



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-04797
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 19, 2010

**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 14, 2009, as part of his employment with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F on November 23, 2009. 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on December 1, 2009.

Applicant answered the SOR in an undated written response. He admitted 10 and denied 10 of the 20 Guideline F allegations. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 17, 2010, and the case was assigned to me on February 22, 2010. DOHA issued a Notice of Hearing on March 10, 2010, for a hearing on April 6, 2010. I convened the hearing as

scheduled. The Government offered four exhibits, marked Government Exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant testified on his behalf. He offered one exhibit marked Applicant Exhibit (App. Ex.) A, which was received without objection. I kept the record open for Applicant to file additional documents. Applicant timely filed three documents, marked App. Ex. B through D, which were received without objection. (See, Gov. Ex. 5, Memorandum, dated April 21, 2010) DOHA received the transcript of the hearing (Tr.) on April 12, 2010. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 42 years old and has worked as a warehouse logistician for a defense contractor for approximately 16 months. He is a high school graduate, and has attended trade school for computer programming. He married in October 1996, separated in 2004, and divorced in August 2009. He has one 12-year-old child, and a 20-year-old stepdaughter. Applicant is required to pay \$350 monthly in child support for his daughter. He has not previously held a security clearance or served in the military. (Tr. 16-27; Gov. Ex. 1, e-QIP, dated April 14 2009)

Applicant's marriage was not smooth. There were many problems that were not the fault of Applicant. (See, App. Ex. D, Police Incident Report, dated June 5, 2004) Applicant's and his wife's initial financial arrangement was to keep their funds separate and each pay part of the family bills. Applicant paid the first mortgage on their house and his wife paid the second mortgage. Applicant's wife refused to tell Applicant the amount of her salary. The couple had marital problems starting in 2003, and his wife told Applicant she would not pay any bills that were not in her name. She stopped helping pay any of the bills including the bills she had agreed to pay. Applicant returned home one day in February 2004 and discovered his wife had moved out of the house and taken everything from the house, including the stove and refrigerator. Applicant soon learned she had not been paying her share of the bills, even the second mortgage. They were over \$3,000 behind on the second mortgage and Applicant did not have the funds to bring payments current. Because of her failure to pay the second mortgage, the house was foreclosed in late 2004.

Applicant was a truck driver making \$11 an hour when his wife left him in 2004. Shortly thereafter, Applicant was terminated by his employer. He received a ticket while driving his personal car, and his employer's insurance company would no longer cover Applicant when he drove the company's truck. Applicant was unemployed for a short time before finding work with a temporary agency for approximately a year making \$10 per hour. He then worked for another trucking company making \$12 to \$13 per hour. He had another position after that that only paid \$8.25 per hour, until he found his present position with the defense contractor making \$14.25 per hour. Applicant's present

monthly salary is \$1,358, with \$1,324 in monthly expenses. His expenses include the \$350 in monthly child support payments. He has a net monthly remainder of approximately \$34. He is seeking a roommate to help him with the rent payments, thereby providing him with more disposable funds. He occasionally works a part-time job that pays about \$80 per month. (Tr. 28-30, 54-60)

Credit reports (Gov. Ex. 3, Credit report, dated August 13, 2009; and Gov. Ex. 4, Credit report, dated April 24, 2009) and Applicant's admissions (Gov. Ex. 2, Answers to Interrogatories, dated September 14, 2009) reveal the following delinquent debts for Applicant: a telephone debt to T-Mobile in collection for \$921 (SOR 1.a); a telephone debt for AT&T in collection for \$230 (SOR 1.b); a cable debt in collection for \$127 (SOR 1.c); two medical debts in collection for \$799 (SOR 1.d) and \$857 (SOR 1.e); a credit card debt charged off for \$3,315 (SOR 1.f); the second mortgage on his house in collection for \$19,139 (SOR 1.g); a credit card in collection for \$6,459 (SOR 1.h); a returned check charged off for \$104 (SOR 1.i); a debt in collection for \$206 (SOR 1.j); a telephone debt to Suncom in collection for \$428 (SOR 1.k); a credit card debt in collection for \$489 (SOR 1.l); another credit card account in collection for \$437 (SOR 1.m); car repossession for \$6,650 (SOR 1.n); three medical debts in collection to the same creditor for \$305 (SOR 1.o), \$225 (SOR 1.p), and \$221 (SOR 1.q); a pay day loan in collection for \$235 (SOR 1.r); a storage debt in collection for \$52 (SOR 1.s); and a credit card debt in collection for \$2,489 (SOR 1.t). The delinquent debt totals \$43,724.

Applicant has paid in full the cable debt of \$127 at SOR 1.c. (Tr. 32; App. Ex. A, Receipt, dated March 18, 2010) Applicant paid in full the returned check at SOR 1.i. (Tr. 39-40; App. Ex. B, Receipt, dated April 9, 2010) Applicant paid in full the pay day loan at SOR 1.j (Tr. 40; App. Ex. C, Letter, dated April 7, 2010). None of the other debts have been paid.

Applicant has few funds for bill payments because of the child support he is required to pay. He contacted some creditors but most want a lump-sum payment or an initial large payment before agreeing to a payment plan.

The delinquent debt at SOR 1.a is for a telephone bill. Applicant contacted the creditor but they would only accept an up-front payment. (Tr. 30) Applicant is unsure of the delinquent debt at SOR 1.b. He did pay a \$230 debt that was taken from his bank account. He is not sure if this is the debt that was paid. (Tr. 30-32)

The delinquent debt at SOR 1.d for \$799 is for emergency room treatment of Applicant. He did not have health insurance at the time of the visit. The debt has not been paid. (Tr. 33) Applicant is unsure of the medical debt at SOR 1.e. It may be the same debt as the debt listed in SOR 1.d. He contacted the hospital about both debts but he is only listed for one debt. He did not receive any documentation to support the potential duplication. (Tr. 34)

The delinquent debt at SOR 1.f is from a credit card used by both Applicant and his wife. His wife was to pay half of the debt. The card is in his name only and his wife

refuses to pay any debt not in her name. He contacted the creditor and they want an initial large payment. He does not have funds to make the payment. (Tr. 34-37)

The delinquent debt at SOR 1.g is the second mortgage on Applicant's house. Applicant paid the primary mortgage, and his wife paid the second mortgage. Applicant made his mortgage payments, but his wife stopped paying the second mortgage some time in 2003. He did not know about his wife's failure until he was called at work by the mortgage company and was informed that he was \$3,000 behind on the second mortgage and the house would be foreclosed. He was unable to pay the \$3,000, so the house was foreclosed. The foreclosure paid the first mortgage, but the second mortgage is still outstanding. The mortgage is in his name. He admits he has some responsibility for the second mortgage but he believes his wife also has responsibility. (Tr. 37-38)

The delinquent debt at SOR 1.h for \$6,459 is for a credit card used by Applicant and his wife during the marriage. The debt has not been paid. (Tr. 39)

The delinquent debt at SOR 1.k is for a cell phone Applicant co-signed with a friend. Applicant's friend did not pay the telephone bill. He and his friend went to the company and negotiated a settlement. Applicant stated he paid his portion of the settlement, but his friend did not pay the other part of the bill, leaving him with the bill. (Tr. 40-42)

The delinquent debt at SOR 1.l is for Applicant's personal credit card. The debt has not been paid. (Tr. 4-43) The delinquent debt at SOR 1.m is for a gas credit card in Applicant's name used by both Applicant and his wife. The debt has not been paid. (Tr. 43)

The delinquent debt at SOR 1.n is a car repossession. The car was used by Applicant and his wife. He paid the car loan and his wife paid the insurance. His wife stopped paying the insurance without his knowledge. When his wife left, he could not make both the insurance and car payments. The car was repossessed. The debt has not been paid. (Tr. 43-44)

The delinquent debts at SOR 1.o, 1.p, and 1.q are medical debts. Applicant is not sure of the origin of the debts or the true amount of the debts. Applicant contacted the creditor but they request a total payment. Applicant is unable to make the payment. (Tr. 45-50)

The delinquent debt at SOR 1.r is for a pay day loan that has not been paid. The delinquent debt at SOR 1.s is for a storage facility. Applicant is not sure of the debt, and the debt has not been paid. The delinquent debt at SOR 1.t is for a credit card jointly used by Applicant and his wife that has not been paid. (Tr. 50-51)

Applicant has not taken any action to proceed against his wife to get assistance in paying some of the marital debts. He does not want to jeopardize his visitation rights

with his daughter. He talked to one credit counseling agency in 2009 that took money from his account to assist him. They took \$39 monthly for administrative fees and \$79 for debt payments. He did not know what if any debts had been paid. He stopped the payments since he could not afford to have the funds taken from his account. (Tr. 51-54)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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.

## Analysis

### Financial Considerations:

Under 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 overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts as listed on credit reports are a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant incurred delinquent debt as early as 2003 when his wife stopped assisting him with debt payment. He continued to accrue delinquent debt after he and his wife separated in 2003 and divorced in 2004. The delinquent debts total over \$43,000.

I considered the Financial Considerations Mitigating Conditions (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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). The mitigating conditions partially apply. Applicant's delinquent debts started when his marriage deteriorated and his wife no longer assisted him with paying the family bills. She discontinued paying those bills that she agreed to pay. This was a circumstance beyond his control. Applicant states that he does not have sufficient income to pay his debts. However, Applicant has been gainfully employed since his marriage dissolved. He paid only a small portion of his delinquent debts. Some of the remaining unpaid debts are for small amounts and could be paid if Applicant had in place a payment plan. In some cases, he has not even contacted the creditors to establish payment plans. He has not demonstrated that under these circumstances he acted responsibly towards his finances. Applicant does not have a plan in place or even considered one to accumulate funds to pay the remaining debts.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant has paid only a few small debts. He does not have payment plans established for the payment of his remaining delinquent debts. He does not have a systematic concrete method of managing his delinquent bills. He has not shown a reasonable, prudent, honest course of action to manage his debts. Accordingly, he has not established a good-faith effort to resolve his debt. Accordingly, Applicant has not mitigated security concerns based on his finances.

### **“Whole-Person” Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An 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 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 must establish a “meaningful track record” of debt payment, including evidence of actual debt reduction through payment of debts. He is not required, as a matter of law, to establish that he paid off each and every debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his actions to reduce his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

Applicant has not established a meaningful track record of debt payment. He has not presented a concrete systematic plan for resolving his debt problems. He has no

payment plans in place, and no methods of saving to pay debts. He has sufficient monthly income to meet his present obligations, and does have some limited income to use to make some payments on delinquent debts. Applicant's lack of sufficient management of his past obligations indicates he may not be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. He has not established he is suitable for a security clearance. I conclude Appellant has not mitigated the security concerns arising from his financial situation.

### **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 - 1b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d - h:	Against Applicant
Subparagraphs 1.i - 1.j:	For Applicant
Subparagraphs 1.k - 1.t:	Against Applicant

### **Conclusions**

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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THOMAS M. CREAN  
Administrative Judge