



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 10-01979  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

October 29, 2010

**Decision**

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HOWE, Philip S., Administrative Judge:

On December 2, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On May 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an undated answer. Applicant requested that his case be decided on the written record in lieu of a hearing.

On July 20, 2010, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM) was provided to the Applicant

on that date. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 16, 2010. Applicant filed a Response to the FORM on August 25, 2010, within the 30 day time allowed that would have expired on September 15, 2010. Department Counsel did not object to the additional information that Applicant submitted. I received the case assignment on August 31, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant admitted all the allegations contained in the SOR. He submitted additional information in support of his request for a security clearance.

Applicant is 32 years old and married to his third wife. He has a child from each of his first two marriages. He works for a defense contractor on an air base as a truck driver. (Item 5, FORM Response)

Applicant filed Chapter 7 bankruptcy in December 2000. The Bankruptcy Court granted him a discharge in May 2001. Applicant stated he intends to file bankruptcy again when he has saved enough money to pay his attorney. His attorney told him "not to pay any of the debt that will be discharged." Applicant did not submit a copy of any current bankruptcy petition with proof of filing. (Answer; Items 5 to 10)

Applicant has 17 delinquent debts as listed in the SOR. The amount owed is \$16,878. Eight of these debts are \$100 or less each. Another six debts are less than \$1,000 each. He has a utility bill (Paragraph 1.c) in the amount of \$2,767. His delinquent mortgage account is past due \$11,727 on a balance of \$130,000. He surrendered the house to the lending bank. The earliest of these debts is dated 2002. Applicant did not submit any documentation specifically showing that he was paying any of these 17 debts. He did submit in his Response documents from his online checking account showing that he paid other debts: including one owed to a city, a financial company, a utility company (at least \$123 monthly since September 2009 with varying payment amounts and dates until July 2010), and a wireless telephone company. An examination of the debts listed in the SOR and Applicant's payment documents revealed no readily evident correlation between them. This information, coupled with his statement that his bankruptcy attorney told him not to pay any debts, shows Applicant ceased all payments to the four creditors in his Response documents in July 2010 pursuant to that instruction. No debts have been paid since then, including payments on the SOR-listed debts. (Items 4-9, Answer, FORM Response)

Applicant submitted two character statements. Both writers state Applicant is honest and has a "sound character." (FORM Response)

## 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 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, the administrative judge applies the 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.

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 as to obtaining 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2002 to the present, Applicant accumulated 17 delinquent debts totaling \$16,878 that remain unpaid or unresolved. Applicant filed Chapter 7 bankruptcy in 2000 and was discharged in May 2001. Since then he purchased a house that he surrendered to the lending bank. He has a pattern of incurring debt and not being able to repay the money. This history of not meeting his financial obligations spans back to 2000 when he filed bankruptcy.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. I considered all of them. None of them apply.

- (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.

Applicant's financial behavior is current and continuous from 2000 to the present time. He has had financial problems for a decade because he cannot manage his money. He clearly lacks good financial judgment. AG ¶ 20 (a) does not apply.

The financial problems that surround Applicant were not due to conditions beyond his control. He presented no persuasive evidence his two divorces caused his problems. All his financial delinquencies were within his control. He should have been more careful about his spending habits after his 2000 Chapter 7 bankruptcy. AG ¶ 20 (b) does not apply.

Applicant did not submit any evidence of seeking or receiving financial counseling. AG ¶ 20 (c) does not apply.

Applicant tried to pay four debts not listed in the SOR. He did not submit any evidence that the SOR-listed debts were paid or that he made any good-faith efforts to pay them. AG ¶ 20 (d) does not apply.

Applicant did not dispute any the delinquent debts listed in the SOR. He admitted he owed all of them. There is no evidence of any affluence in Applicant's life. Therefore, neither AG ¶ 20 (e) nor (f) applies.

### **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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. He exhibited a continued lack of appropriate judgment by failing to make payments on any of his SOR-listed delinquent debts during the past decade.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

### **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 to 1.q:	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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PHILIP S. HOWE  
Administrative Judge