



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-04731  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

June 29, 2011

**Decision**

WHITE, David M., Administrative Judge:

Applicant accrued almost \$18,000 in delinquent debt over the past decade, with no progress toward resolution during the two years he has been employed in his current job. He made no showing of unusual circumstances giving rise to these debts, or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on May 13, 2009.<sup>1</sup> On November 11, 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*

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<sup>1</sup>Item 4.

<sup>2</sup>Item 1.

*Clearance Review 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 after September 1, 2006.

Applicant answered the SOR in writing on December 8, 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 January 18, 2011. 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 February 4, 2011, 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 February 23, 2011.<sup>5</sup>

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor, where he started work as a computer support technician in May 2009. Since mid-1999, he was laid off from five previous jobs resulting in short periods of unemployment that totaled about 15 months, according to his response to the SOR. His SF 86 contains different information, including the fact that he was either directly employed by or working full time under a consulting contract for the company where he worked from January 2000 to August 2004. The SF 86 shows only five months of unemployment over that 11-year period. He collected state unemployment compensation during each month he was unemployed between jobs.<sup>6</sup>

Applicant is married, for the second time, with two children ages 20 and 7. He served a three-year active duty enlistment in the Army, followed by three more years in the Inactive Reserve and National Guard, and held a Secret security clearance during his service.<sup>7</sup> In his response to the SOR, Applicant did not formally admit or deny the allegations as he was requested to do. Instead, he provided explanations concerning each alleged delinquent debt. His explanations are incorporated into the findings below.

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<sup>3</sup>Item 3.

<sup>4</sup>The Government submitted 11 Items in support of the SOR allegations.

<sup>5</sup>Although the case was assigned to me before the expiration of the 30-day period afforded to Applicant for response to the FORM, I confirmed with Department Counsel that no response or request for more time to respond was received from Applicant after the case assignment date.

<sup>6</sup>Item 3; Item 4.

<sup>7</sup>Item 4.

He tacitly admitted the truth of the allegations in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, 1.g, and 1.h, including the fact that he had not paid or otherwise resolved those debts. The total due on these six delinquent debts is \$10,571.<sup>8</sup>

Applicant claimed that the two debts alleged in SOR ¶¶ 1.a and 1.b are based on the same debt, reflecting the original 2007 judgment in the former paragraph, and the current balance due to the agency seeking to collect the debt in the latter paragraph. Comparison of the identical account numbers on the credit reports listing the SOR ¶ 1.b debt with the court papers and correspondence from the law firm concerning the judgment listed in SOR ¶ 1.a confirms this claim.<sup>9</sup>

Applicant claimed to have paid the \$472 collection account alleged in SOR ¶ 1.d, and that it had been removed from his credit report. However, the documents he submitted to substantiate these claims fail to do so. This debt was placed for collection by the county court on May 8, 2009. Applicant documented a \$436 payment to the state Department of Motor Vehicles (DMV) on February 25, 2009. There is no evidence in the record to suggest that the county court debt and the DMV fine related to the same obligation, and the placement of the court debt for collection several months after the payment to the DMV suggests otherwise. In addition, the July 16, 2010, credit report Applicant submitted with his response to the SOR shows that this collection account remains unpaid.<sup>10</sup>

Applicant said that he did not know what the tax liens alleged in SOR ¶¶ 1.i and 1.j were for, and that they were removed from his credit report after he disputed them. However, the July 16, 2010, credit reports he submitted with his interrogatory response and his response to the SOR reflect both of the tax liens remain in effect. These liens, in the amounts of \$696 and \$316, were filed in September 2003. A subsequent tax lien for \$5,755 that was filed in October 2005 was reported to have been released in December 2007 on the same credit reports.<sup>11</sup>

Applicant claims that he does not owe the \$50 medical debt alleged in SOR ¶ 1.k, because it arose from a dental bill for his daughter that his ex-wife charged to his dental insurance without his knowledge. His May 28, 2009 credit report shows this account in collection, and indicates the account was opened in August 2003. Applicant's daughter was 12 years old at that time, and his divorce from his first wife was not final until November 2003. He provided no explanation or evidence to suggest that he was not responsible for his daughter's dental care when this debt arose.<sup>12</sup>

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<sup>8</sup>Item 3.

<sup>9</sup>Item 3d; Item 5; Item 6; Item 7; Item 11.

<sup>10</sup>Item 3; Item 3b; Item 3g; Item 10.

<sup>11</sup>Item 3; Item 3b; Item 5; Item 10.

<sup>12</sup>Item 3; Item 4 at 31-32; Item 5 at 8.

Applicant claimed that the amount listed for the \$5,673 credit card debt alleged in SOR ¶ 1.I is erroneous and had been disputed with the creditor. He further said the creditor had gone out of business and he had not been able to contact them. He did not elaborate on these contradictory statements, or provide evidence of either a dispute or the basis therefore. The debt appears on many of his credit reports, and became delinquent in September 2003. Applicant stated in his July 19, 2010, response to DOHA interrogatories, "Further review of my credit reports clarified that the [SOR ¶ 1.I] ACCOUNT is a valid debt I am responsible for."<sup>13</sup>

Applicant also claims to have disputed the \$86 collection account alleged in SOR ¶ 1.m, but provided no explanation or evidence to substantiate this claim. The debt was reported by the Experian bureau, and its absence from the TransUnion credit report Applicant submitted with his response to the SOR does not establish that it has been satisfactorily resolved.<sup>14</sup>

This analysis brings Applicant's total admitted and proven delinquent debt to \$17,864. He did not provide proof of payment or other resolution of any of these debts. In addition to his relatively brief periods of drawing unemployment compensation, he attributes his unpaid debt to "errors in his federal and state tax returns" for the years 1999 to 2004 that resulted in more than \$14,000 in unpaid taxes he had to repay, and to the involuntary garnishment of his pay to complete his child support obligations for his daughter. He said that he intended to get a better picture of his debt situation, then hire a debt management service to help him resolve his outstanding debts. No evidence concerning implementation of these stated intentions was provided.<sup>15</sup>

Applicant's personal financial statement, dated July 17, 2010, reflected \$2,890 in net monthly income, \$2,751 in monthly living expenses and a \$100 monthly debt payment toward a \$1,200 personal loan from a friend. This left a monthly remainder of \$39, with no allowance for repaying any delinquent debt. He listed \$7.00 in bank savings, and no other assets except a 2002 automobile he valued at \$2,500. Applicant submitted no evidence of financial counseling.<sup>16</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.

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<sup>13</sup>Item 3; Item 5; Item 10 at 10.

<sup>14</sup>Item 3; Item 5.

<sup>15</sup>Item 3.

<sup>16</sup>Item 3; Item 10.

## 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 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 under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's financial problems began more than a decade ago, and have not improved in the two years during which he has been employed in his current position. He has almost \$18,000 in SOR-listed delinquent debt, which is more than half of his net income for an entire year. His personal financial statement reflects no available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) 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;

(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 multiple delinquent debts arose over the past decade, and continue to date. They are both frequent and recent, and arose under circumstances that have not materially changed. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved, and failed to resolve any of these debts even after their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). None of the debts were shown to have arisen from conditions beyond his control. He offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. His stated intention to hire a debt management company in the future is insufficient to establish a good-faith effort to repay his many overdue creditors or otherwise resolve his debts, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore inapplicable.

The record evidence supports Applicant's contention that the debt alleged in SOR ¶ 1.a is a duplicate listing of the debt alleged in SOR ¶ 1.b. This mitigates security concerns with respect to the former debt under MC 20(e). He failed to provide any proof to substantiate a basis to dispute the legitimacy of the remaining debts alleged in SOR, for which the record credit reports provide substantial evidence. Accordingly, he failed to mitigate those allegations 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 decade, and continues at present. It involves substantial delinquent debts totaling almost \$18,000, toward which he had made no payments at the close of the record. He has yet to sufficiently demonstrate a willingness to fulfill his legal obligations to his creditors. He did not demonstrate that these debts arose under unusual circumstances, or that he initiated any changes to prevent additional financial difficulties. He offered no evidence of financial counseling, rehabilitation, or 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.m:	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