



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-04651
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

September 9, 2010

**Decision**

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

On November 2, 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 adjudicative guidelines (AG).

In a response dated December 2, 2009, Applicant admitted all 32 allegations raised under Guideline F without elaboration and requested an administrative determination. On December 30, 2009, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant timely responded to the FORM by submitting a letter dated February 10, 2010. The case was assigned to another DOHA administrative judge on March 12, 2010, then reassigned to me September 7, 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 51-year-old aircraft mechanic who has worked for his present employer, a government contractor, since January 2009. He served in the military from 1976 until 1980. During that time, he attended a school of aerospace sciences, from which he received a certificate of training. He is committed to continuing his service to the country through his work as a contractor. Applicant is divorced and has three children. In requesting an administrative determination, he offered scant facts regarding his personal life, family, or his current financial situation.

From January 2001 through September 2001, Applicant was an inspector for a utility company. He was then unemployed until about March 2003, when he accepted a position as a stocker at a supermarket. He was then unemployed from May 2003 until August 2003, when he was hired as a jet engine mechanic. He remained at that position until April 2004, when he became unemployed before finding similar work in October 2004. In February 2005, he took a position as an inspector for a paint company. In July 2007, Applicant became disabled for an unspecified medical condition. He was placed on short term disability status. After a June 2008 surgery, he was converted to long term disability. Although he was able to pay his rent and utility bills, his disabled status impacted his ability to stay current on his credit card balances and other debts. In November 2008, he returned to work at a new and better paying position as an aircraft engine mechanic. To accept the job, he was required to move to another state. He acquired debt making the move. When he arrived at his new position, he discovered the project for which he was hired would not be a long term project. He stayed with that position until at least the time he accepted his present employment, which also required him to relocate.

Applicant does not dispute any of the debts cited in SOR allegations ¶¶ 1.a through 1.ff. Those debts amount to about \$17,000, although the debts cited in SOR allegations ¶¶ 1.c, 1.d, and 1.e, may represent the same obligation.<sup>1</sup> If so, the balance owed could be about \$14,000. There is no evidence indicating Applicant has any child support arrearages. He consulted two different attorneys regarding the efficacy of filing for Chapter 7 bankruptcy. One firm told him it would cost about \$1,500 and take several months. Another firm advised him to seek Chapter 13 bankruptcy protection instead, which would also cost about \$1,500.<sup>2</sup> He has since concluded that “[b]ankruptcy is no longer an option for me.”<sup>3</sup> He has, however, recently “begun the enrollment process in a

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<sup>1</sup> FORM at 3.

<sup>2</sup> Response to FORM, dated Feb. 10, 2010, at 2.

<sup>3</sup> *Id.*

program” offering credit card relief in an effort to show his “willingness to resolve [his] financial distress.”<sup>4</sup>

As of late 2009, Applicant was earning a gross monthly salary of approximately \$4,289. After expenses, he has a net monthly remainder of about \$148. There is no evidence of other sources of income or assets. He shares expenses with a roommate. When he completed his security clearance application, he identified some of his delinquent debts in response to Section 28 (Your Financial Delinquencies).

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. The AG lists 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 overarching 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.

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>5</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>6</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.

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<sup>4</sup> *Id.*

<sup>5</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

Such decisions entail a certain degree of legally permissible extrapolation about 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>7</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>8</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>9</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>10</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>11</sup> Here, Applicant admits he has 32 delinquent debts, amounting to a total obligation of \$14,000 to \$17,000.<sup>12</sup> 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) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s delinquent debts remain delinquent, thus representing a continuing course of conduct. He experienced multiple periods of unemployment in the past decade, but he only offered information regarding his period of disability, which lasted from approximately July 2007 until November 2008. The nature of the disability is not identified, so it cannot be discerned whether it may recur. He has deemed bankruptcy as being “no longer an option.” As of last year, his net monthly remainder was

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<sup>7</sup> See also EO 12968, § 3.1(b) and EO 10865 § 7.

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

<sup>9</sup> *Id.*

<sup>10</sup> AG ¶ 18.

<sup>11</sup> *Id.*

<sup>12</sup> The delinquent debts cited range from \$21 to \$1,772. Most are either charged-off or in collection. Nine of those debts (SOR allegations ¶¶ 1.h, 1.i, 1.m, 1.n, 1.o, 1.p, 1.s, 1.t, 1.u) are clearly identified as being related to medical accounts and amount to approximately \$1,097 of delinquent debt.

approximately \$148. He provided no evidence of any additional income or a strategy to address the debt at issue. Consequently, 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) does not apply.

Applicant's periods of unemployment and his disability, however, do raise 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) to some extent, although Applicant failed to show which debts arose due to these periods.<sup>13</sup>

Without evidence or an indication that Applicant has received or is receiving financial counseling, 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) does not apply. Moreover, the record lacks documentary evidence showing that Applicant has worked with his creditors. While many of the debts cited are small, the evidence reflects that Applicant does not presently have the monthly net income to make payments toward his delinquent debts, obviating application of FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

In declining a hearing and relying on the written record, Applicant limited his ability to address the issues raised in the SOR. The burden for such mitigation in these proceedings is placed squarely on Applicant. Lacking evidence of any effort to resolve the allegations set forth in the SOR, and absent evidence that he has the ability to make some progress in resolving his debts, Applicant 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). 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"

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<sup>13</sup> The debts noted in SOR allegations ¶¶ 1.h, 1.i, 1.m, 1.n, 1.o, 1.p, 1.s, 1.t, 1.u are noted as being for medical accounts, but there is no specific indication that they were related to Applicant's disability.

factors.<sup>14</sup> Applicant served this country in the military from 1977 until 1980. He is the father of three children. There is no indication that he owes any child support arrearages. He was willing to relocate on more than one occasion to find employment and now shares expenses with a roommate. He returned to full-time employment after suffering from an unidentified disability. In completing his security clearance application, Applicant detailed some of his delinquent debts, thus giving notice that his finances were an issue. He considered bankruptcy as a method to address his delinquent debts.

Based on the scant evidence available, Applicant does not presently have the financial income, resources, or strategy to address his delinquent debt. While bankruptcy may be a valid avenue for addressing his debt, Applicant concluded it is not a current option. He did not state what led him to this conclusion. It may be assumed that the \$1,500 filing fee was an important consideration, given his current net monthly remainder of only about \$148. While Applicant's military service and his continued support of this country are highly appreciated, the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. With his delinquent debts yet unaddressed, and with no evidence that his financial situation may soon be remedied, 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
Subparagraphs 1.a – 1.ff	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge

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<sup>14</sup> Examination of the "whole-person" in this matter is limited due to Applicant's reliance on the written record and his failure to supplement the record with more personal information.