



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 10-00611  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

September 14, 2010

**Decision**

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LYNCH, Noreen A., Administrative Judge:

On March 16, 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 March 23, 2010, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on May 20, 2010. DOHA issued a Notice of Hearing on July 12, 2010, and I convened the hearing as scheduled on July 22, 2010. Department Counsel offered four exhibits, which were admitted without objection as Government Exhibits (GE) 1-4. Applicant testified on his own behalf. He submitted three exhibits for the record, which were admitted as Applicant Exhibits (AE) A through C. DOHA received the transcript (Tr.) on July 30, 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 to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.f.

Applicant is a 33-year-old employee of a defense contractor. He graduated from high school and obtained an Associate's Degree (computer technology) in 1997. (Tr. 21) He has been with his current employer since August 2008. (Tr.24)

Applicant is single and has one daughter, aged 14, from a previous relationship. His daughter lives in another state with her mother. Applicant sends money to her but he is not under any child support order. He sends approximately \$500 a month to his daughter. (Tr. 22) Applicant worked for a large company from 1997 until September 2007. (Tr. 24) Applicant held various full time positions but was unemployed from May to August 2008.

Applicant started having financial difficulties in 1999 as a result of overspending and not saving. He acknowledged living beyond his means. When he relocated from one state to another, he spent the entire lump sum relocation pay (\$25,000) on "foolish things" and did not pay things such as his student loan. Applicant purchased a home in 2005. He made payments for approximately one year. In 2006, Applicant refinanced his primary mortgage. In 2007, Applicant obtained a second mortgage for \$12,000. He used the money to take a trip. (Tr. 29)

The SOR alleges six delinquent debts, including a \$32,000 judgment and delinquent credit card debt. The approximate total for Applicant's debts is \$47,000 (GE 4). The current status of Applicant's delinquent debts is described below.

When answering the DOHA interrogatories, Applicant explained that he leased a "dream car" for his girlfriend. His monthly payment was \$699. He acknowledges that he owes them \$3,300 and has not made any payments. (Tr. 38) He returned the car in 2008, and he has not made any payments on the account.

The debts alleged in SOR ¶ 1.a through ¶ 1.f have not been paid. Applicant stated at the hearing that he has not made any payments on the delinquent debts or the judgment in the SOR. However, he entered into a modification loan with his mortgage company in 2009. (AE A) He wants to avoid foreclosure of his house and he does not want to sell his house. (Tr. 16)

Applicant has paid other delinquent debts from 2007 until 2010 that are not listed on the SOR. He provided documentation (AE B). He would occasionally use his tax return to settle a debt.

Applicant's current monthly net income is approximately \$3,143. (GE 2) He is not current on his car payment. (Tr. 48) Applicant's net monthly remainder is approximately \$20. (Tr. 45) He has not had any financial counseling. (Tr. 47)

At the hearing, Applicant was forthright and candid about his financial difficulties. He claims he was very immature and spent money foolishly. He also spent money on expensive, unnecessary items for his daughter. He admitted that he bought extravagant gifts for his girlfriend that he could not afford. (Tr. 19) He traveled and bought his friend her "dream car." Applicant was sincere in his desire to become financially responsible. His priority is his home mortgage. He intends to address the other delinquent debts when he can. Applicant was credible in his remorse for his poor financial management.

Applicant's colleague describes him as extremely reliable, hard-working and dedicated to his position. He is a team player. Applicant is calm under pressure and is a man of personal integrity. (AE C)

Applicant's team lead describes him as a knowledgeable and hard worker. He shows dedication to his work and performs within guidelines. Applicant conducts himself as a professional. (AE C)

Applicant's employer describes Applicant as a good, honest, and hard-working employee and friend. He has known Applicant for approximately eight years.

### **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 *a/so* 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>@</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>@</sup> may raise security concerns. Applicant accumulated delinquent debts on various accounts totaling approximately \$47,000. He has an unpaid judgment in the amount of \$32,000. His admissions and 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>@</sup> Applicant still has

unresolved delinquent debts. He has not paid on the delinquent debts listed in the SOR. He intends to pay them when his primary mortgage is current. 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 due to living beyond his means. Although he had a month of unemployment in 2008, it did not result in his financial problems. 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 judgment and delinquent debts listed in the SOR. He admits that he does not have sufficient income to pay his debts. He is making arrangements for a loan modification plan for his primary home mortgage. 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 has been employed as a contractor for many years. He had a short period of unemployment but he has been steadily employed since 2008. He has a 14-year-old daughter from a previous relationship. He provides a monthly support payment for her. He purchased a home in 2005 and desires to keep his home. He has not had sufficient funds to pay his delinquent debts. He is credible in his remorse for past financial irresponsibility. He intends to pay his delinquent debt when he is current on his primary mortgage. He is starting a repayment plan for his home mortgage.

Applicant was candid and forthright at the hearing. He admits that he lived beyond his means when he was younger. He lived lavishly and purchased expensive gifts for his girlfriend and daughter. He has not had any financial counseling. His colleagues describe him as hard-working and professional. However, 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.f:	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