



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 09-07194
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Greg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

January 12, 2011

**Decision**

MASON, Paul J., Administrative Judge:

In 2004, Applicant was laid off from his job as an airline mechanic. Six months later he discovered his son had dyslexia. Because the school did not have the resources to educate the child with this condition, Applicant’s wife decided to give up her employment and continue to educate the child at home. Applicant exercised good judgment in trying to establish payment plans for the delinquent debts. However, he demonstrated poor judgment in not seeking alternative courses of action after incurring the large, delinquent debt he could not repay, and learning the creditors would not negotiate with him. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified Electronic Questionnaires for Investigations Processing (Item 5, e-QIP) on June 11, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on July 8, 2009. In his interrogatory answers submitted to the Government on March 1, 2010 (Item 6), Applicant agreed with the investigator’s summary of his July 2009 interview, and acknowledged the summary

could be used in a security clearance hearing to determine his security suitability. (*Id.*) On August 3, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (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), implemented by the Department of Defense on September 1, 2006.

Applicant's undated answer to the SOR was received by DOHA on September 1, 2010. He requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on October 1, 2010. He received the FORM on October 8, 2010. In an attachment to the FORM, he was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. His response was due on November 7, 2010. No response was received. The case file was assigned to me on December 15, 2010.

### **Findings of Fact**

The SOR contains six allegations (delinquent debts) under the financial considerations guideline. Applicant admitted all allegations. Applicant is 38 years old. He has been married in a common-law relationship since May 1995, and has two children, ages 13 and 9. He served in the United States Air Force (USAF) for four years, and was honorably discharged in May 1995, the same year he established his common law marital relationship with his wife. He has been employed as a mechanic for a defense contractor since January 2008, and has been employed consistently since 2001. (Item 5)

In 2004, Applicant was a mechanic with a commercial airline company. The company laid him off.<sup>1</sup> Six or seven months later in 2004, his son was diagnosed with severe dyslexia, and his school did not have the resources to educate him. His wife decided to discontinue her employment, where she earned about \$2,000 month, and return home to educate the child. When his wife stopped working, earnings for the household fell from \$4,000 to Applicant's net monthly income of approximately \$2,000 a month. After falling behind on the listed debts, Applicant contacted the creditors and explained his plight, with an offer to repay the accounts at reduced amounts. The creditors were not accommodating. Applicant's vehicle was repossessed. He considered financial counseling and debt consolidation, but decided against either option because of the cost. (Item 6) Applicant repeatedly stated he wanted to repay the

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<sup>1</sup> However, Applicant's e-Qip (Item 5) shows no gap in employment while Applicant was working for this employer. The e-Qip reflects that Applicant worked for the airlines from May 2001 to April 2005, then he was hired as an overhaul technician in April 2005, and worked there until June 2006, when he began working as a maintenance technician. According to his e-Qip, in January 2008, he began employment at his current position.

creditors when he was able. (*Id.*; Item 7) Applicant's monthly income is \$2,948. After monthly expenses (\$1,723) and debts (\$1,075) are subtracted, his discretionary, monthly income is about \$149 a month. (Item 7)

The credit reports (Items 8, 9, and 10) confirm that the six accounts listed in the SOR are delinquent. Of the six delinquent accounts, five are credit cards, and the sixth is a medical debt. The accounts became delinquent between December 2005 and October 2008. The total amount of delinquent debt is \$46,230.

### **Character Evidence**

Applicant had an opportunity to respond to the FORM with objections to the contents of the FORM, or by submitting additional material he wanted me to consider. He could have furnished more information on his decision not to seek assistance for his financial problems. Furthermore, he advanced no character statements from individuals or supervisors on his job, or individuals in the community. Applicant decided not to submit other kinds of character evidence, such as awards, certificates of recognition and/or letters of commendation.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they are deemed necessary in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a significant period of a person's life with a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. I have avoided drawing inferences grounded on mere speculation or conjecture. 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 of the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 for obtaining a favorable security decision.

## Analysis

### Financial Considerations

The security concern for financial considerations is set forth 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.

Applicant owes \$46,230 to six creditors, and is unable to repay the debt. Applicant did not accumulate these debts at one time but over a five-year period beginning in December 2005. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

Four mitigating conditions are potentially applicable. No mitigation is available under 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 reliability, trustworthiness, and good judgment*). This mitigating condition does not apply because there are six delinquent debts that have fallen delinquent under circumstances that are likely to be repeated.

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) calls for two items of proof to be established. In order for this mitigating condition to apply, the condition causing the financial problem should be largely beyond the applicant's control, and the applicant should act responsibly under the circumstances following his recognition of the problem. The medical condition of Applicant's son in 2004 was an unforeseen event largely beyond Applicant's control. He and his wife exercised good judgment when they decided that she would remain at home to educate their son. Applicant showed good judgment by explaining his son's condition to the creditors, and by trying to negotiate revised payment plans. But after realizing the creditors would not agree to his plans to repay, Applicant should have considered counseling or other publicly available organization to help his son. Instead, he took no other action. In sum, Applicant only receives limited mitigation under AG ¶ 20(b).

AG ¶ 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*) does not apply because Applicant has never had financial counseling and there is no evidence of payments to the creditors. AG ¶ 20(c) does not apply.

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Demonstrating good-faith means more than trying to negotiate payment plans. The term includes action that shows that delinquent accounts are actually being repaid under some kind of plan. However, when the creditor indicates he does not agree with the repayment terms, then the applicant has to resolve his debts in another way as defined by the mitigating condition. Based on his decision not to seek counseling or a debt consolidation, Applicant receives no mitigation under AG ¶ 20(d). With only AG ¶ 20(b) partially supporting his case in mitigation, Applicant's financial problems are still a serious concern under the financial guideline.

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 38 years old. Based on his answers to the SOR, the information he provided in his (e-Qip), and the interrogatory answers he provided, he is a mature adult who has worked for his current employer since January 2008.

In 2004, after learning their son's school lacked the resources to address his dyslexia, Applicant and his wife made a praiseworthy decision by having his wife discontinue her employment so that she could continue to educate their son at home. However, this decision meant that there was only one income (instead of two) to pay the day-to-day expenses and listed debts. After learning that his creditors would not accept his repayment proposals, Applicant should have considered alternative courses of action, including assistance from other public entities or the bankruptcy laws. Accordingly, Applicant has not met his burden of showing it is clearly consistent with the national interest to grant him access to classified information.

## **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 through 1.f    Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge