



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



In the matter of: )  
)  
) ISCR Case No. 09-07563  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

September 29, 2011

**Decision**

DUFFY, James F., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

In an undated response, Applicant answered the SOR and requested a hearing. The case was assigned to me on August 3, 2011. DOHA issued a notice of hearing on August 10, 2011, and the hearing was convened as scheduled on August 31, 2011. Department Counsel offered exhibits (GE) 1 through 5 that were admitted into evidence

without objection. Department Counsel's list of exhibits was marked as hearing exhibit (HE) 1. Applicant testified, but called no witnesses and offered no exhibits. DOHA received the hearing transcript (Tr.) on September 12, 2011.<sup>1</sup>

### Findings of Fact

Applicant is a 29-year-old security officer employed by a defense contractor. He has worked for his current employer for over two years. He graduated from high school in 2001 and attended two years of community college. He has never been married and has no children. This is the first time that he has applied for a security clearance.<sup>2</sup>

The SOR alleges 15 delinquent debts totaling about \$22,521. These debts were listed on credit reports obtained on June 27, 2009; October 28, 2009; and March 17, 2011. In his Answer to the SOR, Applicant admitted each of the allegations (SOR ¶¶ 1.a through 1.p). His admissions are incorporated herein as findings of fact.<sup>3</sup>

Applicant attributes his financial difficulties to a period of unemployment and low paying jobs. His care for his ailing mother also contributes to his financial problems. He does admit, however, that he was young and has made financial mistakes. Currently, he is only working part time. Because he frequently transports his mother to medical appointments and treatments, his ability to work additional hours has been limited. From January 2007 to December 2007, he worked for an investigative company that required him to travel often. Under the company's policies, he was responsible financially for travel expenses if he lost receipts or for hotel bills incurred above the authorized reimbursement limits. At the hearing, he indicated that he resigned from the company because he could not afford the travel expenses. In his interview with an Office of Personnel Management investigator in July 2009, he stated that he did not officially resign, but chose to resign because it was better than being fired. After leaving that job, he was unemployed from December 2007 to December 2008 and did not receive unemployment compensation for that period. He then was employed in a low-paying job for six months before obtaining his current part-time job.<sup>4</sup>

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<sup>1</sup> Tr. at 12-13, 25-26; GE 1. Parts of Applicant's Answer are apparently missing from the record. His Answer does not reflect that he requested a hearing, but he testified that he requested a hearing in his Answer.

<sup>2</sup> Tr. at 6-8, 88; GE 1.

<sup>3</sup> Applicant's Answer to the SOR; GE 1-5.

<sup>4</sup> Tr. at 22-24, 30-49, 54, 56-57, 88; GE 2. During his interview with an Office of Personnel Management investigator, Applicant reportedly stated that the vice-president of the investigative company advised him that his resignation was accepted. He indicated that, although he did not officially resign, he did not challenge that decision because he thought resigning was better than being fired. In his Electronic Questionnaires for Investigations Processing (e-QIP), Applicant indicated that he was suspended by the company in October 2007 because he was arrested for driving while his license was suspended. GE 1 at 24. At the hearing, he testified that his license was suspended because his friend who worked for the police department forgot to "fix" his traffic tickets. Tr. at 42-44.

Each of the alleged debts is addressed below.

SOR ¶ 1.a – judgment for \$2,556. This debt was for a car loan that Applicant obtained in 2006. He was making payments on this loan until he resigned from his job in December 2007. Since then, he has not been able to make any payments, but still has possession of the vehicle. He plans to start making payments when he is able to do so.<sup>5</sup>

SOR ¶ 1.b – charged-off debt for \$9,038. This debt was for a car loan that Applicant cosigned with his fiancée in 2008. She was supposed to make the payments, but failed to do so. The vehicle has been repossessed. He admits that he is financially responsible for this debt. He has had no contact with the creditor.<sup>6</sup>

SOR ¶ 1.c – charged-off debt for \$258. This debt was a credit card that he obtained in college with a \$200 or \$250 limit. He claimed that he never reached the credit limit and the card was declined. He refuses to pay this debt. He provided no documents showing that he has a legitimate basis for disputing this debt.<sup>7</sup>

SOR ¶ 1.d – collection account for \$873. This debt was for a credit card with a \$200 limit that he obtained to rebuild his credit history. He stopped making payments on this debt when he resigned from his job in December 2007. Since then, he has not been in contact with this creditor.<sup>8</sup>

SOR ¶ 1.e – collection account for \$831. This debt was for an overdrawn bank account. Applicant received a check from an individual that he deposited in his bank and then withdrew the money. The check bounced, causing the deficiency. The bank indicated that it would accept a payment arrangement, but he has not yet made those arrangements.<sup>9</sup>

SOR ¶ 1.f – collection account for \$90. This debt was for car insurance. Applicant claimed that he had no knowledge of the debt. He had car insurance while working for the investigative company, but does not remember the name of that insurance company. He has not contacted the insurance company or the collection agency about this debt.<sup>10</sup>

SOR ¶ 1.g – collection account for \$2,015. This debt was for a company travel card that Applicant used while working for the investigative company. He claimed this

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<sup>5</sup> Tr. at 23-24, 26-31; GE 2.

<sup>6</sup> Tr. at 24, 58-59; GE 2.

<sup>7</sup> Tr. at 25, 59-61; GE 2.

<sup>8</sup> Tr. at 61-63, 67; GE 2.

<sup>9</sup> Tr. at 63-67; GE 2.

<sup>10</sup> Tr. at 67-68; GE 2.

was the company's debt and he was not responsible for it. He also noted that the company was taking money from his paycheck to pay bills arising from his use of this credit card. He indicated that former employees of the company have brought a lawsuit against the company because of its credit card practices. He indicated that he is a party to that lawsuit, but provided no documents showing that he has a legitimate basis for disputing this debt.<sup>11</sup>

SOR ¶ 1.h – medical debt for \$100. This debt was placed for collection in October 2005. Applicant claimed that he has no knowledge of this debt.<sup>12</sup>

SOR ¶ 1.i – collection account for \$125. This debt was a doctor bill. He still receives medical care from this doctor. He stated that he has been making payments on this bill, but provided no documentary proof.<sup>13</sup>

SOR ¶ 1.j – collection account for \$351. This debt was for a loan. Initially, Applicant had a loan with this creditor that he paid. He then borrowed more money that he has not repaid. He has not had contact with the creditor and stated that there is no reason why he has not paid this debt.<sup>14</sup>

SOR ¶ 1.k – collection account for \$759. This debt arose from a college class that Applicant dropped. He thought he dropped the class before the deadline for doing so. He has not made any payments on this debt.<sup>15</sup>

SOR ¶ 1.m – medical debt for \$2,446. This debt was placed for collection in May 2008. Applicant claimed that he has no knowledge of this debt.<sup>16</sup>

SOR ¶ 1.n – collection account for \$2,479. Applicant claimed this debt is a duplicate of the one alleged in SOR ¶ 1.a. Department Counsel agreed. This debt is resolved.<sup>17</sup>

SOR ¶ 1.o – collection account for \$150. Applicant opened this account to purchase some jewelry for his mother. He mother was supposed to pay the monthly balance, but failed to do so.<sup>18</sup>

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<sup>11</sup> Tr. at 23, 37-49, 68; GE 2.

<sup>12</sup> Tr. at 68-69; GE 3, 4.

<sup>13</sup> Tr. at 68-69; GE 2.

<sup>14</sup> Tr. at 24, 71-72; GE 2.

<sup>15</sup> Tr. at 25, 72-73; GE 2.

<sup>16</sup> Tr. at 69-71; GE 2.

<sup>17</sup> Tr. at 69-71, 73-74.

<sup>18</sup> Tr. at 74-75; GE 2.

SOR ¶ 1.p – judgment for \$450. This debt arose from an apartment that Applicant leased. In 2005, the apartment was having sewage problems and he refused to pay his rent. He went to court over the issue. He indicated that the judge asked him if his rent was \$450 and he responded “yes.” A judgment was rendered against him. He asked why the judgment was entered and was told that he admitted the debt. He complained and the judge told him there was nothing further that could be done. He has not paid this debt.<sup>19</sup>

In responding to interrogatories in August 2010, Applicant stated: “None of these debts have been paid. Right now I’m not financially able at the current time to take care of these debts. But when I am able to I ensure you that these matters will be resolved.”<sup>20</sup>

Applicant lives with his fiancée, and they share living expenses. He indicated that he is current on his living expenses. In August 2010, he submitted a Personal Financial Statement (PFS) that reflected his net monthly income ranged from \$1,400 to \$2,200 and that his total monthly expenses were \$2,182. In that PFS, he did not list any debt payments.<sup>21</sup>

A week before the hearing, he purchased a vehicle for \$11,800. He financed that purchase through a bank, put down no money on that purchase, and will soon have monthly payments of \$299. In 2010, he received a tax refund of about \$5,000. He stated that he did not use any of that refund to pay delinquent debts, but used it to pay for living expenses. He stated that he is living paycheck to paycheck and does not have a budget. He has not received any financial counseling. He indicated that he will attempt to pay the delinquent debts in the next couple of months.<sup>22</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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

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<sup>19</sup> Tr. at 75-77.

<sup>20</sup> GE 2.

<sup>21</sup> Tr. at 57-58, 80, 88-89; GE 2.

<sup>22</sup> Tr. at 77-79, 85-87.

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.

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 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy them for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several 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.

Applicant's debts are ongoing and significant. There is no indication that they will not recur. AG ¶ 20(a) is not applicable.

Applicant admitted that he has made financial mistakes. In 2007, he resigned from a job when it appeared he was about to be fired. After his resignation, he was unemployed for about one year and then was employed in a low-paying job for six months before obtaining his current part-time job. Such circumstances do not support a determination that his financial problems arose from conditions beyond his control. He does, however, care for his ailing mother, which is a condition beyond his control. To obtain full credit under AG ¶ 20(b), he must also have acted responsibly under the circumstances. Here, given that he has not taken any meaningful action to resolve his

delinquent debts since his financial problems arose, I cannot find that he has acted responsibly. AG ¶ 20(b) partially applies.

Applicant has not obtained financial counseling. He presented no documentary evidence showing that he has made payments on any of the delinquent debts. No settlement agreements were offered into evidence. There is no indication that these debts are being resolved or are under control. AG ¶¶ 20(c) and 20(d) are not applicable.

The debt in SOR ¶ 1.n was a duplicate of the one in SOR ¶ 1.a. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in an applicant's favor.<sup>23</sup> Therefore, SOR ¶ 1.n is resolved in Applicant's favor. Although he contests various other debts, he presented no documentary evidence to show he has a legitimate basis for disputing them. In absence of supporting documentary evidence, AG ¶ 20(e) does not apply.

At this point, Applicant's finances remain a security concern. He has failed to take meaningful action to resolve his financial problems.

### **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 relevant 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.

I considered Applicant's service to his employers as well as his periods of unemployment and underemployment. Nevertheless, he has not established that he is

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<sup>23</sup> ISCR .Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005).



financially responsible. He does not have a plan for resolving his debts. He has taken minimal action to address them and they remain unresolved. Despite his ongoing financial problems, he recently took on additional debt by purchasing a vehicle. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

### **Formal Findings**

Formal findings 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.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o–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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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James F. Duffy  
Administrative Judge