



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-08008
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esquire, Department Counsel  
For Applicant: *Pro se*

September 29, 2010

**Decision**

LYNCH, Noreen A., Administrative Judge:

On March 29, 2010, 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 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).

On April 22, 2010, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on June 4, 2010. DOHA issued a Notice of Hearing on September 5, 2010, and I convened the hearing as scheduled on September 14, 2010. Department Counsel offered four exhibits, admitted without objection as Government Exhibits (GE) 1-4. Applicant testified and did not submit any exhibits at the hearing. DOHA received the transcript (Tr.) on September 22, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## Findings of Fact

In his Answer, Applicant admitted the SOR allegations except for SOR ¶¶ 1.s, 1.v, 1.x, 1.bb, and 1.jj. He neither admitted nor denied 1.r, 1.cc, 1.hh, and 1.ii.

Applicant is a 31-year-old employee of a defense contractor. He graduated from high school in 1997. Applicant served in the United States Army from August 1998 until August 2004. He has been with his current employer since June 2009. (GE 1)

Applicant married in April 2002 and divorced in August 2008. He has full custody of his two children from his marriage. (Tr. 13) He and his girlfriend have one child. Applicant supports his three children, ages six, four and one. (Tr. 15)

During his marriage Applicant's wife handled the finances. However, she gambled and did not use the money for household bills. She used Applicant's ATM card and personal checks to gain access to money. Applicant believed his wife lost \$15,000 to \$20,000 a year from approximately 2004 until 2007. (GE 2) Applicant explained that his wife took money from his wallet when he was sleeping. (Tr. 17) He learned that she wrote checks from the account and caused checks to be returned for insufficient funds. (Tr. 17) He knew that this was happening in 2006. However, as early as 2003, Applicant learned that his wife was arrested for fraud. (Tr. 27) He knew that she was incarcerated for the fraudulent charges.

Applicant's delinquent debts largely stem from his ex-wife's "severe gambling addiction." (GE 2) Sixteen medical accounts alleged were the result of his wife's chronic asthma condition belonging to his wife. Applicant acknowledged that he was not paying attention to the finances and trusted his wife to take care of paying the bills. (Tr. 12) He did not want to believe that he could not trust her.

The SOR alleges 40 delinquent debts, including two repossessed vehicles, and delinquent credit card debt. The approximate total for Applicant's SOR debts is \$50,000. (GE 4).

When answering the DOHA interrogatories, Applicant explained that he cancelled his ATM cards and destroyed checks but she continued to get his money. Many accounts were joint accounts. (GE 2) He realizes that he is "technically" responsible for the accounts.

The debts Applicant admitted have not been paid. He acknowledged receiving notices for the various accounts but he has not contacted creditors. He admitted that the debts in the SOR began in 2003 or 2004. He attempted to curtail his wife's gambling but he was not successful. (Tr. 28) He tried to persuade her to obtain counseling for the gambling problems, but she refused. (Tr. 28)

Applicant denied two debts alleged in the SOR because he believed he paid them. (SOR ¶ 1.x, 1.bb) (Tr. 35) He did not have any documentation to support his

assertion. He believes he paid them by phone. He acknowledged he does not have any documentation at home because he is a bit disorganized. The remaining debts alleged in the SOR that Applicant denied (1.s, 1.v, 1.hh, 1.ii, 1.jj) are the result of his wife's actions. He has not officially disputed these delinquent accounts nor has he contacted the creditors.

At the hearing, Applicant explained that he worked two jobs to support his family. Applicant has paid other delinquent debts that are not listed on the SOR. He believes that since January 2010 he has paid smaller accounts for a total of approximately \$600. Applicant provided documentation that he paid or settled a military account for \$50 in January 2010. He also settled a delinquent account for \$224

Applicant's current monthly net income is approximately \$2,907. Applicant's net monthly remainder is approximately \$141. (Tr. 43) In 2008, he enrolled in online college courses and has student loans in deferment. He is not certain of the amount of the student loans. He has not had any financial counseling. (Tr. 47) He does not have a payment plan for any of the debts alleged on the SOR. He intends to pay some other bills and then "fulfill the obligation of the outstanding balances on the SOR."

At the hearing, Applicant was forthright and candid about his financial difficulties. He claims he was too trusting of his wife. He tried to stop her from taking his money but he claims he could not. He separated from his wife in 2007 and borrowed money from his father to pay for a divorce. He is repaying that amount (\$7,000) in monthly payments of \$308. Applicant was sincere in his desire to become financially responsible. His priority is his family. He intends to address the other delinquent debts when he can. Applicant was credible in his remorse for his poor financial management.

## **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 must 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2, 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 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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* 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(a), an inability or unwillingness to satisfy debts<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on various accounts totaling approximately \$50,000. His admissions and his credit reports confirm the debts. The evidence is enough to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be

mitigated where 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. Applicant's wife gambled and spent his money rather than pay bills. Applicant realized that as early as 2006. He did not assume financial responsibility when he knew that his wife was gambling and stealing his money. He has \$50,000 in unresolved delinquent debt. He has not paid on the delinquent debts listed in the SOR. He intends to pay them at some point in the future. However, he now has student loans in deferment. This is an additional debt. This mitigating condition does not apply.

Under AG & 20(b), the disqualifying condition may be mitigated where 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. Applicant's inability to pay his delinquent debts is in part due to his wife's gambling addiction. He did not act responsibly under the circumstances. This mitigating condition does not apply.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Neither of these mitigating conditions apply. Applicant has not resolved the delinquent debts listed in the SOR. He admits that he does not have sufficient income to pay his debts. Despite good intentions to pay his delinquent debts, Applicant has not been able to do so. Applicant's efforts are insufficient to carry his burden in this case.

### **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 must 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 mitigating conditions in light of all the facts and circumstances surrounding this case and conclude they are insufficient to overcome the government's case.

Applicant is a 31-year-old high school graduate. He served in the Army from 1998 until 2004. He supports his children. His marriage ended in divorce due to his wife's gambling. He has been steadily employed. He even worked two jobs to financially support his family. However, he did not manage his financial affairs in a responsible manner after learning about his wife's irresponsible behavior. He is credible in his remorse for past financial irresponsibility. He intends to pay his delinquent debt when he is able to do so.

Applicant was candid and forthright at the hearing. He admits that he has not had any financial counseling. He has no repayment plans for any of the multitude of debts. He enrolled in college classes, which is laudable, but now he will have to repay student loans in addition to his \$50,000 delinquent debt. Applicant has not established a financial track record at this point in time. Under Applicant's current circumstances, a clearance is not warranted.

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 security concerns arising under 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.pp:	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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NOREEN A. LYNCH  
Administrative Judge