



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



In the matter of: )  
)  
) ISCR Case No. 10-01729  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

12/30/2011

**Decision**

MASON, Paul J., Administrative Judge:

Since 2003, Applicant has incurred delinquent debt that he has not addressed. By 2009, the number and amount of debt had increased exponentially. Applicant claimed that his divorce in 2002 and his wife’s bankruptcy in 2003 created his financial problems. The lack of record evidence does not support Applicant’s claim. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP, Item 4) on September 30, 2009. He provided interrogatory responses (Item 5) to adjudicators from DOHA on October 29, 2010. In addition to the responses, Item 5 also contains Appellant’s interview with an investigator from the Office of Personnel Management (OPM). Appellant agreed with the investigator’s report of interview (December 8, 2009) and acknowledged that the report of interview could be admitted in evidence at a hearing to determine Applicant’s suitability to hold a security clearance. On July 20, 2011, DOHA issued a Statement of Reasons (SOR, Item 1)

detailing security concerns under financial considerations (Guideline F). 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).

Applicant's undated answer to the SOR was received by DOHA on October 29, 2011. (Item 3) A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on October 12, 2011. He received the FORM on October 24, 2011. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. His response was due by November 23, 2011. No response was received by DOHA. The case was assigned to me on December 22, 2011.

### **Findings of Fact**

Applicant is 43 years old. He was married to his former wife from September 1993 to October 2002. He has a 13-year-old son and a 12-year-old daughter from this marriage. He has been employed by a defense contractor since September 2009. He is also a professional musician and has been employed by several ocean cruise line travel companies since 1986. He seeks a secret security clearance.

The SOR contains 42 delinquent debt allegations under the financial considerations guideline. The debts represent credit cards, 33 medical bills, auto installment loans, an equity line of credit, and utility bills. The total amount of delinquent debt is approximately \$95,246. The accounts became delinquent between 2003 and 2009. Applicant admitted all allegations except for SOR ¶¶ 1.u, 1.w, 1.z, 1.aa, 1.bb, 1.cc, 1.gg, 1.oo, and 1.pp. The only explanation he provided for disputing the above allegations was that his former wife divorced him in 2002. The divorce decree required that she pay certain debts. Then, she filed a Chapter 7 petition in 2003. When she was discharged from her debts in bankruptcy, the creditors pursued him for payment. Regarding most of the medical bills, Applicant tried to work out payment plans with the local hospitals, but could not maintain the payment terms. No additional documents were presented to shore up Applicant's claims.

On June 1, 2010, Applicant provided a personal financial statement (PFS). He listed his monthly income (monthly income section) as \$2,010, with expenses of \$660 (expenses section), including \$400 a month in child support. In the debt section, he cited \$860 in total payments, but listed payments to a musical instrument company of \$200 a month on a bill of \$1,000. Applicant quoted his remainder (income after all other debts and expenses) as \$1,150 a month. I am uncertain how he arrived at the foregoing figure based on the other figures in the far right column where the total amount is to be entered.

Applicant intends to enroll in credit counseling and eliminate his delinquent debt. Since he started his contractor job in September 2009, he has lowered his debt, eliminated his credit cards, and paid off his vehicle. He is current or paying past-due debt and has contested some of the listed debts. Applicant does not believe he could be pressured or exploited because of his financial problems.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

There are two disqualifying conditions under AG ¶ 19 that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). The applicability of AG ¶ 19(a) is based on Applicant's inability to pay the listed debts. The length of time some of the debts have been delinquent suggests that he is unwilling to satisfy his delinquent debts. The credit reports that show when the listed debts became delinquent, confirm that Applicant has a history of not meeting his financial obligations within the scope of AG ¶ 19(c).

Five mitigating conditions are potentially applicable. No mitigation is available under AG ¶ 20(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 reliability, trustworthiness, and good judgment*). Applicant began incurring delinquent debt in 2003, and by 2009, owed approximately \$95,246. The fact that he owes that debt today and for the foreseeable future continues to cast doubt on his reliability, trustworthiness and good judgment.

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*) does not apply. The record does not provide or suggest a condition that resulted in Applicant's uncontrollable financial problems. He has not provided a documented reason why his divorce in 2002 should be considered the cause of his financial problems. Further, he has provided insufficient evidence to establish that his wife's bankruptcy was the cause of his financial problems.

AG ¶ 20(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*) does not apply. Applicant has not had financial counseling and his debts are not being resolved or under control. One way to resolve debts is to pay them, and Appellant has provided no evidence he has paid any of the debts or resolved them by other means. AG ¶ 20(d) (*the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolved debts*) does not apply.

AG ¶ 20(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*) refers to bona fide disputes with creditors and documented action to remedy the disputes. As the condition indicates, an applicant must establish by more than a claim that he has a dispute. He must document the basis for the dispute. Applicant's claim does not satisfy the elements of AG ¶ 20(e). Having weighed the disqualifying evidence with Applicant's undocumented dispute claims with nine listed creditors, the financial considerations guideline is resolved against Applicant.

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have

also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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.

Applicant is 43 years old and divorced. He has two children. He has been employed by a defense contractor since September 2009.

Applicant indicated that since he was hired with his current employer, he has lowered his debt. The claim is confusing when viewed against the SOR debt he still owes. Applicant stated he eliminated his credit card use and paid off his vehicle. Both changes in financial habits demonstrate maturity in managing finances, but both changes in habits provide no probative insight into his plans for the listed debt. His claim that he is current or paying on any past-due debt is simply not correct, in light of the 42 delinquent bills that appear in the SOR. Applicant has not overcome the disqualifying evidence under the financial considerations guideline.

### **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**

Subparagraph 1.a through 1.pp: **Against Applicant**

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge