



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-08116  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

October 28, 2010

**Decision**

LYNCH, Noreen A., Administrative Judge:

On June 1, 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).

Applicant timely answered the SOR and requested a hearing. He denied the allegations without explanation. DOHA assigned the case to me on August 3, 2010. DOHA issued a Notice of Hearing on September 10, 2010, and I convened the hearing as scheduled on October 6, 2010. Department Counsel offered eight exhibits, which were admitted without objection as Government Exhibits (GE) 1-8. Applicant testified and presented five exhibits, which were admitted without objection as Applicant Exhibits (AE) A-E. I kept the record open until October 15, 2010, for Applicant to submit additional documents. Applicant did not submit additional documents. DOHA received

the transcript (Tr.) on October 13, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 52-year-old employee of a defense contractor. He graduated from high school in 1971 and obtained an undergraduate degree in 2000. He served in the United States Army (USA) from 1977 until 1997. He has held a security clearance since 1978. Applicant has been with his current employer since 2005. (GE 1)

Applicant's first marriage in 2001 ended in divorce in 2005. (Tr. 74) Although, he has no children from the marriage, he is the father of four children. Applicant's financial difficulties started when he separated and divorced his wife. (Tr.34) He was investing in homes with his first wife. (Tr 90) He explained that they were buying the homes and then "turning them over for a profit." (Tr. 68) He purchased an expensive car based on the projected profits. (Tr. 93) The profits did not materialize.

Applicant remarried in 2006, and has two children under the age of three from the marriage. He used credit to buy furniture and other items. (Tr. 84) He cosigned a car loan for his older daughter in 2006. In 2006, he attended a theological college. He fell behind on tuition payments even though he had the GI bill to pay for the cost. (GE 2)

The SOR alleges delinquent debts, including medical accounts, a 2007 judgment, and wage garnishments for tax liens from failure to pay taxes from 2005 until 2007. The approximate total for Applicant's debts is \$40,000. (GE 8)

When Applicant was interviewed by an OPM investigator in June 2009, he claimed that he paid alimony of \$1,600 to his ex-wife for three years and that all payments were made. However, when questioned at the hearing, he reported that it was not alimony but money for repayment of a loan involved with the property investments. (Tr. 93) He also described his financial status in 2009 as "good." He noted that has his military retirement pay to help support him.

Applicant testified that he submitted payment receipts for each allegation with his answer to the SOR. There were no attachments in the file but there were copies of bank statements for some accounts in his interrogatories. (GE 2). He paid his delinquent debts starting this year due to "financial hardship." He noted that there are several accounts he is not familiar with. (SOR 1. I and 1.j) He claims that he is investigating them.

Applicant claimed that the debts alleged in SOR ¶¶ 1.a, b, c, e, and n, are fully paid. (Tr. ) His wages were garnished in 2006-2007 for the \$1,896 judgment alleged in SOR 1.c (Tr. 28) from an apartment lease. Applicant claims he had no notice of the judgment. He notes that the judgment has been paid and should not appear on his

credit report. (Tr. 51) The other debts were small medical co-pays that were not covered by his military insurance. (GE 2) Applicant paid them in 2010.

He has not resolved the debt for \$4,509 in SOR 1d. He co-signed on a car loan for his daughter in 2006. (Tr.29) She defaulted on the note. He believes it is his daughter's primary responsibility. (Tr. 55) It is on his credit report, and stated that if he has to pay it, he will. (Tr. 56) However, during his 2009 interview he stated that he had no idea what the account was.

Applicant submitted documentation at the hearing for several delinquent debts that are in repayment status. The debt alleged in SOR ¶1.f ( military credit card charge-off account) has a balance of \$8,288. (AE A) Applicant began paying \$228 per month in December 2009. (Tr. 33)

He is also making monthly payments on his collection account in SOR ¶1.g for the tuition (\$2,311) owed the theological college. His monthly payments are \$100. His first payment was March 2010. (GE 2)

Applicant has not paid legal fees to his divorce attorney from 2005 (debt 1. h.) He does not like the representation that he received. They are disputing the actual amount that is owed due to "interest charges." (Tr. 34) He would like to negotiate a lower payment rather than pay the \$7,503. (Tr. 35)

Applicant made his first payment of \$382 for the debt alleged in SOR ¶1.k On March 2010. He acknowledged that he was negligent in allowing this cell phone debt to go unresolved for so long. He will pay two additional payments to bring the account to closure. (GE 2)

Applicant made a partial payment to settle the account alleged in SOR 1.l This is due to non reimbursement for a medical bill. (GE 2)

The delinquent account alleged in SOR ¶ 1.m is for \$301. Applicant claims this was for a satellite network and has been paid in full. (Tr. 61)

Applicant 's delinquent debt in SOR 1.o is for a \$10.00 parking ticket. He states that he will pay the ticket. (Tr. 42)

Applicant's state tax lien in the amount of \$5,085 is in repayment status. (AE B) His wages were garnished in 2009 for failure to file the taxes from 2004 -2008. He is paying \$100 a month. He did not provide documentation to support his claim.

Applicant submitted documentation that the federal tax lien in the amount of \$11,459 is in repayment status. (AE B) His wages were garnished in 2009 for the failure to pay taxes from 2005 until 2008. He pays \$404 monthly. The payment plan began in February 2010.

Applicant's monthly net income is \$7,281. He has a net monthly remainder of approximately \$2,400. He has a retirement account and \$11,000 in stocks and bonds. Applicant reported an asset of \$25,000 in car/boat in his 2009 interview. (GE 2)

Applicant also earns money from speaking in church. (Tr. 95) (\$1,700 a month) He is current on a \$6,000 credit card account. He is paying his wife's car payment and her student loans. (Tr. 100) His \$686 monthly car payment is current. He listed \$316 for alimony. (AE C)

Applicant submitted two letters of reference. (AE D) He is described as a veteran, ordained minister, and father. He is an honorable man who loves his family and country. He is recommended for a position of trust.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 many accounts and had garnishments for tax liens. His credit reports confirm the debts. The evidence is sufficient 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.<sup>o</sup> He acknowledged his delinquent debts are continuing. Applicant still has unresolved debts. 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.<sup>o</sup> Five years ago Applicant's financial difficulties began with his divorce. However, that same year or year after he purchased an expensive car, co-signed a car loan for his daughter, and remarried. He was steadily employed. He did not

act as responsibly as he should have given the circumstances. He acknowledged that he was dilatory with some of the debts. This mitigating condition applies in part.

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. Applicant has not received any financial counseling. He has sufficient income to pay his debts but he began repayment late in 2009 or 2010. He has not shown good-faith efforts to pay his delinquent debts. Even the \$10 parking ticket has yet to be paid. He had wage garnishments and judgments. His efforts are insufficient to carry his burden in this case. I conclude these mitigating conditions do not apply.

### **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 disqualifying and 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 served in the military for 20 years. He retired with an honorable discharge. He held a security clearance during his service without incident. He has worked for government contractors for the past 15 years. He is a loyal employee. He considers himself a patriot. He is a father and an ordained minister.

Applicant divorced in 2005. His divorce may have exacerbated conditions but he made some poor decisions when he was having financial difficulties. He co-signed a loan for his daughter. He did not file taxes until recently. He was not active in finding

solutions to repay his delinquent debts. He took on additional expenses that he needed have. There were also other debts that he has paid instead of his delinquent debts. He has a very high car payment and is paying his wife's student loans. He has other assets. The amount of his delinquent debt is sizeable.

He has failed to act with due diligence. He was questioned about his debts in June 2009. He still is unfamiliar with two debts listed in the SOR. It has been more than a year since he was questioned about his debts and the majority of his debts remains unpaid.

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.q:	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