



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05008
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

October 25, 2010

**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on October 23, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on December 23, 2009 detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on January 11, 2010. He answered the SOR in writing on January 12, 2010 and requested a hearing before an

administrative judge. DOHA received the request and Department Counsel was prepared to proceed on March 16, 2010, and I received the case assignment on March 22, 2010. DOHA issued a notice of hearing on April 5, 2010, for a hearing on April 28, 2010. Applicant received the hearing notice on April 14, 2010. He did not arrive for the hearing at the date and time scheduled because he encountered difficulties finding the hearing location. He arrived for the hearing at 4:35 p.m. Because of the late hour and a language issue, I granted a continuance.

DOHA issued a notice of hearing on June 3, 2010, and I convened the hearing as scheduled on June 22, 2010. The Government offered six exhibits (GE) 1, 2, and 4 to 6, which were received and admitted into evidence without objection. Pages 1 and 4 of GE 3 were also admitted into evidence. Applicant testified through an interpreter. He submitted five exhibits (AE) A through E, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 29, 2010. I held the record open until July 7, 2010, for Applicant to submit additional matters. Applicant timely submitted Exhibits AE F to AE I, without objection. The record closed on July 7, 2010.

### **Evidentiary Ruling**

#### **Evidentiary ruling**

Department Counsel offered GE 3, which is a set of interrogatories to Applicant. The interrogatories primarily address passport issues, that would be raised under Guideline C, which is not at issue in this case. In his answer to the interrogatories, Applicant attached a copy of a wage and earnings statement. The cover page and this statement have been admitted into evidence, but the remaining pages are not relevant to this case and were not admitted. (Tr. 18-22, 28-34)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 48 years old, works as a janitor for a Department of Defense contractor. He began this position in September 2008. He was also working full-time at a gas station in September 2008. Previously, he worked as a cashier for convenience stores, in maintenance for a discount store, and 20 years as a bus boy. These jobs, like his current job, pay low wages. At the hearing, he indicated he was looking for a second job.<sup>1</sup>

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<sup>1</sup>GE 1; GE 2; Tr. 38, 43. By September 2009, Applicant was not working his second job. GE 2.

Applicant immigrated to the United States from Cuba in the early 1980s. He became a naturalized citizen in 1990.<sup>2</sup> He has been married three times and divorced twice. He and his current wife are living separate. He does not provide financial support to her. He has four children, ages 25, 21, 18, and 6. He pays child support in the amount of \$266 a month for his youngest child. His child support payments are deducted from his pay as a garnishment.<sup>3</sup>

Applicant currently earns \$10.27 an hour and works 40 hours a week. His monthly gross income totals \$1,644, and his net monthly income totals approximately \$1,200 after his child support is deducted.<sup>4</sup> His monthly living expenses include \$500 for rent, \$60 for the laundromat, \$80 for the bus, \$150 for cell phone, and \$100 for food for total monthly expenses of \$890. He has \$310 a month for debt payment.<sup>5</sup>

The SOR identified 22 purportedly continuing delinquencies as reflected by credit reports from 2008 and 2009, totaling approximately \$41,603. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.<sup>6</sup>

In December 2009, Applicant enrolled in a debt settlement program. Under the terms of the negotiation agreement, Applicant was to pay \$457 a month to the debt program plus \$4,500 in fees. The program would place his payments in a savings account, negotiate a settlement, and pay the settlement amount with his accumulated funds. Applicant terminated this agreement because he could not afford the plan to pay his debts.<sup>7</sup>

In April 2010, Applicant contacted a second consumer credit counseling company. Using a credit report from his bank, this company helped him develop a payment plan for the debts listed in SOR ¶¶ 1.b, 1.c, 1.e, 1.g, 1.h, 1.i, 1.m, and 1.n. The plan includes two debts not listed in the SOR, but the debts are listed in the credit report

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<sup>2</sup>The record contains conflicting dates on when Applicant became a citizen of the United States. He credibly testified to 1990, the date when he received a U.S. passport. GE 1, p. 8; Tr.26.

<sup>3</sup>GE 1; AE F; Tr. 36-37, 40.

<sup>4</sup>His wage and earnings statements show he worked 157.5 hours in May for a total gross income of \$1,617 and a net income of \$1,181. In June, he worked 165 hours for a total gross income of \$1,694 and a net income of \$1,245. AE F.

<sup>5</sup>GE 3; AE F; Tr. 30-41.

<sup>6</sup>GE 5; GE 6.

<sup>7</sup>Response to SOR; Tr. 42-43.

from his bank. The debts in his plan total approximately \$11,300. Applicant agreed to pay \$358 a month to this company for debt payment. As one debt is paid, another debt will be added to his account for payment. Applicant made his first payment in June 2010 and his second payment in July 2010. Applicant negotiated a payment plan for a telephone debt not listed in the SOR. He complied with the payment plan and resolved this debt in July 2010. He also paid another non-SOR debt in full. More than \$30,000 in debts listed in the SOR are not paid, resolved, or in a payment plan.<sup>8</sup>

At the hearing, Applicant indicated that many of his debts are old and are the result of his 2003 divorce. The credit reports show a date of last activity between April 2002 and June 2007 for 17 debts listed in the SOR (SOR ¶¶ 1.a-1.f, 1.h-1.m, 1.o-1.s, 1.v). These debts total approximately \$34,200. The debt in SOR ¶ 1.v (\$4,375) has been sold and the current owner is unknown. Of these debts, five are included in Applicant's repayment plan (SOR ¶¶ 1.c, 1.f, 1.h, 1.i, 1.m). The remaining five debts listed in the SOR total approximately \$7,500 and are more recent. The debts listed in SOR ¶¶ 1.o through 1.v are not listed in the December 14, 2009 credit report. Many of these accounts show a date of last activity in 2002. The credit report dated September 10, 2009 and submitted by Applicant shows that many of these debts were to come off his credit report in 2009.<sup>9</sup>

Applicant does not want to file bankruptcy, as he would prefer to pay his debts. His credit counseling company advised him not to file bankruptcy. He also feared that if he did, he would lose his job.<sup>10</sup>

## 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 list potentially disqualifying conditions and mitigating conditions, which are 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.

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<sup>8</sup>AE A-AE E; AE H-AE I; Tr. 36, 43-55.

<sup>9</sup>GE 2; GE 4; GE 5; GE 6.

<sup>10</sup>Tr. 60.

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, 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. . . .” An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about the 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 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 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

19(a) inability or unwillingness to satisfy debts.

19(c) a history of not meeting financial obligations.

Appellant developed significant financial problems when he divorced in 2003. As a result of his divorce, he was responsible for the marital debts. He has been unable to pay these debts, which continue. These two disqualifying conditions apply.

The Financial Considerations guideline also includes conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 20(a) through 20(f), and especially the following:

20(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.

20(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.

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

Applicant's debt problems started with his divorce in 2003 and were exacerbated by his low income, despite continuous employment since then. Applicant had paid some bills over the last years, but many remain unpaid. He retained the services of a credit counseling firm in December 2009, but could not pay the monthly payment and other costs required by this company. He ended his contract with this company and retained a second credit counseling company in April 2010. He began monthly payments of \$358 with this company on June 2, 2010. He also paid one past due debt not listed in the SOR. Some of his debts are old and some are recent. He is making an effort to pay his old debts, but his unpaid debts and unresolved debts are significant. AG ¶¶ 20(b), 20(c), and 20(d) are partially applicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge with must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has worked steadily since arriving in the United States at low income jobs. His divorce in 2003 created increased financial difficulties, as all the of the marriage debts became

his. He has made an effort to pay some debts in the last seven years, but many of his debts remain unpaid because he lacks the financial resources to pay them.

Many of the debts listed in the SOR are barred from collection under state law. While he is not legally liable for his old debts, the DOHA Appeal Board has held declined to apply to Statute of Limitations in security clearance cases. Several debts have dropped off his credit report, most likely for age and clearly not for payment. With the debts no longer listed on his credit reports, he will encounter difficulty locating the creditors and paying the debt. Applicant has not contacted these creditors and obtained information showing that the debts cannot be paid.

Applicant has a long track record of nonpayment of his debts and a short, limited track record for payment of his debts. His debts did not occur in a narrow period of time, but have occurred over the last eight years. Several debts relate to cell phones and accompanying high charges. He is making an effort to pay his debts, but given his current income, he will have difficulty complying with his payment plan as his monthly expenses exceed his net monthly income by about \$45.

Applicant prefers to pay his debts. Contrary to his fear, he would not lose his job if he filed bankruptcy. Applicant has some mitigation factors in his favor, such as his efforts to resolve his debts and his divorce, but he has not demonstrated a meaningful track record for a resolution of his debts.

Overall, the record evidence leaves me with questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

### **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 :	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i-1k:	Against Applicant
Subparagraph 1.l-1.n:	For Applicant
Subparagraph 1.o-1.v:	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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MARY E. HENRY  
Administrative Judge