



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



In the matter of: )  
 )  
 ) ISCR Case No. 09-08119  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: *Pro se*

June 16, 2011  
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**Decision**  
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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of Case**

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on May 7, 2009. On September 24, 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an answer to the SOR on November 20, 2010. He declined a hearing and requested that his case be adjudicated on the written record. The Government compiled its File of Relevant Material (FORM) on February 17, 2011. The FORM contained documents identified as Items 1 through 9. By letter dated February 23, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on March 8, 2011. His response was due on April 7, 2011. Applicant did not submit any information within the required time period. On April 27, 2011, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains 14 allegations raising security concerns under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.n.). The allegations recite financial delinquencies totalling approximately \$22,811. In his Answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.b., 1.c., 1.e., 1.g., 1.i., 1.j., 1.k., 1.l., and 1.m. He denied the allegations at SOR ¶¶ 1.a., 1.d., 1.f., 1.h., and 1.n. Applicant's admissions are entered as findings of fact. (Item 1; Item 2.)

Applicant is 50 years old and a high school graduate. As an independent contractor, he hauls freight for a government contractor. Applicant and his wife, also an independent contractor truck driver, work together as a team. Applicant was first awarded a security clearance in 1979, when he served in the U.S. military. (Item 2; Item 4.)

Applicant was married for the first time in 1980. He and his first wife divorced in 1991. Applicant married his second wife in 1992. Applicant is the father of five children from his first marriage, and he is the stepfather of four children from his second marriage. (Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's May 7, 2009 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories; and Applicant's credit reports of August 1, 2009, April 8, 2010, April 26, 2010, and January 27, 2011. (Items 4 through 9.)

On his e-QIP, Applicant reported that from November 1991 to January 2001, he worked as an electrician for a local government. Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on August 18, 2009.<sup>1</sup> He told the investigator that he had surgery in 1999, which resulted in medical costs to him of \$12,000. In the interview, he also stated he had several thousand dollars in medical expenses in 2007. Applicant stated that he paid some of his

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<sup>1</sup> In response to DOHA interrogatories, Applicant indicated that the investigator's report accurately reflected the information he provided during his personal subject interview. (Item 5 at 29.)

past medical bills, but acknowledged that delinquent medical bills alleged at SOR ¶¶ 1.g. and 1.k. remained unsatisfied.<sup>2</sup> In his Answer to the SOR, Applicant also admitted that medical debts alleged at SOR ¶¶ 1.b., 1.c., 1.e., 1.i., 1.j., 1.l., and 1.m. remained unsatisfied.<sup>3</sup> In response to DOHA interrogatories, Applicant stated that he would pay his delinquent medical bills when he was able to do so, but “right now keeping our home, utilities, and food are priority.” (Item 4 at 20-21; Item 5 at 61-62.)

Applicant told the investigator that from January 2001 until December 2007, he and his wife worked for a company that sold exotic birds. Applicant drove a truck for the company and delivered exotic birds to various locations around the United States. When the owner sold the company in 2007, Applicant and his wife learned that the new owner intended to cancel their health insurance. (Item 2; Item 5.)

Applicant and his wife left the exotic bird company in about May 2008. He enrolled in truck driving school, and he acquired a truck driving job with another company. However, he was terminated from the company in December 2008 for violating company policy. Applicant then found work with still another company, where he worked for approximately two months and was paid by the load. The owner of that company terminated Applicant over a disagreement over a repair to the vehicle that Applicant drove. Applicant then found work as a long-distance truck driver with his current employer. (Item 2; Item 5.)

Applicant’s employment problems made it difficult for him to pay his bills and meet his financial obligations. Applicant observed that he and his family have always lived paycheck to paycheck, “and probably always will.” In February 2009, his personal truck was repossessed. Applicant estimated that the balance owed on the vehicle at the time of repossession was approximately \$22,000. He also estimated that he was \$12,000 past due on the debt. The debt resulting from the vehicle repossession is alleged in SOR ¶ 1.f. Applicant denied the debt and asserted that he was paying \$100 a month to the creditor. He provided a copy of a stipulation for payment with final judgment upon default by which he agreed to remit \$100 a month to the creditor, beginning December 10, 2009, to satisfy the debt. He also provided documentation showing that he had made the required payments in January and February 2010. Applicant’s credit report of April 2010 shows the \$11,041 debt alleged at SOR ¶ 1.f. as a charged-off account. Applicant provided no other evidence of consistent payment after February 2010. (Item 2 at 6; Item 5; Item 8.)

Applicant told the authorized investigator that beginning in 1995, he took prescription medication to manage his depression and anger. Between 1995 and May 2009, he took the prescription drug Effexor XR. Since 2009, he takes the prescription

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<sup>2</sup> Applicant’s credit reports reveal that the debt alleged at SOR ¶ 1.l. is a duplicate of the debt alleged at ¶ 1.g. (Item 6; Item 8; Item 9.)

<sup>3</sup> Applicant’s credit reports established that the allegation at SOR ¶ 1.j was a duplication of the allegation at SOR ¶ 1.e. and the allegation at SOR ¶ 1.i. was a duplication of the allegation at SOR ¶ 1.c. (Item 6; Item 8; Item 9.)

drug Prozac. His wife, who works with him, also takes Prozac for depression. In response to DOHA interrogatories, Applicant confirmed his use of Prozac and denied any mental health counseling. (Item 5 at 2-6, 63-64.)

Applicant denied a \$2,137 debt alleged at SOR ¶ 1.a. The debt is listed as unpaid on his credit report of April 26, 2010. Applicant provided documentation confirming that he owed the debt and had made two \$100 payments to the creditor, one in January 2010 and one in February 2010. He also provided a hand-written note stating that he had authorized an automatic monthly deduction of \$100 to satisfy this debt, and the account was up-to-date. However, he failed to provide documentation corroborating the automatic monthly deductions or the current status of the account. (Item 2; Item 5 at 18-19, 23, 27.)

Applicant denied SOR ¶ 1.d., a \$394 delinquent debt to a communications company. He claimed the debt was not his but was his son's responsibility. He also claimed to have disputed the debt with credit reporting agencies. However, he failed to provide documentation to corroborate his statements that the debt was not his and that he had disputed the debt. Additionally, the debt appears as unpaid on Applicant's credit bureau reports of August 1, 2009, April 8, 2010, April 26, 2010, and January 27, 2011. (Item 2; Item 5 at 8; Item 6; Item 7; Item 8; Item 9.)

Applicant also denied SOR ¶ 1.h., which alleged that he was 120 days past due on a mortgage account of \$4,000, and the debt remained unpaid as of September 24, 2010. Applicant provided documentation showing that he had made two payments on the mortgage, one in February 2010 and one in March 2010. Additionally, Applicant's credit bureau report of April 8, 2010 reported that he was paying the mortgage under a partial or modified payment agreement. (Item 2; Item 5 at 9-10, 22, 25; Item 7.)

Applicant denied SOR ¶ 1.n., which alleged that he owed a creditor \$1,943 on a delinquent debt that remained unpaid as of September 24, 2010. Applicant provided documentation, dated November 27, 2009, showing a payment agreement with the creditor of \$50 a month until the debt was satisfied. The creditor further stated that as of November 27, 2009, the account was current. Applicant provided a copy of his bank statement showing payments to the creditor of \$50 in January 2010 and February 2010. He provided no other documentation showing the current status of the debt. (Item 2; Item 5 at 21, 23, 27.)

Applicant acknowledged that as an independent contractor, he was required to file federal income taxes on his income. His pay stubs confirmed that his employer did not deduct federal income taxes from his net pay. (Item 5 at 50-55.)

When he was interviewed by the OPM investigator in August 2009, Applicant reported that he and his wife had a monthly income of \$2,796. He reported monthly expenses of \$1,804. His monthly debt payments total \$1,231 and include a first mortgage payment of \$744 and a second mortgage payment of \$269. Additionally, Applicant paid \$159 each month on credit card debt and \$59 on a personal loan. At the

end of the month, after paying his fixed expenses, his two mortgages, and his credit card and personal loan debts, Applicant had a negative net remainder of \$239. (Item 5 at 62-63.)

In response to DOHA interrogatories, Applicant provided a personal financial statement. He reported that he and his wife had a net monthly income of \$4,238. He reported the following fixed monthly expenses: groceries, \$800; clothing, \$100; utilities, \$700; car expense, \$100; life and other insurance, \$488; medical expenses, \$200; and miscellaneous, \$300. Applicant's fixed monthly expenses total \$2,688. (Item 5 at 45.)

Applicant reported that each month he paid the following debts: first mortgage, \$700; second mortgage, \$499; credit card debt payment, \$100; personal loan debt payment, \$100; payment of debt identified at SOR ¶ 1.a., \$100; payment of debt identified at SOR ¶ 1.f.; payment of debt identified at SOR ¶ 1.n., \$100. Applicant's monthly debt payments total \$1,699. His personal financial statement shows a negative monthly remainder of \$149. (Item 5 at 45.)

Applicant's personal financial statement did not include payments on the medical debts alleged on the SOR. Additionally, his financial statement did not indicate how he planned to pay his federal and state income taxes. Applicant and his wife contacted an agency to seek credit counseling. (Item 5 at 45, 54.)

### **Burden of Proof**

The Government has the initial burden of proving controverted facts alleged in the SOR. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant carries the burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an 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, which are 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching 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 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 in seeking 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 protect 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 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* 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. For several years, Applicant has accumulated delinquent debt which has not been paid. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

The guideline also recites conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if "it 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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control," such as "loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence "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" (AG ¶ 20(c) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20 (e)).

The debts alleged at SOR ¶¶ 1.i., 1.j., and 1.l duplicate the debts alleged at SOR ¶¶ 1.c., 1.e., and 1.g. Accordingly, the duplicate allegations are concluded for Applicant. Additionally, there is sufficient record evidence to establish that Applicant has negotiated a payment plan with the creditor identified in SOR ¶¶ 1.h. and that he is making payments consistent with the payment plan. The allegation at SOR ¶ 1.h. is concluded for Applicant.

However, Applicant's overall financial situation raises security concerns. Applicant has failed to demonstrate that his financial problems are resolved or are under control. His personal financial statement indicates that he spends more than he earns each month. Moreover, he lacks a clear and timely strategy for resolving his delinquent

debts, paying his federal and state income taxes as an independent contractor, and avoiding financial delinquency in the future.

Applicant has been employed by his present employer since February 2009. While he provided some documentation to show he had made good-faith efforts to resolve the debts alleged at SOR ¶¶ 1.a. and 1.f. and 1.n., he failed to provide sufficient documentation to show a track record of consistent payment of those debts over time. While he asserted that the delinquent debt alleged at SOR ¶ 1.d. was not his, he failed to provide documentation to show that he had disputed the debt with the credit reporting agencies. By spending more than he earned each month, Applicant failed to establish that he acted reasonably when confronted with financial problems.

In response to DOHA interrogatories, Applicant stated that he intended to pay his delinquent medical debts in the future. However, his several delinquent medical debts remain unresolved. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). It is also well settled that failure to resolve debts over a period of time constitutes a continuing course of conduct that raises concerns about an applicant's reliability and trustworthiness. ISCR Case No 07-10575 at 4 (App. Bd. Jul 3, 2008). Accordingly, I conclude that none of the Guideline F mitigating conditions fully applies to the facts of Applicant's case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 the facts and circumstances surrounding this case. Applicant is a mature adult. While he has taken steps to address some of his delinquent debts, his financial situation is



unstable. With negative monthly remainders, it is not clear that he has sufficient resources to continue to pay his delinquent debts consistent with the payment plans he negotiated with the creditors identified at SOR ¶¶ 1.a., 1.f., and 1.n. Moreover, as an independent contractor, he must set aside a portion of his annual income to pay his federal and state income taxes, and the record does not establish that he has done so. Despite over two years of steady employment, Applicant has failed to satisfy his delinquent medical debts, several of which are for relatively small amounts of money. His failure to satisfy his creditors raises security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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.g.:	Against Applicant
Subparagraphs 1.h. – 1.j:	For Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	For Applicant
Subparagraphs 1.m. -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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Joan Caton Anthony  
Administrative Judge