



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-05526
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro Se*

January 28, 2010

**Decision**

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

Applicant signed a security clearance application (SF-86) on May 22, 2009. On September 14, 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 revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a response notarized on October 13, 2009, Applicant admitted all eight of the allegations set forth in the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated November 13, 2009. Applicant received the FORM on November 30, 2009, but declined to respond to its contents. On January 20, 2010, the Director, DOHA, forwarded the case for assignment to an administrative judge. The case was assigned to me on the same day. 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 is denied.

### **Findings of Fact**

Applicant is a 31-year-old employee of a defense contractor. He is single and has no children. He worked as a blaster from June 2003 through May 2009, the same month in which he completed the security clearance application for his present employment. He also worked as a part-time bartender from April 2001 to June 2005, then from September 2005 to May 2009.

In choosing an administrative determination, Applicant chose to rely on the written record. The facts he submitted with regard to his past and his financial situation are limited to admissions to each of the eight financial allegations noted in the SOR. The only other facts submitted were contained in his answer to the SOR allegations, in which he stated:

The debts listed are the result of a sudden relocation to my current address as well as lack of work during this time. I do not believe the sum of the debts listed is an alarming amount, or an amount that would cause someone to take illegal actions as listed in Guideline F. . . . I do plan on repaying all my debts & being granted a security clearance would be a reason for a better position/pay w/in my company.

Applicant's admitted delinquent debts amount to approximately \$22,881. They are comprised of debts referred for collection or charged off, plus a judgment in the amount of \$6,907. Applicant did not disclose information as to what kind of expenses gave rise to these obligations. He similarly declined to offer information as to the circumstances surrounding his recent relocation or its relationship to the debts at issue. He also declined to provide information regarding any period of unemployment, although it is noted that there was a break in employment between part-time bartending jobs between July and August 2005. No indication is given as to whether he ever pursued financial counseling or has made any efforts to address the debts at issue since the summer of 2005. Applicant did not provide any evidence regarding his current financial situation.

### **Policies**

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. 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 over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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>1</sup> The burden of proof is something less than a preponderance of evidence.<sup>2</sup> The ultimate burden of persuasion is on the applicant.<sup>3</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 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</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>6</sup> The decision to deny an individual a security clearance 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.

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

Guideline (Financial Considerations) is the most pertinent to the case. Applicable conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

### **Analysis**

Under Guideline F:<sup>7</sup> “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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” Here, Applicant admitted that he has approximately \$22,881 in delinquent debts. To date, those debts remain unaddressed. Consequently, 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 was continuously employed as a blaster from 2003 until May 2009, when he completed his security clearance application and apparently started his current position. There was, however, a two-month break in his employment as a part-time bartender in the summer of 2005. While this brief break in secondary employment might have complicated Applicant’s ability to meet his obligations, he provided no information about his efforts to otherwise meet those obligations during this period. Consequently, neither his financial circumstances at the time, nor how he acted during this time period can be analyzed. Financial Considerations Mitigating Condition (FC MC) 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) does not apply.

Applicant’s delinquent debts are multiple in number and remain unpaid. Amounting to approximately \$22,881, the amount at issue is significant. Lacking information regarding his “sudden relocation,” “lack of work during this time,” or any other relevant facts regarding either how the debts at issue became delinquent or why they remain delinquent, neither 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) nor FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant’s failure to disclose whether he ever pursued or received financial counseling obviates the applicability of 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).

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<sup>7</sup> Revised Adjudicative Guideline (AG) ¶ 18.

Applicant attributes his delinquent debts to a “sudden relocation” and “lack of work” during the time of his relocation. He provided no information or documentation, however, regarding either circumstance. The record only notes a brief break in employment as a part-time bartender. Lacking additional facts, particularly with regard to his finances, Applicant failed to meet his burden in mitigating 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):

- (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. 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” factors. Applicant is a mature, single man who maintained at least two jobs for the past several years. He apparently faced a sudden relocation that, when combined with an undefined period of unemployment, caused him financial distress. Applicant failed, however, to provide any relevant facts or explain any and circumstances regarding that period.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and carry his burden in this process. He failed to offer evidence of financial counseling. He failed to provide documentation regarding either his past efforts toward addressing his delinquent debts or his future plans for satisfying those obligations. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain. Clearance is 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
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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge