



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



In the matter of: )  
)  
) ISCR Case No. 09-07540  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeffrey A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

February 28, 2011

**Decision**

MASON, Paul J., Administrative Judge:

Applicant owes almost \$50,000 in debt. After adding \$42,300 for unpaid spousal support for 33 out of 36 months, Applicant owes approximately \$92,300 in delinquent debt. He has taken no steps to satisfy any of the delinquent accounts. Applicant has failed to meet his burden of demonstrating he warrants a security clearance. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on March 24, 2009. He was interviewed on August 19, 2009, by an investigator from another federal agency. In his interrogatory answers submitted to the Government on June 9, 2010 (Item 6), Applicant agreed that the investigator's summary of his August 2009 interview was correct, and that the summary could be used in a

security clearance hearing to determine his security suitability.<sup>1</sup> On September 24, 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 furnished his answer to the SOR on November 2, 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 November 24, 2010. He received the FORM on December 13, 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 January 13, 2011.<sup>2</sup> No response was received. The case file was assigned to me on February 16, 2011.

### **Findings of Fact**

The SOR lists 14 allegations under the financial considerations guideline. The allegations refer to cell phone accounts, loans, a repossessed auto, and three credit cards. The total delinquent debt total is approximately \$92,300. The largest delinquent accounts are identified in 1.k<sup>3</sup> and 1.m.<sup>4</sup> His first account (1.f) to become delinquent occurred in August 2005. Applicant's most recent account (1.l) to become delinquent was in July 2010. Applicant admitted SOR 1.c, 1.e, 1.i, 1.j, 1.k, and 1.m. He denied 1.a, 1.b, 1.d, 1.f, 1.g, 1.h, 1.l, and 1.n. He explained in his denials of eight of the 14 accounts that the accounts belong to his former wife. She had his power of attorney when she opened several accounts without his knowledge. (GE 6) Based on his admissions and the credit bureau reports in GE 7, 8, and 9, all financial allegations are resolved against Applicant.

Applicant is 29 years old. He married his first wife in June 2001 and divorced her in December 2006 when he married his second wife. He has no children. He has been

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<sup>1</sup> The decision in every security clearance case, either after a hearing or on the record of documents presented, is whether it is clearly consistent with the national interest to grant an applicant eligibility for access to classified information. Hence, the interview may be used for all purposes in both kinds of due process procedures.

<sup>2</sup> The memorandum assigning the case file cites the date of January 13, 2010 as when Applicant's response was due. The memorandum also cites January 19, 2010 as when the case was forwarded to DOHA. The year cited in both dates should be 2011 instead of 2010.

<sup>3</sup> Applicant owes \$22,953 for a car that was repossessed after being in his possession for a month. (GE 6 a 97)

<sup>4</sup> The spousal support arrearage amounts to \$43,200 for December 2006 to December 2009.

employed as a pod leader at a military base since December 2008. No additional information was furnished concerning his current employment. From April 2008 to December 2008, Applicant was a program representative. No additional information was furnished about his employment in this position. From June 2007 to April 2008, he was unemployed and received unemployment compensation.

Following his graduation from high school in 1999, Applicant took some college courses between 2000 and 2002. In June 2007, Applicant received a general discharge under honorable conditions (GE 10) after serving in the United States Army for eight years.

In August 2009, Applicant told the security investigator from another agency that he had been struggling for the past three years. He did not know he had to file a tax return for unemployment compensation. He has applied for small credit cards to build his credit again. He wanted to consolidate his debts into a payment plan. A military attorney told him he did not have enough debt to file for bankruptcy. In a personal financial sheet (PFS), Applicant stated his monthly income was \$1,168, monthly expenses were 1,769, a monthly payment of \$350 for two personal loans totaling \$3,000, leaving a net monthly remainder of \$198. Subtracting his monthly expenses and monthly payments from his net monthly income, leaves a negative, not a positive monthly remainder. Applicant wrote on the PFS that his income varies based on the amount of hours he actually works. (GE 6) Based on his explanation, he must work a substantial amount of extra time to narrow the difference between his net income and his monthly expenses.

### **Character Evidence**

Applicant provided no job performance evaluation evidence or other kinds of character evidence providing his reputation in the community.

### **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's delinquent debts are approximately \$92,300. He blames his first wife for abusing the power of attorney she had by opening credit accounts. He is still legally responsible for her unauthorized actions. In addition, his power of attorney explanation does not apply to an account that became delinquent in July 2010, almost four years after he divorced his first wife. Applicant's inability to pay his debts falls within the scope of AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Four mitigating conditions are potentially applicable: 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*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*); 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*); and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

There are 13 delinquent debts and delinquent spousal support. The delinquent accounts did not materialize under unusual circumstances, and Applicant's failure to address the debts and his non-payment of spousal support continue to cast doubt on his reliability and judgment. AG ¶ 20(a) does not apply.

For AG ¶ 20(b) to mitigate financial problems, an applicant must present evidence that shows “the conditions that resulted in the financial problem were largely beyond the person’s control,” and “the individual acted responsibly under the circumstances.” Applicant’s divorce in December 2006 and his unemployment from June 2007 to April 2008 fall under the first prong of the condition. However, to receive full mitigation under the condition, an applicant must show he made responsible decisions about his delinquent accounts once the accounts become delinquent. Advising the creditors of his financial predicament is one step an applicant can take. Consulting with a financial counselor about debt consolidation plans or bankruptcy action is another course of action. Applicant has provided no documentation that he has taken any action to handle his delinquent debt. AG ¶ 20(b) applies only in part.

AG ¶¶ 20(c) and 20(d) do not apply. There is no evidence of financial counseling and that the financial problems are under control. Applicant has made no good-faith effort to satisfy the debts.

Applicant denied several of the listed debts. His unsupported denials are insufficient to refute the evidence contained in the credit reports indicating that the listed accounts are his responsibility.

### **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 owes about \$92,300 in delinquent debt. He has one loan listed in the SOR. His PFS reflects that he owes two personal loans. He owes his former wife \$42,300 in spousal support. Except for the support, all the debts in the SOR are for discretionary items rather than non-discretionary items. The amount of debt, the length of time the accounts have been delinquent, and Applicant’s passive attitude about what he plans to do about the debts, compels a finding against Applicant under the financial considerations guideline. See AG ¶¶ 2(a)(1) through 2(a)(9).

## **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.n    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