



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-06553  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

October 29, 2010

**Decision**

HOWE, Philip S., Administrative Judge:

On May 27, 2007, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On March 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on May 1, 2010. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 1, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant

on that date. He received the FORM on July 6, 2010. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed a Response to the FORM on July 28, 2010, within the 30-day time allowed that would have expired on August 5, 2010. Department Counsel had no objection to the Response. I received the case assignment on August 31, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant admitted the allegations in the SOR. He denied his financial delinquencies met the standards set forth in Guideline F. He submitted 76 pages of attachments to his Answer. His FORM Response consisted of another 28 pages.

Applicant is 46 years old, married, and operates a business delivering appliances for a department store. His income in 2008 was \$173,000 and his wife earned \$45,000 working as an accountant in the state government. (Items 4-6)

The SOR alleges two delinquent debts and a Chapter 7 bankruptcy filing in May 2009. This bankruptcy petition was dismissed in December 2009 on the grounds Applicant abused the bankruptcy law by underreporting his income and overstating the effect his May 2008 ATV accident had on his ability to operate his business. There was a discrepancy about how much time Applicant was not able to work at his business as he recovered from his injuries. The discrepancy was whether that time was four to six weeks, or four to six months (as Applicant claimed). The bankruptcy court granted the motion to dismiss and allowed Applicant to file a Chapter 13 petition by December 18, 2009. Applicant did not file another bankruptcy petition. (Items 4, 6, 10-14, FORM Response)

The first debt alleged in the SOR is owed to his first mortgage holder in the amount of \$14,034. This amount was owed as of May 2009. The mortgage was signed in February 2007. The total amount owed on the first and second mortgages was \$431,000. Applicant submitted documents showing this creditor approved a short sale procedure in July 2010 if the sale price was \$113,000 and it was paid \$99,582.63. The debt had to be paid by August 27, 2010. The second mortgage holder would accept \$8,327 on its property lien no later than August 27, 2010. In February 2010 an offer on the house was made to purchase it for \$105,000. The result of that proposed transaction is not shown by any document submitted by Applicant. Applicant's personal financial statement made in December 2009 states no mortgage payment or rent is being paid. On that statement Applicant's family income is shown as \$4,975.65, his monthly expenses as \$3,560, and his net remainder as \$1,415.65. This debt is unresolved. (Items 4, 6-9, FORM Response)

The second debt alleged in the SOR is owed to a credit union in the amount of \$17,393. This money is the balance owed on a debt consolidation loan taken out in

February 2008 in an original amount of \$20,055. The last payment was April 2009. This debt is unresolved. (Items 6-9)

Applicant's response to the interrogatories shows his delinquent debt is \$107,800. This amount includes 11 credit card debts. These debts include \$2,100 owed on a vacuum cleaner purchase and two credit cards with more than \$25,000 on each account. (Item 6)

Applicant admitted he owed the Internal Revenue Service (IRS) \$12,195.87 on his 2008 personal income tax account. He under paid his taxes by \$11,000. He entered an agreement to pay \$500 per month and made one payment. Applicant did not submit any documents showing he made more than one payment. (Item 6 at 6 to 25 of 131)

Applicant submitted a letter from a collection agency dated May 10, 2010, in his FORM Response. Two accounts they have could be settled for \$14,976 if Applicant paid \$416 a month from May 2010 to April 2013. Applicant did not submit any proof of payment of the monthly amounts. His cover letter in the FORM Response states "We are making a good faith attempt to resolve our debts with creditors. As they contact us we give them to our lawyer to negotiate a payment. We are using legal advice at all times showing we are in control of our debt at this time." This letter is dated July 28, 2010. Applicant did not submit any documentation from himself or his attorney that any delinquent debt is resolved or in the process of being resolved. The balance of Applicant's FORM Response consists of the bankruptcy filings submitted previously in his Answer to the SOR. (Items 6-9, Answer, FORM Response)

### **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 useful 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 the 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.

According to 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 the applicant or proven by Department Counsel, and 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.

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

From 2008 to the present, Applicant accumulated significant delinquent debts, totaling \$31,724 as alleged in the SOR that remain unpaid or unresolved. These debts are only symptomatic of Applicant's total liabilities. He owes \$431,000 on his two mortgages on his home, \$107,800 on credit card and debt consolidation loans, and \$12,195.87 to the IRS for his 2008 federal income taxes. Applicant has a financial inability to pay his excessive debts and a history of not meeting his financial obligations for the past two years, at least. His attempt to rid himself of his delinquent debts in a Chapter 7 bankruptcy filing was stopped by the bankruptcy trustee's motion to dismiss for abuse of the bankruptcy law. The bankruptcy court granted the motion and gave Applicant until December 18, 2009, to file a Chapter 13 petition. He did not file that petition. He has not paid his mortgages for at least 11 months. The two disqualifying conditions apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties:

(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;

(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;

(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;

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

(e) 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 actions to resolve the issue; and,

(f) the affluence resulted from a legal source of income.

No mitigating condition applies. AG ¶ 20(a) does not apply because the delinquent debts are still owed and are recent. The situation is recurring. Applicant is not paying his debts. The magnitude of the debt and their duration cast serious doubt on

Applicant's good judgment, current reliability, and trustworthiness. The bankruptcy court's granting of the motion to dismiss based on abuse of the law gives further serious doubt to Applicant's good judgment and trustworthiness.

AG ¶ 20(b) does not apply because Applicant has not shown his ATV injuries were beyond his control and adversely affected his ability to repay his numerous and large debts. There is no evidence Applicant acted responsibly in 2008 and 2009.

AG ¶ 20(c) does not apply because there is no evidence that Applicant received counseling for his financial problem, or that his situation is under control or being resolved. He does not appear to be paying any debts and hides behind his attorney. His FORM Response statement that he refers creditors to his attorney to negotiate a payment plan is not supported by any evidence that any plan for any debt exists and is being paid monthly. Applicant did not need an attorney to tell him not to pay his debts; he took that action on his own initiative in 2009 before he hired an attorney.

AG ¶ 20(d) does not apply because there is no good-faith effort to resolve Applicant's debts. He is not paying any of them, based on the evidence he submitted.

AG ¶ 20(e) is not supported by any evidence. Applicant did not show any reasonable basis to dispute any debt.

AG ¶ 20(f) is not an issue because no affluence was shown from any source of income.

### **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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past two years. His Chapter 7 bankruptcy petition was dismissed in December 2009 because the court found he had abused the law by providing faulty information to the court. It is clear Applicant spent a large amount of money on credit cards over the past two years with no realistic possibility of repaying it. His actions are irresponsible. In addition, he has not paid his mortgages for at least 11 months while continuing to live in his house. He takes no action to resolve any debt, through bankruptcy, negotiation of an installment payment plan, or payment in full.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

### **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 to 1.c:	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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PHILIP S. HOWE  
Administrative Judge