



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



In the matter of:

ISCR Case No. 09-06716

Applicant for Security Clearance

**Appearances**

For Government: William T. O'Neil, Esq., Department Counsel

For Applicant: *Pro se*

October 21, 2010

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a long history of financial indebtedness. He currently has 16 delinquent debts, and has failed to submit proof that any of them are satisfied. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the Statement of Reasons (SOR) in writing on April 14, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on July 27, 2010. A complete copy of the file of relevant material (FORM) was received by Applicant on August 3, 2010. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. On August 30, 2010, Applicant responded with a four page submission (Reply), including a copy of his Answer to the SOR. The case was assigned to me on September 23, 2010.

### **Findings of Fact**

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since January 2008. He is single and has three sons. (Item 5; Item 6).

The SOR alleges 16 delinquent debts, which are all substantiated in the record. (Item 6; Item 7; Item 8). Applicant admitted all 16 debts alleged in SOR totaling \$11,409. Further, Applicant's Personal Financial Statement reflects that he has a monthly deficit of -\$1,008. (Item 6.) In his Reply, Applicant indicated he admitted to being in debt to the creditors as listed and was now "in the process of getting them liquidated." He provided no further documentation to support his statement. His debts are as follows:

Allegation 1.a. alleges that Applicant is indebted on a judgment against him filed in May 2007, for a car loan, in the approximate amount of \$7,092. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.b. alleges that Applicant is indebted on a judgment against him for unpaid babysitting fees, filed in January 2007, in the approximate amount of \$325. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.c. alleges that Applicant is indebted on a medical account in the approximate amount of \$81. Applicant indicated that this bill was for medical care for his youngest son. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.d. alleges that Applicant is indebted on a medical account in the approximate amount of \$468. Applicant indicated that this bill was for medical care for his youngest son. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.e. alleges that Applicant is indebted on a medical account in the approximate amount of \$78. Applicant indicated that this bill was for medical care for his youngest son. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.f. alleges that Applicant is indebted on a medical account in the approximate amount of \$98. Applicant indicated that this bill was for medical care for his youngest son. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.g. alleges that Applicant is indebted on a medical account in the approximate amount of \$125. Applicant indicated that this bill was for medical care for his youngest son. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.h. alleges that Applicant is indebted on a medical account in the approximate amount of \$436. Applicant indicated that this bill was for medical care for his youngest son. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.i. alleges that Applicant is indebted on an account placed for collections by a bank for an overdrawn account, in the approximate amount of \$455. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.j. alleges that Applicant is indebted on a medical account in the approximate amount of \$125. Applicant indicated that this bill was for medical care for his youngest son. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.k. alleges that Applicant is indebted on a utility bill in the approximate amount of \$1,008. This bill was incurred when Applicant moved out of a residence. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.l. alleges that Applicant is indebted on a telephone account in the approximate amount of \$394. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 7.)

Allegation 1.m. alleges that Applicant is indebted on a telephone account in the approximate amount of \$304. In his subject interview, Applicant claimed this debt is a duplicate of 1.l.; however he failed to provide documentation to support his assertion. (Item 6; Item 7.)

Allegation 1.n. alleges that Applicant is indebted on a gym membership account in the approximate amount of \$327. Applicant failed to provide documentation that he has addressed this debt. (Item 6; item 8.)

Allegation 1.o. alleges that Applicant is indebted on an insurance account debt in the approximate amount of \$123. This debt was incurred for vehicle insurance on a vehicle that was repossessed. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 8.)

Allegation 1.p. alleges that Applicant is indebted on a medical account in the approximate amount of \$70. Applicant failed to provide documentation that he has addressed this debt. (Item 6; Item 8.)

### **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 to be 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, administrative judges apply 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. 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion 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 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 EO 10865 provides that adverse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or financial analysis.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations. Further, his financial problems have been ongoing for at least the past 3 years, without resolution, while at the same time Applicant has continued to incur additional debts. He has a negative monthly net remainder of -\$1,008, which shows he continues to spend beyond his means. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and

(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.

The evidence does not show that Applicant has resolved any of the 16 debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant failed to present any documentation in support of this claim. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has worked for his current employer since January 2008. He did not submit evidence of any payments, even on the smallest debts. He did not present a plan on how he will address his delinquent debts, other than to indicate in his Reply that he is in the process of getting them liquidated. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant did not produce any evidence to suggest he attended any financial counseling. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve his delinquent debts. The record fails to establish that any payments have been made any of his 16 debts. AG ¶ 20(d) is not applicable.

Applicant initially disputed owing the debt alleged in 1.m., as a duplicate of 1.l., however, he admitted each debt in his Answer. Further, he presented no evidence to show that he was in the process of disputing this debt or that he had successfully disputed this debt in the past. AG ¶ 20(e) is inapplicable.

### **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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is 37-years old. He is clearly aware of the need to be financially responsible. He has had ample opportunity to address his financial delinquencies, but has failed to do so.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Considerations security concerns.

### **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-1.p:                      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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge