



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00663
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: William T. O'Neil, Esquire, Department Counsel  
For Applicant: *Pro se*

June 7, 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.

On October 21, 2009, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On November 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 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 provided a notarized answer to the SOR, dated January 13, 2011, and requested a hearing. On March 8, 2011, Applicant withdrew his request for a hearing and requested that his case be determined on the written record. The Government

compiled its File of Relevant Material (FORM) on March 16, 2011. The FORM contained documents identified as Items 1 through 11. By letter dated March 18, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the FORM on March 29, 2011. His response was due on April 28, 2011. Applicant filed additional information within the required time period. On April 27, 2011, the case was assigned to me for a decision. Without objection, I marked Applicant's submitted information as Ex. A and admitted it to the record.

### **Findings of Fact**

The SOR contains nine allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In his Answer to the SOR, Applicant admitted all allegations. Applicant's admissions are admitted as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in response to the FORM. The record evidence includes Applicant's October 21, 2009 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;<sup>1</sup> Applicant's credit reports of July 21, 2010 and February 26, 2010, and records of the Internal Revenue Service (IRS) dated April 30, 2010. (See Items 6 through 11; Response to FORM.)

Applicant is 49 years old, married, and has two stepchildren. He is employed by a federal contractor as a telecommunications technician. He has worked for his present employer since August 2009. He seeks a security clearance for the first time. (Item 6.)

Applicant's e-QIP reveals that from March 1988 to February 2003, he worked for a private telecommunications company. In February 2003, Applicant founded his own telecommunications firm, which he operated until February 2009, when the economic downturn negatively impacted his business. On his e-QIP, Applicant reported that he worked as a full-time installer for a private company from February 2009 to June 2009, and he was unemployed from June until August 2009.<sup>2</sup> (Item 6; Response to FORM at 1-2.)

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<sup>1</sup> Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on November 6, 2009. The investigator reported that Applicant owed \$120,996 to the creditor later identified at SOR ¶ 1.d. On September 28, 2010, in response to DOHA interrogatories, Applicant asserted that the amount he owed the creditor was "approximately \$12,000, not \$120,000." Applicant's two credit reports indicated that he owed the creditor \$10,417, which was the amount of the debt alleged at SOR ¶ 1.d. Also, after reviewing the investigator's report that he had a 2007 federal tax delinquency, Applicant stated that he had paid his 2007 Federal taxes in full. After making these two corrections to the investigator's report, Applicant signed a statement that the corrected investigator's report accurately reflected his November 6, 2009 interview. (Item 1; Item 8; Item 9; Item 10; Item 11.)

<sup>2</sup> In his response to the FORM, Applicant stated that he was unemployed from February 2009 to August 2009, a period of approximately eight months. In part, Applicant attributed his financial difficulties to this

The SOR alleges that Applicant owes eight delinquent debts totaling approximately \$99,507. The debts include two medical debts, one for \$130 and the other for \$438 (SOR ¶¶ 1.a. and 1.b.) Additionally, the SOR alleges that Applicant is responsible for five delinquent accounts in charged-off status. The delinquent accounts are for \$5,736, \$10,417, \$8,436, \$30,630, and \$33,720 (SOR ¶¶ 1.c. through 1.g.)<sup>3</sup> In his November 2009 OPM interview, he identified the delinquent debts alleged at SOR ¶¶ 1.c., 1.d., and 1.f as credit card accounts he used in his business. He told the investigator that he had acquired employment in August 2009, and he intended to pay the debts at a future time. (Item 8 at 3-4.)

The SOR also alleged that Applicant owed the IRS \$10,000 in federal income taxes for tax year 2008, and, as of September 2010, he had not filed his 2009 federal income tax return (SOR ¶¶ 1.h. and 1.i.). In his answer to the SOR, Applicant admitted both allegations. He stated he had paid his 2007 federal income taxes, owed a balance of approximately \$8,000 on his 2008 federal income taxes, and had filed his 2009 federal income tax return in October 2010. In his response to the FORM, Applicant reported that, as the result of an IRS audit, he owed an additional \$4,400 in federal income taxes for tax years 2007 and 2008. He stated that he was attempting to sell a 45-acre parcel of land he owned to pay his federal tax debt. (Item 1; Item 4; Response to FORM.)

Applicant stated that his financial delinquencies arose when he closed his business in early 2009 in response to the economic downturn. He asserted that he had made payments on his 2008 federal tax debt, but he did not provide documentation to corroborate his assertion. He provided no documentation to corroborate that he had filed his 2009 federal tax return. He has made no payments on any other debts alleged in the SOR. (Response to FORM.)

Applicant did not provide a personal financial statement. Other than Applicant's mention of selling land he owns to pay his tax debt, the record is silent regarding his income, his wife's income, their monthly expenses, their savings, and other resources he has available for satisfying his delinquent debt. Applicant has not had financial credit counseling. He stated that he had no money available to pay his debts. (Response to FORM.)

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period of unemployment. He did not explain the discrepancy between the periods of unemployment reported on his e-QIP and in his response to the FORM. (Item 6; Response to FORM at 1-2.)

<sup>3</sup> In his interview with the OPM investigator, Applicant identified the debt alleged at SOR ¶ 1.g as a delinquent loan he took out in about 2001 to purchase a recreational vehicle. The initial amount of the loan was \$61,000, and Applicant's monthly payments on the loan were \$680. In January 2009, the account became past due, and the creditor repossessed the recreational vehicle. Applicant owes a balance of \$33,000 on the delinquent debt. He told the investigator he used the vehicle for business travel. (Item 8 at 3.)

## 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 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 revised adjudicative guidelines (AG). 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 overarching 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 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline 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 in this case. 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.

Applicant owes approximately \$99,507 in delinquent debts. He has been steadily employed since August 2009, but he has failed to demonstrate that he has paid his debts, made payments on his debts, or negotiated payment plans with his creditors. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of 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, (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.” (AG ¶ 20(b)). Still other mitigating circumstances that might

be applicable include 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” (AG ¶ 20(c)) or “the individual 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)).

Applicant has a history of financial delinquencies. The debts alleged in the SOR remain unresolved. He has made no arrangements to pay or otherwise satisfy his financial delinquencies. His financial delinquencies are ongoing and are likely to recur. Applicant intends to resolve his debts at some unspecified future time. 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).

Applicant claimed that his delinquent debt arose when he closed his business in response to an economic downturn and was unemployed for eight months in 2009; however, he failed to provide documentation to corroborate his claims. Moreover, he provided no documentation that he informed his creditors of his financial hardship and requested forbearance or reduced payment arrangements. While Applicant may have been unable to control the economic downturn or his unemployment, he failed to show that he acted reasonably under the circumstances.

Applicant has been steadily employed since August 2009. He provided no information on his family income, regular expenses, and resources available to satisfy debts. His debts, even two relatively small debts of \$130 and \$438, remain unresolved. Applicant failed to demonstrate that he made good faith efforts to satisfy his delinquent debts. He has not had financial counseling, and there is no evidence that his financial situation is under control. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply in mitigation in Applicant's case.<sup>4</sup>

### **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

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<sup>4</sup> AG ¶ 20(e) does not apply to the facts of Applicant's case.

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. He established a business, the business was affected by an economic downturn, and Applicant was unemployed for a period of time. He was unable to pay his debts. However, he has had a steady job since August 2009, and yet he has taken no action to satisfy even the smallest debt alleged on the SOR. He took no action to contact his creditors to inform them of his financial problems and to arrange payment plans. He says he will pay his debts in the future, but he provides no specific plan for doing so.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that 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
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Subparagraphs 1.a.- 1.i.:	Against Applicant
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### **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