



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



In the matter of )  
)  
) ISCR Case No. 09-03427  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

November 23, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

On February 19, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required as part of his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On July 10, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).<sup>2</sup> In his undated Answer to the SOR, Applicant admitted both allegations under Guideline F. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on August 17, 2009, and the case was assigned to me on August 28, 2009. DOHA issued a Notice of Hearing on September 8, 2009, and I convened the hearing as scheduled on October 8, 2009. The government offered five exhibits, which I admitted as Government Exhibits (GE) 1 through 5. Applicant testified and submitted six exhibits, which I admitted as Applicant's Exhibits (AE) A through F. DOHA received the transcript on October 16, 2009.

### **Findings of Fact**

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant is 44 years old. After high school, he joined the U.S. Marine Corps in 1983, and was honorably discharged in 1987. He also served in the Army National Guard from 1990 to 1991, including duty during Operation Desert Storm. He completed two years of trade school in 1993. He has been in the aviation field since the 1980's, and has not been unemployed within the past 10 years. From 2002 to 2007, Applicant was employed as an aviation manager, and received the next-to-highest or highest grade in most tasks in 2004 and 2005. His performance decreased slightly in 2006. He has held his current position as a senior avionics technician for a defense contractor since February 2009. (GE 1; AE B, C, D; Tr. 28-30, 34).

Applicant married in 1984 and divorced in 2000. He has two sons from his first marriage, 14 and 16 years of age, who live with his ex-wife. He married his current wife in 2007. Her two daughters, Applicant's step-daughters, are 14 and 18 years old and live with Applicant and his current wife. (GE 1; Tr. 28-30, 34).

As of the date of his personal financial statement in May 2009, Applicant's and his wife's net monthly take-home pay totaled approximately \$7,900. Applicant's child support payment of \$1,100 per month for his two sons is

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<sup>2</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

garnished from his pay. With expenses deducted, Applicant had approximately \$5,000 per month net remainder. His circumstances changed somewhat since May: his daughter started an expensive college, his spouse changed jobs, he has a \$400 per month car payment, and a rent increase of \$600 per month. Applicant estimates his current monthly net remainder to be approximately \$1,000. He has about \$500 in savings and \$8,300 in his checking account. He closed most of his credit card accounts after his divorce in 2000, and now has one credit card. Applicant has not attended financial counseling. His 2009 credit reports show that he has no accounts in collection other than the two listed in the SOR. (GE 2, 4, 5; Tr. 36, 57, 63-73).

The SOR debts total \$17,650. Allegation 1.a. refers to a debt of \$6,412 owed on a retail store credit card. In 2002, Applicant's girlfriend applied for the card while they were buying a computer and other items at the store; they both signed the application. The original debt was approximately \$2,600. Applicant and his girlfriend parted ways in about 2003, and she kept the computer. The debt became delinquent in 2004. The store both wrote and called Applicant and informed him that he was the primary account-holder, and was responsible for the delinquent debt. Applicant disputed his liability and referred the company to his girlfriend. She could not be located. The creditor won a judgment against Applicant in 2006. He contacted the collection agency in 2007 and set up a payment plan of \$100 per month. The creditor stated that it would not charge interest if he made the payments. Applicant made three payments, but then realized the company was charging interest; therefore, Applicant stopped his payments. As of March 2009, the date of his security clearance interview, he stated he should not be liable for this debt, and that he had disputed the debt with the credit reporting agencies. In his interrogatory response of May 2009, he again stated that he disputed the debt. However, he testified at the hearing that he no longer contests it. (GE 2, 3, 4; Tr. 37-48, 58).

As a result of the 2006 judgment, this debt was to be paid through garnishment of Applicant's wages. However, his wages were not garnished because of his existing child support garnishment. Applicant expects that his pay will be garnished after his child support obligation decreases or ends, which will be in approximately two years. He is no longer employed by the same company where he worked when the garnishment for this debt was ordered, and he no longer lives in the state where the court order was issued. Applicant contacted his former company's Human Resources department and requested a copy of the court order, but has not received it. He has not informed the issuing court that he changed employers or that he moved to a different state. The debt remains unpaid (GE 2, 4; Tr. 25, 37-48, 58-59, 83).

The \$11,242 debt alleged at ¶ 1.b. relates to a new motorcycle Applicant bought in 2003 or 2004 for \$23,000. Applicant did not use it, but did make one payment. Applicant had reconciled with his first wife at about this time, but shortly after he purchased the motorcycle, Applicant moved out. He realized he could no

longer afford the motorcycle, and asked the company to take it back. He offered to pay \$2,000 to \$3,000 to cover any depreciation during the one month he owned it. The company refused, repossessed the motorcycle, and directed the person who retrieved it to drive it to another state for sale at auction. The trip added approximately 600 miles to the odometer. The company held Applicant liable for the deficiency balance remaining after the sale. (Answer; GE 2, 3, 4, 5; Tr. 48-56, 59, 76-78).

Applicant believes the trip decreased the amount the company received from the sale, and he should not owe the amount sought. Applicant disputed the deficiency and reported it to the credit reporting agencies. As of March 2009, an investigation was pending. Applicant has not contacted the credit reporting agencies to determine the result of the investigation. At his security interview, Applicant stated he does not intend to pay the debt. At the hearing, Applicant reiterated that he is not responsible for the debt. He testified, "I was told a million times by a million people before I came here to just pay what you can on it, so that you'll bring it down and a court will see that you've brought the money down. But I truly don't believe I owe this money." He also noted that paying it would be the same as taking "all my beliefs and throw[ing] them out the window." However, in both his Answer and at the hearing, Applicant said he is willing to "start a payment plan" or "work out a deal" in order to obtain his security clearance. (Answer; GE 2, 3, 4, 5; Tr. 48-56, 59, 76-78).

Applicant submitted several documents attesting to his high level of on-the-job performance. Letters from several site managers and a quality-control inspector praised his honesty, professionalism, and strong leadership. He has also been commended for sound judgment and integrity, and the loyalty demonstrated by his military service. (AE E, F).

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>3</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the "whole person" concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and

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<sup>3</sup> Directive 6.3

adjudicative factors addressed under Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>4</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the government's case.

Because no one has a "right" to a security clearance, an Applicant bears a heavy burden of persuasion.<sup>5</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the judgment, reliability and trustworthiness to protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>6</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Applicant does not believe he should be liable for either of the two debts in the SOR, which total \$17,600. As of the date of the hearing, both debts remain

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

unpaid. The credit card debt became delinquent five years ago. The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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;

(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 delinquencies did not occur in the distant past, as they are still unresolved. His long-standing unwillingness to resolve debts he legitimately incurred raises concerns about his judgment and reliability, which are not resolved by his recent statements that he will pay them in order to obtain his security clearance. AG ¶ 20(a) does not apply. Mitigating condition AG ¶ 20(b) is not relevant, as there is no record evidence of unforeseen events, such as serious medical issues, large unexpected bills, or unemployment, which interfered with Applicant's ability to pay his debts.

Applicant has not brought his financial situation under control. Whether or not the store credit card debt will be resolved through garnishment in the future is unknown. Moreover, Applicant has not made a good-faith effort because he failed to facilitate garnishment by notifying his former employer and the issuing court of his current employer's location and his residence in another state. As to the second delinquency, Applicant consistently maintained in the past that he

had no intent to pay the motorcycle debt. Although he states that he is now willing to pay it, and that he will check into the possible future garnishment on the credit card debt, such promises to take future action do not constitute current, good-faith efforts to resolve debts. Neither AG ¶ 20(c) nor AG ¶ 20(d) applies.

AG ¶ 20(e) is relevant, because Applicant disputes both debts. Although he places responsibility for the retail store credit card on his former girlfriend, his claim is not reasonable as Applicant admits that he co-signed the credit application, thereby assuming joint liability for the account. Moreover, he made several payments on the account in 2007, indicating that he accepted his responsibility to pay it. As to the delinquent debt on his motorcycle, Applicant purchased the vehicle and assumed possession of it. After the voluntary repossession, the company sold it at auction, and legitimately sought the remaining balance on Applicant's loan. He receives some mitigation under AG ¶ 20(e), as his claim that the company irresponsibly depreciated the vehicle through its own actions appears reasonable. Applicant's dispute is also documented in the March 2009 credit bureau report. However, he has taken no further steps to resolve the situation, and his past inaction raises questions as to whether he will repay it. The partial mitigation available related to this debt is insufficient to find that AG ¶ 20(e) applies.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is 44 years old and presumed to be a mature and responsible adult. However, his disputes as to his debts are not reasonable. In one case, he accepted liability, because he began payments. As to the other debt, it appears that he is unwilling to accept that he owes a significant debt for a vehicle that he bought but did not use.

However, other than the two SOR debts, Applicant's current credit is in good standing, which reflects favorably. This decision should not be construed as a determination that Applicant cannot or will not attain a security clearance in the future. The award of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended based on Applicant's current circumstances, but should he be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, or established a track record of payments with supporting documentation, he may be able to demonstrate evidence of his security worthiness at that time.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts currently raised about his suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a. - 1.b.	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge