this case. I conclude these mitigating conditions do not apply.

Applicant's act of filing for bankruptcy, even if he should receive a discharge in bankruptcy, does not preclude assessing the security significance of Applicant's overall financial problems. He has not established a track record of financial reform.

AG ¶ 20(e) applies where the evidence shows "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." As stated above, Applicant's student loans are not delinquent. He provided documentation to support his assertion. This mitigating condition applies to SOR allegations 1.h through 1.k.

### **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.

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 and conclude they are insufficient to overcome the government's case. Applicant has worked all his adult life. He has supported his family. He obtained a degree so that he could enhance employment

