



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05233
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 26, 2010

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted a Questionnaire for Sensitive Positions (SF-86) on January 5, 2009. On December 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On January 19, 2010, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on February 2,

2010. I convened a hearing on February 22, 2010, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced six exhibits, which were identified and marked as Applicant's Ex. A through F and admitted to the record without objection.

At the conclusion of the hearing, I left the record open for one week, until close of business March 1, 2010, so that Applicant could, if he wished, provide additional information for the record. Applicant did not file any additional information. The record closed on March 1, 2010. DOHA received the transcript (Tr.) of the hearing on March 3, 2010.

### **Findings of Fact**

The SOR contains eight allegations of disqualifying conduct under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.h.) In his Answer to the SOR, Applicant admitted all eight allegations. Applicant's admissions are admitted herein as findings of fact. (Answer to SOR; Tr. 19-20, 28-31, 35-46, 55-63.)

Applicant is 35 years old, married, and the father of three young children. He seeks a security clearance for his duties as a security administrator and physical security investigator for a government contractor. (Ex. 1; Tr. 41-42, 47-48.)

Applicant attended college from 1993 to 1997, but he did not take a degree. He enlisted in the military in 1997, where he served as a hospital corpsman. In April 2005, he was released from the military for failure to advance in rank within a certain period of time. Applicant was unemployed between April and June 2005. (Ex. 1; Tr. 42-45, 50.)

In 2006 or 2007, Applicant enlisted in a military reserve unit, with the understanding that he would serve for one year, receive a bonus, medical benefits, and an increase in rank. He did not receive his increase in rank, and he was recalled to active duty in July 2007. He was released from active duty orders for medical reasons. He has not returned to drill, although he does not recall receiving a release letter. His commitment to the inactive reserve ends in May 2010. (Tr. 46-47.)

In 2001, Applicant and his wife purchased a home for approximately \$58,000. In late 2005 or early 2006, he and his wife refinanced their house for approximately \$101,000. They used the proceeds from the refinance to pay numerous debts, including a loan of approximately \$12,000, an automobile loan of approximately \$5,000 to 6,000, and several credit card obligations. After their debts were paid from the proceeds of the refinance, Applicant and his wife netted approximately \$3,000. The refinance provided them with a clean financial slate. (Tr. 88-90.)

In 2007, Applicant accepted a job in another community, and he and his wife rented their home to individuals who agreed to purchase it. The prospective purchasers decided not to buy Applicant's home. Applicant and his wife then put their home on the market and tried, unsuccessfully, to sell it. Their monthly rent payments in the new community were twice as high as their mortgage payments had been. As of December 23, 2009, Applicant and his wife were past due on their mortgage payments and owed the mortgage company \$4,000. Their mortgage was in foreclosure with a total loan balance of \$101,000. Applicant was unable to provide information on how long the home was rented or when it went into foreclosure. This debt is alleged at SOR ¶ 1.f. Applicant has made no payments on this debt. He claimed the creditor had filed for bankruptcy and he was unable to contact a successor creditor. (Tr. 34-40, 77-82.)

In October 2009, Applicant provided a personal financial statement in response to DOHA interrogatories. The personal financial statement shows Applicant's net monthly salary as \$2,416 and his wife's net monthly salary as \$3,000. In addition, Applicant's wife receives \$1,063 each month in military disability pay. At his hearing, Applicant confirmed the accuracy of these amounts, which, in total, reflect a net monthly household income of \$6,479. (Ex. 3 at 3; Tr. 50-54.)

Applicant also confirmed at his hearing that his monthly household expenses are as follows: rent: \$1,725; groceries: \$600; clothing: \$250; utilities: \$820; car expenses: \$1,000<sup>1</sup>; life and other insurance: \$1.80; medical expenses (co-pays): \$250; day care: \$125; and miscellaneous: \$300. Applicant's personal financial statement reflected that he made no payments on any of his existing debts. After paying his household expenses of \$5,071.80, Applicant has a monthly net remainder of approximately \$1,407. (Ex. 3 at 3; Tr. 55, 57-58, 61.)

The SOR alleged eight financial delinquencies, all of which were identified on Applicant's personal financial statement of October 2009. In his Answer to the SOR, Applicant admitted the eight alleged debts. (SOR; Answer to SOR.)

The SOR alleged at ¶ 1.a. that Applicant owed a creditor \$2,266 on an unpaid debt in collection status. Applicant admitted the debt and stated that the debt alleged at SOR ¶ 1.d. was a duplicate of the debt alleged at SOR ¶ 1.a. He offered to provide documentation to corroborate his statement, but he failed to do so. The debt, identified as a non-tax federal debt, was satisfied when the Department of the Treasury intercepted Applicant's federal income tax refund and applied it to the delinquent debt. (Ex. E; Tr. 34-38, 64-66.)

The SOR alleged at ¶1.b. that Applicant owed a department store creditor a \$620 debt which as in collection status. Applicant acknowledged that the debt was

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<sup>1</sup>Applicant and his wife own two automobiles: a 2001 Chevrolet, which is paid for, and a 2010 Mitsubishi, which was purchased to replace a Ford Expedition which was deemed a total loss as the result of a fire. Applicant's monthly car expenses of \$1000 include an estimated \$400 payment on the 2010 Mitsubishi. (Tr. 93-95.)

unresolved. He provided a settlement offer from the creditor, dated December 2009, which he had not responded to. (Ex. F; Tr. 66-72.)

The SOR alleged at ¶ 1.c. that Applicant owed a creditor \$3,852 on a debt in collection status. In October 2009, Applicant's employer complied with a wage garnishment order from the U.S. Treasury Department. In compliance with the order, Applicant's wages are garnished by approximately \$240 every two weeks to satisfy the debt, which was identified as \$4,931 in October 2009. (Ex. A; Ex. B; Ex. C; Tr. 33-34, 75-76.)

The SOR alleged at ¶ 1.e. that Applicant owed a charged-off debt of \$266 to a communications company. The SOR alleged at ¶¶ 1.g. and 1.h. that Applicant also owed charged-off debts of \$58 and \$82 to the same communications company. At his hearing, Applicant stated he had not contacted the creditor communications company to arrange payment. The debts remain unresolved. (Tr. 76-77.)

Applicant reported he had \$5 in a savings account and \$4,000 in his 401(k) account. He reported total assets of \$11,000, which included an automobile, jewelry, clothing, household furnishings, and electronic equipment. (Ex. 3 at 3; Tr. 59-60.)

Applicant's wife is responsible for managing the family's finances, paying all bills, and filing the couple's federal and state income tax returns. Applicant and his wife do not have a budget. Applicant has not had financial counseling. (Tr. 60-62.)

Applicant's supervisor provided a letter of character reference for the record. He noted that he had supervised Applicant for two years and, during that time, he had found Applicant to be a responsible and professional employee. He also noted that Applicant had received favorable job performance ratings and had been promoted twice. (Ex. D.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these 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.

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 in seeking to obtain 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.

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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that began in at least 2005 or 2006, when he refinanced his home in order to satisfy a number of his creditors. With the exception of a brief period of unemployment from April to June 2005, Applicant has been steadily employed since he was released from the military in 2005.

Applicant failed to provide documentation that he had voluntarily satisfied any of the debts alleged on the SOR. The debt alleged at SOR ¶ 1.a. was satisfied when the Treasury Department seized Applicant's federal income tax refund and applied it to a non-tax federal delinquent debt that he owed. The debt alleged at SOR ¶ 1.c. is currently being satisfied by wage garnishment. Applicant's mortgage debt remains unsatisfied, as do three small debts to a communication company, and a department store debt of \$620. Moreover, Applicant failed to provide documentation to corroborate his claim that the debt alleged at SOR ¶ 1.d. duplicated the debt alleged at SOR ¶ 1.a.

Applicant has not received financial counseling. He does not have a budget. His monthly net remainder of approximately \$1,400 resulted from his failure to pay his delinquent debts. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He has no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that none of the Financial Consideration mitigating conditions apply to the facts of Applicant's case.

### **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 the facts and circumstances surrounding this case. Applicant is a mature person of 35 years. His financial problems began at least four to five years ago. During that time, he has failed to take an interest in his financial obligations, and he has left all financial decisions and actions to his wife. He has not taken affirmative action to live within his means and to pay or resolve his substantial delinquent debts. His lack of attention to his financial delinquencies continues to raise security concerns. Despite a steady income for several years, he has failed to budget his income to satisfy his many debts, and he has not sought credit counseling.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment and his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	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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Joan Caton Anthony  
Administrative Judge