



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



In the matter of: )  
)  
) ISCR Case No. 09-04561  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

January 24, 2011

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On March 12, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on June 14, 2010, and requested that the case be decided on the written record in lieu of a hearing. On August 12, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing eight Items and mailed

Applicant a complete copy on August 16, 2010. Applicant received the FORM on September 1, 2010, and had 30 days from its receipt to file objections and submit additional information. He did not submit any additional documentation. On October 26, 2010, DOHA assigned the case to me.

### **Findings of Fact**

In his response, Applicant admitted all 19 allegations contained in Paragraph 1 of the SOR. His admissions are accepted as factual findings.

Applicant is a 39-year-old employee of a defense contractor. He was honorably discharged from the U.S. Marine Corps in June 1993. After working for the post office for seven years, he decided to obtain a college education. In June 2001, he enrolled in an associate's program and earned his degree in 2003. In June of 2007, he completed his bachelor's degree in electronics engineering. He funded his education with student loans because he was not earning enough money to pay his living expenses and attend school. In January 2009, he was hired as an associate technician by his current employer.

In April 2009, Applicant met with a government investigator to discuss his delinquent accounts. During that interview, he indicated that he was unaware of several accounts, including a \$1,021 judgment, and was working on a plan to consolidate his student loans. He stated he would contact the Department of Treasury to resolve the outstanding \$186 and \$1,024 debts. (Item 6.) In October 2009, he completed a set of Interrogatories inquiring into the status of 18 debts. He noted that he had not done anything at that time. (*Id.*) Along with his responses, he submitted a budget that listed his monthly net income as \$2,556 and expenses as \$2,340, which included a \$1,000 payment on his mother's mortgage. (*Id.* at 7.) In an attached letter, he wrote that he is "presently not capable of paying off any of my accumulated bills, but my plan is to pay off all of them gradually as soon as I can." (*Id.* at 10.)

Based on credit bureau reports (CBR) dated March 2009, January 2010, and August 2010, the SOR alleged 19 delinquent debts totaling \$60,837, which began accruing in 2003. Ten of those debts (SOR ¶¶ 1.f. through o.) are delinquent student loans and total \$48,152. The remaining nine debts, totaling \$12,685, are owed to other creditors, including two judgments and two tax debts. Applicant submitted a document with his answer to the SOR stating that on May 28, 2010, he paid \$208 toward some consolidated student loans. (Item 3.) No other documentation was provided to document any payment toward or attempt to resolve these debts. He did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, 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(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.

Directive ¶ E3.1.14 requires the Government to 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." 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."

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.

## 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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Based on three CBRs and his admissions, Applicant has been unable or unwilling to satisfy his delinquent debts that began accruing in 2003 and continue into the present. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial security concerns:

- (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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial delinquencies began accruing in 2003 and remain unpaid or unresolved. Because the problems are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. He did not present sufficient credible evidence that the accumulation of \$60,837 of debt was due to conditions beyond his control or that he attempted to responsibly manage that debt once they accrued, as required under AG ¶ 20(b).

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). He did not submit evidence that he received credit counseling or that he paid or resolved any debt, which would indicate that the situation is coming under control. Nor, did he present adequate evidence that he made a good-faith effort to pay or resolve any of the 19 debts. Despite his statement in April 2009 that he was unaware of some of the debts and a judgment, Applicant did not provide documentation verifying that he formally disputed or investigated those debts, which is necessary to trigger the application of AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(f).

### **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). They include the following:

(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. Applicant is a mature individual, who has worked for a defense contractor since January 2009. In April 2009, he learned of the Government's concerns relating to his financial delinquencies, and indicated his willingness to resolve the matters. In October 2009, the Government again notified him of its concerns and inquired into the status of his delinquent debts. In May 2010, DOHA filed a SOR. In August 2010, the Government filed the FORM. For more than a year, he has been on notice that his delinquent debts were creating security concerns and potentially affecting his employment. Despite that knowledge, he did not provide proof that he has taken sufficient steps to address the delinquent debts, including paying off the small \$166 debt listed in SOR ¶ 1.e, or the two tax deficiencies listed in SOR ¶¶ 1.d and 1.s for \$186 and \$1,024 respectively. Applicant failed to demonstrate financial rehabilitation, which is required to assure the Government that the recurrence or continuance of unaddressed obligations is unlikely. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.s:	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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SHARI DAM  
Administrative Judge