



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



In the matter of:	)	
	)	
XXXXXXXXXX, XXXXX	)	ISCR Case No. 09-07932
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel  
For Applicant: *Pro se*

July 6, 2010

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has not mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is denied.

**Statement of the Case**

On December 1, 2009, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP).<sup>1</sup> On December 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) 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.

<sup>1</sup> FORM Item 8.

On December 31, 2009, Applicant acknowledged receipt of the SOR. On January 16, 2010, Applicant submitted his Answer to the SOR and submitted a supplemental Answer on February 17, 2010.<sup>2</sup> He elected to have his case decided on the written record in lieu of a hearing.<sup>3</sup> A complete copy of the file of relevant material (FORM), dated March 16, 2010, was provided to him by letter on the same day. Applicant received the FORM on March 23, 2010. He was afforded a period of 30 days, from his receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information. The case was assigned to me on June 4, 2010.

### **Findings of Fact**

Applicant admitted all of the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 26-year-old business analyst, who has been employed by a defense contractor since November 2008.<sup>4</sup> Applicant graduated from high school in May 2001, and attended college from August 2001 to December 2006. Following college, Applicant was employed in several different positions of relatively short duration, and also experienced some periods of unemployment. Applicant has never married and has no dependents. He did not serve in the armed forces.

Applicant has 21 delinquent debts totaling more than \$53,800, including more than \$49,000 in delinquent student loans.<sup>5</sup> In addition to Applicant's admissions, his delinquent debts are evidenced by two credit reports.<sup>6</sup>

In June 2009, when interviewed by a DoD investigator, Applicant said he experienced financial difficulties between 2002 and 2006 while attending college and working part-time.<sup>7</sup> He told the investigator he was "in the process" of contacting his creditors and attempting to consolidate his debt, and expressed an intention to pay his

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<sup>2</sup> Items 4 and 6.

<sup>3</sup> Item 6.

<sup>4</sup> Items 7 and 8, (April 2009 SF-86 and December 2009 e-QIP) are the source for background information in this decision, unless stated otherwise.

<sup>5</sup> Items 1, 4, and 7-12.

<sup>6</sup> The Appeal Board has held that an applicant's credit report showing the delinquent debts alleged in an SOR is sufficient to establish the Government's prima facie case. See ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2003.)

<sup>7</sup> Item 9.

debts.<sup>8</sup> In discussing his financial situation with the investigator, Applicant disclosed he was “earning more money now than he has in the past,” lived in the house next to his mother’s “and both mortgages are paid.”<sup>9</sup> From information Applicant provided the investigator, it appears he has a monthly remainder of about \$1,600 after accounting for his monthly expenses.<sup>10</sup>

In October 2009, Applicant responded to DOHA interrogatories asking him to provide an update on the status of his debts, including identifying whether he had yet established a payment plan, providing evidence of any such plan, and providing documentation of any payments made towards his debts.<sup>11</sup> Applicant’s response to the interrogatories shows he made no payments towards his delinquent debts, although he said he was “currently looking for a program for debt consolidation.”<sup>12</sup> When questioned about whether he had followed through on his expressed intent to set up payment arrangements on his delinquent student loan debts, he said he “would have to get in contact with the financial aid dept.”<sup>13</sup>

I find that the alleged delinquent debts are established by Applicant’s admissions and evidence presented. Most of his debts have been delinquent for quite some time. Applicant did not submit any documentation to show that he contacted creditors, settled debts, or has been making payments on the debts for which he is responsible.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s controlling 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

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* Applicant said he earns \$41,000 per year, with “take home pay of \$1,222.00 every two weeks.” He estimated his expenditures for utilities, insurance, and other miscellaneous expenses to be about \$845 per month, and he said he also gives his mother about \$200 per month. *Id.*

<sup>11</sup> Item 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”<sup>14</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>15</sup>

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 Executive Order 12968 (Aug. 2, 1995), Section 3.

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<sup>14</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>15</sup> “The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the security concern is that an applicant's 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. AG ¶ 18.

Applicant has accumulated 21 delinquent debts approximating \$53,800, including more than \$49,000 in delinquent student loans. The majority of these debts have been outstanding for several years. Applicant admitted all of these debts. He presented no documentary evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR.

AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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.

Applicant has not produced evidence sufficient to warrant the application of any of the above mitigating conditions. He has not shown that his financial situation has resulted from circumstances beyond his control, has not shown he has ever sought or received financial counseling of any type, and has not established a track record of financial responsibility sufficient to mitigate the financial considerations that give rise to a security concern in this case. What is clear from the record evidence is that, while Applicant may well intend to contact his creditors and attempt to establish payment arrangements on his delinquent debts at some unspecified time in the future, he has not made any demonstrated effort to do so thus far.

Despite being questioned about his financial situation in June 2009 by the DoD investigator, and despite being questioned again in DOHA interrogatories in October 2009, Applicant has produced no evidence showing he has made any attempts to pay his delinquent debts or to attempt a good-faith effort to resolve his debts. In short, Applicant's history of financial problems is recent and not isolated. He has not produced evidence showing he has exhibited good judgment and responsible conduct in managing his finances. Based on record evidence, Applicant's financial difficulties appear likely to be a continuing concern.

### **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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for his service thus far working for a defense contractor.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant has failed to show good-faith efforts to

resolve his financial problems in a timely manner. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations.

### **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.u: Against Applicant

### **Conclusion**

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

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ROBERT J. TUIDER  
Administrative Judge