



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-00811  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

February 28, 2011

**Decision**

WHITE, David M., Administrative Judge:

Applicant accumulated more than \$23,000 in delinquent debt over the past four years. He offered no evidence of unusual circumstances or conditions beyond his control that caused this debt. Nor did he demonstrate arrangements to repay the debt, or the willingness or ability to avoid future financial irresponsibility. Resulting security concerns were not mitigated. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on October 1, 2009.<sup>1</sup> On June 5, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> 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*

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<sup>1</sup>Item 1.

<sup>2</sup>Item 2.

*Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in an undated letter that was received by DOHA on July 12, 2010, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on August 11, 2010. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on August 27, 2010, and returned it to DOHA. He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on October 26, 2010.

### **Findings of Fact**

Applicant is a 25-year-old employee of a defense contractor, where he was hired in September 2009. During the preceding three years, he was continuously employed in a number of different positions, primarily as a restaurant cook. He has never held a security clearance or served in the military. He is married, with a four-year-old son.<sup>5</sup> In his response to the SOR, he admitted all but two allegations. He denied SOR ¶ 1.e, stating that he did not know about that medical bill, and SOR ¶ 1.i because it is a duplicate listing of the judgment debt alleged in SOR ¶ 1.b.<sup>6</sup> Applicant's admissions, including his responses to DOHA interrogatories,<sup>7</sup> are incorporated in the following findings.

Applicant's May 2010 credit report shows an unpaid \$50 medical bill in collection, as alleged in SOR ¶ 1.e.<sup>8</sup> Applicant offered no evidence that this was not his debt, or that he had taken any steps to dispute it with the credit bureau. His mere declaration that he does not know about the debt is insufficient to meet his burden to rebut, explain, extenuate, or mitigate the allegation and the resulting security concerns.

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<sup>3</sup>Item 4.

<sup>4</sup>The Government submitted eight Items in support of the SOR allegations.

<sup>5</sup>Item 5.

<sup>6</sup>Item 4.

<sup>7</sup>Item 5.

<sup>8</sup>Item 6.

Department Counsel offered no evidence concerning the debts alleged in SOR ¶¶ 1.b and 1.i, except the two credit reports. Both debts are owed to the same creditor, with the former being a judgment for a slightly larger amount than the latter, which was listed as a collection account on both reports. Applicant's claim that the two represent the same debt, the larger of which he admitted that he owes, is credible and consistent with the evidence.

In his SOR response, Applicant claimed that he had made some payments to reduce the \$164 debt, alleged in SOR ¶ 1.c, to \$100. He failed to provide any documentation to substantiate these payments. In any case, the debt remains unresolved and no evidence was offered of any arrangements to resolve it.

Applicant admitted owing the remaining delinquent debts as alleged in the SOR. These debts became delinquent during 2007, 2008, and 2009.<sup>9</sup> Eliminating the duplicate listing discussed above, his total delinquent debt to nine creditors is over \$23,000. He offered no evidence of unusual circumstances or conditions beyond his control that gave rise to these debts. He offered no evidence of counseling or budget planning from which to conclude that he has either the willingness or the means to resolve them, or to avoid incurring additional delinquencies going forward. The personal financial statement he submitted in response to DOHA interrogatories is incomplete, uncorroborated, and highly improbable.<sup>10</sup>

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 (DCs) and mitigating conditions (MCs), which are to be 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

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<sup>9</sup>Item 6; Item 7.

<sup>10</sup>Item 5.

guidelines in the context 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 the 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, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under four Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.<sup>11</sup>

Applicant has been unable or unwilling to satisfy numerous debts over the past four years, totaling over \$23,000. Whether this was through unwillingness or inability, or some combination of both, is not clear from the record evidence, but no other explanation was offered. DCs 19(a) and (c) were accordingly established. There is no substantial extrinsic evidence of frivolous or irresponsible spending. However, the rapid accumulation of this much delinquent debt with no apparent means to repay it, together with the absence of any evidence of Applicant's willingness or intent to repay those creditors, supports some concerns under DC 19(b). The level of indebtedness involved in this case does not, per se, support application of DC 19(e), nor did Department Counsel provide evidence or financial analysis of either negative cash flow or a high debt-to-income ratio. The evidence raises security concerns under DCs 19(a), (b), and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (a) 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;
- (b) 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;
- (c) 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;

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<sup>11</sup>FORM at 6, 8.

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant's delinquent debts, in excess of \$23,000, arose over the past four years and continue to date. Applicant failed to demonstrate that such problems are unlikely to continue or recur, or that his reliability and trustworthiness have improved. The evidence does not support the application of MC 20(a).

Applicant was continuously employed throughout the period in question, according to his security clearance application, and offered no evidence that would support mitigation under MC 20(b). He and his wife simply spent more than they earned on a regular basis. Applicant did not undergo financial counseling, and he offered no evidence to establish clear indications that the problem is being resolved or is under control. MC 20(c) is therefore inapplicable.

Applicant claimed that he paid \$64 toward more than \$23,000 in delinquent debt, but offered no evidence to corroborate any payment to any of the SOR-listed creditors. Nor did he submit evidence of any arrangements to repay or otherwise resolve any of those debts. No mitigation under MC 20(d) was proven. Finally, Applicant disputed the debt in SOR ¶ 1.e, because he did not know what it was. However, he provided no proof that it was not his debt, or that he took any action to resolve the issue. He therefore failed to meet his burden of proof under MC 20(e).

### **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 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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans the past four years, and continues at present. It involves substantial debts to nine different creditors totaling more than \$23,000, with no indication that such conduct has ended. He demonstrated neither the means nor the willingness to fulfill his legal obligations to these creditors. He offered no evidence of rehabilitation or of responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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.

DAVID M. WHITE  
Administrative Judge