



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-03045

**Appearances**

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

March 25, 2010

**Decision**

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

Applicant signed a security clearance application on January 5, 2009. On October 28, 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 dated November 23, 2009, Applicant admitted all eight allegations raised under Guideline F and requested an administrative determination. On January 15, 2010, Department Counsel submitted a File of Relevant Material (FORM), which included seven attached items. Applicant received the FORM on January 15, 2010, but did not submit any additional information for consideration. The case was assigned to me on March 19, 2010. 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 denied.

### Findings of Fact

Applicant is a 44-year-old software technician working for a defense contractor. He began working for his present employer in September 2008. He is married and has two young children. He has a high school diploma and a college degree in statistics.

In December 1998, Applicant graduated from college. He worked as a program analyst from April 1999 until about October 2002. He was then unemployed until February 2003. He worked on a farm from February 2003 through March 2005, when he was hired as a support services director. That job lasted until February 2008. He then worked as a handy man until he was hired by his present employer.

In response to the SOR, Applicant admitted the allegations set forth in allegations ¶¶ 1.a through 1.h. Those allegations represent approximately \$32,800 in delinquent debt derived from a medical account, a credit card, a state tax lien from 1996, and three student loans. He also admitted he failed to both file a required state tax form for tax year 2005 and resolve a state tax issue involving unemployment benefits received during tax year 2002.

Applicant provided scant information regarding the debts at issue, his employment history, and current finances. He is not living above his means. His medical debt (SOR allegation ¶ 1.a for \$488) arose because he has not had medical insurance for over twenty years.<sup>1</sup> His credit card company no longer has a record of his debt (SOR allegation ¶ 1.f for \$1,607), and he is unable to determine which collection agency now owns the debt.<sup>2</sup> He is in continuing negotiations regarding repayment of his educational debt (SOR allegations ¶¶ 1.c-1.e for about \$29,604), which became delinquent due to periods of unemployment, underemployment, and unmanageable payment terms.<sup>3</sup> He is resolving his tax issues (SOR allegations ¶¶ 1.b, 1.g-1.h for a combined debt of \$29,604) as he “recover[s] tax forms from past years. . . .”<sup>4</sup> Regarding his current financial situation, Applicant wrote in response to the October 2009 SOR that he is currently in the process of repaying all of his debts and noted that he intends to repay all of his debts. He stated, “[m]y current working situation affords me benefits that allow me to repay my debts and without proper security clearance I will not be able

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<sup>1</sup> SOR Response, dated Nov. 23, 2009.

<sup>2</sup> FORM, Item 8, Interrogatories, dated Jul 24, 2009, and Investigator’s Notes, dated Feb. 25-28, 2009, at I-9.

<sup>3</sup> *Id.* at I-3. The dates of last activity shown on these accounts occurred between 2004 and 2008. See FORM, Items 6-7, Credit Reports, dated Aug. 28, 2009, and Jan. 23, 2009, respectively.

<sup>4</sup> SOR Response, *supra*, note 1.

to continue with my present employer.”<sup>5</sup> As noted above, he has worked for his present employer since September 2008.

When interviewed by investigators in February 2009, Applicant stated that he could meet all of his outstanding financial obligations.<sup>6</sup> In July 2009 interrogatories, he noted that he was “working to resolve all debt issues.”<sup>7</sup> In response to the October 2009 SOR and the January 2010 FORM, however, he provided no documentary evidence of either payments on any of these accounts or attempts to consolidate or otherwise address his debts. Moreover, he provided no evidence demonstrating any attempts to resolve his tax issues. Further, there is no evidence he has received financial counseling to aid him in his efforts.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an 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. 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>8</sup> The burden of proof is

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<sup>5</sup> *Id.*

<sup>6</sup> FORM, Item 8, *supra*, note 2 at I-3.

<sup>7</sup> *Id.* at I-12.

<sup>8</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>9</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 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>10</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>12</sup> A security clearance denial 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.

### **Analysis**

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “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.”<sup>13</sup> It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>14</sup> Here, Applicant admitted that he owes approximately \$32,800 in delinquent debt, including one state tax lien from 1996, and that he has yet to resolve two other state tax issues dating from 2005 and 2002. Therefore, 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)

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

<sup>10</sup> See also EO 12968, § 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>11</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>12</sup> *Id.*

<sup>13</sup> AG ¶ 18.

<sup>14</sup> *Id.*

apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant's employment history has been erratic since he graduated from college in 1998. He was unemployed from October 2002 until February 2003, underemployed as a farm worker from February 2003 until March 2005, and underemployed as a handy man from February 2008 until September 2008. At various points during these periods, between 2004 and 2008, he found his student loan payments unwieldy and ceased making payments. In the past year, he repeatedly indicated that he has been working to resolve his debts. Therefore, Financial Considerations Mitigating Condition 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 erratic employment and good intentions may mitigate the creation of the debts and issues set forth in the October 28, 2009, SOR. For over a year, however, he has noted his intentions and abilities to honor his obligations, but has yet to produce any documentation reflecting either his efforts or his progress on these issues. Indeed, although he notes in his response to the October 2009 SOR that his current position "affords him benefits that allow" him to "repay his debts," he provided no evidence that any payments actually have been made. Further, he provided no statement or evidence that he has sought or received financial counseling to help him in his endeavors. Therefore, neither 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 doubt on the individual's current reliability, trustworthiness, or good judgment), 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), nor FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

In declining a hearing and relying on the written record, Applicant limited his ability to address the debts and issues raised in the SOR. The burden for such mitigation in these proceedings is placed squarely on Applicant. Lacking evidence of some progress on either his debts or his tax issues, he failed to mitigate financial considerations security concerns.

### **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 completed his college education in his 30s. Now 44, he recently started a family and has young children. Unfortunately, his employment has been erratic, having suffered through a four-month period of unemployment and two significantly longer periods of underemployment which did not take advantage of his expertise. As a result, debts were acquired and became delinquent.

Applicant was hired for his current position in September 2008. Over the past year, he maintained that he was working on resolving his debts and tax issues. In response to the SOR, he noted that his current position has made it possible for him to repay his debts. Despite these claims, Applicant provided no documentary evidence reflecting such efforts. By failing to meet his burden, financial considerations security concerns remain unmitigated. Clearance 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
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Subparagraphs 1.a - 1.h	Against Applicant
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### **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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge