



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



In the matter of: )  
)  
) ISCR Case No. 09-03391  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

October 6, 2010

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on March 8, 2010, and requested a hearing before an administrative judge. The case was assigned to another Judge on April 27, 2010 and reassigned to me on June 14, 2010. DOHA issued a notice of hearing on June 15, 2010, and the hearing was convened as scheduled on August 18, 2010. The

Government offered Exhibits (GE) 1 through 10, which were admitted without objection. The Applicant offered Exhibits (AE) A through B and testified on his own behalf. The record was held open for Applicant to submit additional information until September 17, 2010. Applicant did not submit any post-hearing exhibits. DOHA received the transcript of the hearing (Tr.) on August 26, 2010.

### **Findings of Fact**

Applicant admitted the SOR allegations ¶¶ 1.b.-1.e., 1.h.-1.i., and 1.k.-1.r. He denied SOR ¶¶ 1.f., 1.g., 1.j., and failed to admit or deny 1.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor. He is single and has no children. He is a 2004 graduate of a culinary school. Applicant is indebted to 18 creditors in the approximate total amount of \$108,871.82. He attributes his debts to caring for his ailing father from 2005 until his passing in 2008. (GE 1, 2, 3, 4, 5, 6, 7, 8, 10; Tr. 48-54.) His debts are as follows:

Allegation 1.a. alleges that Applicant is indebted for satellite television service in the approximate amount of \$65. Applicant claims that he has satisfied this account, but failed to produce evidence to substantiate his claim. (Tr. 54.)

Allegation 1.b. alleges that Applicant is indebted on a judgment against him for a vehicle he purchased. He produced a letter from the creditor noting that Applicant had an agreement to pay \$500 for 11 months to satisfy this debt. Applicant claims that he is making payments on this account under this agreement, but failed to produce evidence to substantiate his claim. (AE B; Tr. 54-55.)

Allegation 1.c. alleges that Applicant is indebted to a creditor in the approximate amount of \$2,068. Applicant disputes this debt. He claims that he has been paying \$200 to \$250 per month on this debt for the last two years. Applicant requested a statement, showing how much he has paid and the creditor would not provide it. He refuses to pay more, until he is give an accounting of the monies paid. He provided copies of some of the payments to this creditor. (Ex. 5; Tr. 59.)

Allegation 1.d. alleges that Applicant is indebted on a delinquent credit card account in the approximate amount of \$768. Applicant has not paid this debt. He has made no contact with the creditor. (Tr. 59.)

Allegation 1.e. alleges that Applicant is indebted on a delinquent credit card account in the approximate amount of \$733. Applicant has not paid this debt. (Tr. 59-60.)

Allegation 1.f. alleges that Applicant is indebted to a collection agent for a telephone service provider in the approximate amount of \$192. Applicant believes he

incurred this debt as a cancelation fee. He has not contacted this creditor to arrange payment. (Tr. 60-61.)

Allegation 1.g. alleges that Applicant is indebted on a medical account in the approximate amount of \$1,196. He believes that this debt was for treatment after a car accident that occurred in 1998 or 1999. He claims that it should have been paid through his parents' insurance. He has not contacted the creditor or officially disputed this debt. (Tr. 61-62.)

Allegation 1.h. alleges that Applicant is indebted to a collection agent for an unpaid cellular phone account in the approximate amount of \$249. Applicant has not paid this debt. (Tr. 63.)

Allegation 1.i. alleges that Applicant is indebted to a collection agent in the approximate amount of \$556. He has been unable to satisfy this account. (Tr. 63-64.)

Allegation 1.j. alleges that Applicant is indebted on a medical account in the approximate amount of \$409. He believes that this debt was for treatment after a car accident that occurred in 1998 or 1999. He claims that it should have been paid through his parents' insurance. He has not contacted the creditor or officially disputed this debt. (Tr. 65-66.)

Allegation 1.k. alleges that Applicant is indebted to a collections agent for a bank, in the approximate amount of \$216. He incurred this debt when a charge was submitted on a bank account he had closed. Applicant has not paid this debt. (Tr. 66.)

Allegation 1.l. alleges that Applicant is indebted on a student loan account in the approximate amount of \$69,309. Applicant testified that he was paying \$300 per month on this debt. Applicant presented a letter from this creditor asking for payments of \$300 per month on this debt. He failed to provide any documentation to show he had made any payments under this agreement. (AE A; Tr. 66-71, 79.)

Allegation 1.m. alleges that Applicant is indebted on a student loan in the approximate amount of \$3,264. Applicant failed to present documentation of any actions he is taking to satisfy this debt. (Tr. 66-79.)

Allegation 1.n. alleges that Applicant is indebted on a student loan in the approximate amount of \$10,496. Applicant failed to present documentation of any actions he is taking to satisfy this debt. (Tr. 66-79.)

Allegation 1.o. alleges that Applicant is indebted on a student loan in the approximate amount of \$5,278. Applicant failed to present documentation of any actions he is taking to satisfy this debt. (Tr. 66-79.)

Allegation 1.p. alleges that Applicant is indebted on a student loan in the approximate amount of \$4,353. Applicant failed to present documentation of any actions he is taking to satisfy this debt. (Tr. 66-79.)

Allegation 1.q. alleges that Applicant is indebted on a student loan in the approximate amount of \$5,182. Applicant failed to present documentation of any actions he is taking to satisfy this debt. (Tr. 66-79.)

Allegation 1.r. alleges that Applicant is indebted to a store in the approximate of \$391. Applicant contends this debt is a duplicate of 1.i. However, he failed to produce documentation to substantiate his claim. (Tr. 63-64.)

In addition to the debts listed on the SOR, Applicant has a state tax debt in the approximate amount of \$1,691. A lien for this amount was filed in approximately September 2009. Applicant earns approximately \$37,000 to \$38,000 per year. (GE 10; Tr. 88-90.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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.

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 the 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 concern under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated 18 delinquent debts and is unable or unwilling to pay these obligations. His delinquencies have been on-going for several years, without resolution. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 failed to provide evidence that he has satisfied any of his delinquent debts listed on the SOR. His debt is current and on-going. He gave little indication that he is working to improve his financial situation. His unwillingness to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partly caused by caring for his ailing father. This qualifies as a condition that was outside his control. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not shown he made any attempt to responsibly address his remaining debts, with the exception on the debt in 1.c., which he did make some payments toward satisfying. He has not had contact with several of his creditors since the accounts became delinquent. He has not established payments under any agreement on his consumer debt. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. He failed to provide proof that AG ¶ 20(c) applies.

Applicant has presented documentation that he made payments on his debt alleged in 1.c. However, he has not proven he made payments to any of his other creditors. There is no showing he has initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable.

Finally, Applicant testified that he contests the debts listed in allegations 1.c., 1.g., 1.j., and 1.r. However, he failed to introduce documented proof to substantiate the basis of the dispute or provide evidence of actions he has taken to resolve the issue with his creditors. AG ¶ 20(e) is not mitigating.

### **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):

- (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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant failed to introduce any character evidence. He has been unable to make ends meet and satisfy his past due accounts. His choices, with respect to his debts, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations security concerns.

### **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.:	For 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

### **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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge