



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



In the matter of: )  
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 ) ISCR Case: 10-01228  
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 Applicant for Security Clearance )

For Government: Paul DeLaney, Esquire, Department Counsel  
For Applicant: *Pro se*

January 31, 2011  
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Decision  
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DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On September 28, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing, National Security Positions (SF 86). On July 21, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 7, 2010, and requested a hearing before an administrative judge. On October 12, 2010, DOHA assigned the case to me. On November 10, 2010, DOHA issued a Notice of Hearing, setting the case for

December 2, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified. He did not submit any exhibits. DOHA received the hearing transcript (Tr.) on December 10, 2010.

### **Findings of Fact**

In his Answer, Applicant admitted all allegations contained in ¶¶ 1.a. through 1.k of the SOR. Those admissions are incorporated herein.

Applicant is 23 years old and unmarried. He graduated from high school in 2005 and then attended college for one semester. He subsequently worked at various low paying jobs until August 2007, when he obtained a truck driving position in another state that paid him approximately \$1,500 per week. (Tr. 17.) He worked there three months and then returned home where he resides with his mother. In August 2009, he obtained a paid internship with a software developing company. He will complete his associate's degree in 2011, after which he intends to work for his employer at a higher salary. He has been receiving good grades while in college. (Tr. 18.)

Applicant started accumulating delinquent debts in 2006 when he began spending more money than he earned. Based on a credit bureau reports (CBR) dated October 2009 and February 2010, the SOR alleged that Applicant accumulated 11 delinquent debts (SOR ¶¶ 1.a through 1.k) between 2006 and 2009 that total \$21,500. They include credit cards, a cell phone account, medical co-pays, and a \$10,125 balance on an automobile repossession of a car he purchased in early 2007. Applicant admitted that he has not taken any actions to resolve or pay the debts and that all of them remain unpaid. (Answer.)

In November 2009, a government investigator interviewed Applicant. He did not take any steps to address his debts after that interview because he planned to begin paying his debts after he started a higher paying position with his company. (Tr. 47-48.)

Applicant earns about \$400 net per month as a part time intern. His mother provides some financial support, in addition to housing. (Tr. 52.) He spends \$80 a month on gasoline, \$100 on his cell phone, and about \$100 on other automobile expenses. (Tr. 41-42.) He no longer uses credit cards. (Tr. 48.) He reiterated his intention to pay his debts, once he completes his associate's degree and becomes a full-time employee with his current employer. (Tr. 48.) About two months ago, he contacted a credit counseling service by telephone and discussed his debts. (Tr. 45.) He subsequently eliminated some unnecessary expenses such as a gym membership and organic food. (Tr. 45.)

Applicant was candid about his financial situation. He acknowledged that he has not properly handled his finances and that he is responsible for paying the delinquent debts. He has learned the importance of saving money before making purchases. (Tr. 51-52.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying and mitigating conditions, which are useful 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(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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 to obtaining a favorable clearance 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 an 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."

## **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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated approximately \$21,500 of delinquent debt that began accruing in 2006, which he has been unable or unwilling to satisfy to-date. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those potential disqualifying conditions, the burden shifted to Applicant to produce evidence to rebut and prove mitigation. AG ¶ 20 provides conditions that could potentially mitigate the above security concerns:

- (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;

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

(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; and

(f) the affluence resulted from a legal source of income.

None of the mitigating conditions apply. AG ¶ 20(a) does not mitigate the security concerns because Applicant's financial delinquencies are recent, involve numerous creditors, and continue to date. AG ¶ 20(b) cannot apply as Applicant did not provide evidence to indicate that his delinquent debts arose from circumstances outside of his control. In fact, the evidence is to the contrary, the situation was within his control. Although he spoke with a credit counselor by telephone one time, two months before the hearing, there is no evidence that his financial problems are under control. None of the debts are paid, resolved, or being resolved. Hence, AG ¶ 20(c) does not apply. Similarly, the evidence does not support the application of AG ¶ 20(d) because he has not made a good-faith effort to pay or resolve any of the 11 delinquent debts. There is no evidence to support the application of AG ¶ 20(e) and AG ¶ 20(f).

### **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). They include the following:

(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 include 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 facts and circumstances surrounding this case. Applicant is a young man, who made poor financial decisions beginning in 2006. He acknowledged his responsibility to pay his delinquent debts, but has not taken any steps to manage them. Despite being made

aware of the Government's security concerns in November 2009, he failed to take steps to resolve any of the 11 debts, including the smaller ones. Instead, he candidly stated that he intends to address them once he obtains full-time employment with his current employer later this summer. At this time, he has not demonstrated financial rehabilitation or evidence of an implemented plan to resolve his obligations. Overall, the record evidence creates substantial doubt as to Applicant's judgment and reliability, and thus his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate 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
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Subparagraphs 1.a through 1.k:	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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SHARI DAM  
Administrative Judge