



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-04209
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

May 20, 2010

**Decision**

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HOWE, Philip S., Administrative Judge:

On December 17, 2008, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On December 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 on September 1, 2006.

Applicant answered the SOR in writing on January 4, 2010. Applicant requested his case be decided on the written record in lieu of a hearing.

On February 1, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant at that time. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 16, 2010. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on March 18, 2010. I received the case assignment on April 21, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant admitted all allegations contained in Paragraphs 1 and 2 of the SOR. (Item 4)

Applicant is 49 years old, divorced, and has one child. He works for a defense contractor. He started work for this employer in March 2008. (Items 5, 6)

Applicant owes the Internal Revenue Service (IRS) \$23,776 on an income tax lien entered by the IRS against him in April 2009. This lien arose when Applicant did not pay the income tax on a profit-sharing bonus from a previous employer in 2004. The credit report dated December 8, 2009, shows this lien remains in effect. The IRS garnished Applicant's wages to pay the tax on the bonus. (Items 5-10)

Applicant owes a mortgage lender approximately \$76,186 on his delinquent mortgage account. This mortgage was on a house Applicant purchased but could no longer afford when he was terminated by a former employer in February 2008. Applicant's home was foreclosed by his lender. (Items 5-10)

Applicant did not disclose on his e-QIP his mortgage delinquency and his late payments of more than 180 days on three credit cards he had. Applicant answered "no" on Question 28 (a) which sought to know if he had been more than 180 days delinquent on any debt in the past seven years. (Items 5-10)

Applicant did not disclose in response to Question 28 (b) that he was more than 90 days delinquent on his mortgage. That question sought disclosure of any current debt delinquency of more than 90 days. (Items 5-10)

### **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 useful 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, the administrative judge applies 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

Applicant has two significant delinquent debts. He owes the IRS \$23,776 for income taxes he did not pay on a 2004 bonus received from a former employer. It is Applicant's duty to report the income and pay the taxes on it. Applicant also owes a mortgage lender \$76,186 on a mortgage he stopped paying in 2008. The house is being foreclosed, but Applicant still owes the mortgage balance offset by any sale price for the property. The evidence raises both potential disqualifications.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only two mitigating conditions might have partial applicability.

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

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. Applicant offered no explanation for his failure to pay his income taxes on the 2004 bonus. He claimed he could not pay his mortgage after losing his job in February 2008, but was employed in March 2008 to the current time by his present employer. His explanation about his mortgage default is not persuasive. He failed to meet his burden of proof on that issue.

Applicant's wages were garnished to pay his IRS lien. Garnishment is not a voluntary action. He defaulted on his mortgage and it was foreclosed by the lender. This action is not a good-faith effort to pay his mortgage. Applicant has not mitigated his financial considerations security concerns. AG ¶ 20 (d) does not apply.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern, one of which may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose his mortgage financial delinquency and late payments on three credit cards as alleged in SOR Paragraph 2. His Answer offers only the statement that his mortgage was in foreclosure and he was in the process of finding what he needed to do. Applicant provided no explanation about the credit cards or why he did not disclose the information about his delinquent payments. Moreover, the foreclosure was the result of his deliberate failure to pay his mortgage. He deliberately failed to state truthful answers to the government's Questions 28 (a) and 28 (b) about his financial delinquencies.

AG ¶ 17 describes seven mitigating conditions that might apply to said disqualification. I considered each condition as applied to the facts in this case. None apply. Applicant failed to meet his burden of proof that any mitigating condition applies.

### **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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts and subsequently failing to adequately address them. He did not provide any explanation for his deliberately false answers to Questions 28 (a) and 28 (b).

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. He did not mitigate the security concerns under the guideline for Personal Conduct. I conclude the "whole-person" concept against Applicant.

### **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 to 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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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PHILIP S. HOWE  
Administrative Judge