



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-04974  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

December 30, 2011

**Decision**

WHITE, David M., Administrative Judge:

Applicant accrued more than \$115,300 in delinquent credit card debt over the past decade, with no progress toward resolution during the two years he has been employed in his current job. He knowingly and voluntarily incurred these debts, and admittedly cannot afford to repay them. He offered no evidence of an effective plan to resolve 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 March 14, 2010.<sup>1</sup> On November 30, 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;

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

Department of Defense Directive 5220.6, *Defense Industrial Personnel Security 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 15, 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 March 1, 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 March 12, 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 October 25, 2011.

### **Findings of Fact**

Applicant is a 57-year-old employee of a defense contractor, where he started work as a senior software engineer in December 2009. Since September 2000 he has been regularly employed as a test or software engineer for seven different companies, except during three periods of unemployment, totaling eight months, in 2003, 2004, and 2009. The most recent such period was for one month. He graduated from high school in 1972. He has been divorced since 1989, with two children ages 32 and 29. He has no military service. He reported undergoing a Single Scope Background Investigation in 2004, but did not indicate that he received a security clearance. He said he had never had clearance denied or revoked, however, so the outcome of that investigation is unclear.<sup>5</sup>

In his response to the SOR, Applicant admitted the truth of the allegations in SOR ¶¶ 1.a, 1.b, and 1.c. The total due on these three delinquent credit card debts is \$115,304.<sup>6</sup> Applicant's admissions, including those made in response to DOHA interrogatories,<sup>7</sup> are incorporated into the following findings of fact.

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<sup>3</sup>Item 4.

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

<sup>5</sup>Item 5.

<sup>6</sup>Item 4. The delinquent amounts are confirmed in Items 8 and 9.

<sup>7</sup>Items 6 and 7.

Applicant has been an owner and worked part-time in a wine importing business for about ten years. He opened the three SOR-listed credit card accounts in 1995, 1993, and 1988. Until his son's troubles, described below, he used the cards primarily for expenses of this business, and usually kept the total balance due for all three cards around \$10,000.<sup>8</sup>

Applicant's son married and went to work as a long-haul truck driver after his discharge from service in the Navy. While in a distant state, the son had sexual relations with two women he met at a truck stop. One of the women subsequently complained that he had raped her. During June 2007 the son was arrested in another state and held for extradition to the state where the complaint was filed. He claimed that the relations had been consensual, and that the woman was trying to extort money from him with a false complaint. Applicant undertook to fund his son's legal representation and a private investigator in connection with his defense. He said that he paid \$70,000 in legal fees, \$5,000 for the investigator, and \$10,000 for bail. During January 2009, to avoid further litigation costs, Applicant's son pled guilty to simple battery and the more serious sexual assault charge was dismissed. After payment of court-ordered fines, fees, and restitution to the victim, only \$2,366 of the bail money paid by Applicant was returned to him. Applicant said that these expenses caused his credit card debt to rise by about \$70,000, and that he tried to pay \$2,000 to \$3,000 per month toward that debt. He found that he could not afford to make the necessary debt payments after paying his rent and other living expenses, and began falling behind on the debts.<sup>9</sup>

During April 2009, Applicant concluded that he could not afford to repay his credit card debts and began researching other solutions, including bankruptcy. However, he found that most solution options also cost more than he could afford. In May 2009, he contracted with a company that offered to contest his debts and seek resolution for far less than he actually owed. On advice of this company, he stopped making any payments toward the three credit card accounts. He paid this company an initial payment of \$2,000, and possibly up to an additional \$4,000. In return, the company sent a series of letters to Applicant's creditors contesting the collectibility of the debts and asserting various legal theories that are, at best, questionable. There is no evidence that either Applicant or the company he hired made any payments toward the debts. The company was shut down by regulators in one state, and has reorganized as several new companies and relocated to a different state.<sup>10</sup>

Applicant has also been helping his daughter pay her living expenses every month. His son lost his employment during his 18-month criminal proceeding, and separated from his wife during early 2008. They are now divorced. Applicant also helped support his son's family during this time, and his son now lives with Applicant and attends school. This support for his adult children provides Applicant's only

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<sup>8</sup>Item 6.

<sup>9</sup>Item 6.

<sup>10</sup>Item 7.

explanation for the additional \$35,000 of delinquent credit card debt not put toward his wine-import business or his son's criminal defense.<sup>11</sup>

Applicant told the investigator from the Office of Personnel Management that he is, "making a significant income," but provided no evidence concerning the details of his earnings and living expenses from which to analyze his present or future solvency. He also submitted no evidence of financial counseling.<sup>12</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 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

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<sup>11</sup>Items 5 and 6.

<sup>12</sup>Items 4, 5, 6, and 7.

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 were exacerbated in 2007 when he chose to fund substantial legal expenses resulting from his adult son’s arrest on sexual assault and battery charges. Prior to that time, he was able to make payments toward about \$10,000 in debt on three credit cards that he used for his wine-importing business. He incurred \$20,000 to \$35,000 in additional delinquent debt by May 2009 to fund his living expenses while also supporting his two adult children. When he decided not to repay these debts, he hired a company to delay and frustrate collection efforts against him. He provided no evidence of 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 three large delinquent credit card debts arose over the past four years, and continue to date. They are both frequent and recent, and arose under circumstances that involved Applicant's entirely voluntary choices to run a wine-importing business and help his adult children. 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 was under no obligation to undertake legal and living expenses arising from his adult son's criminal conduct, nor to support his adult daughter. His choice to do so reflects that he is a caring and devoted father, but incurring credit card debt that he had no ability to repay in order to fund these actions is not responsible action under the circumstances.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. His engagement of a

debt dispute and resolution company to delay and frustrate collection efforts of accounts that he acknowledges that he incurred 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.

Applicant failed to provide any proof to substantiate a basis to dispute the legitimacy of the debts alleged in SOR, to which he admitted and 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 two years, and continues at present. It involves substantial delinquent debts totaling more than \$115,300, toward which he had made no payments at the close of the record. He has not shown a willingness to fulfill his legal obligations to his creditors. He did not demonstrate that these debts arose under circumstances that were beyond his control, 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

Subparagraphs 1.a through 1.c:           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