



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-05457
	)	
Applicant for Security Clearance	)	

**Appearances**

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

April 28, 2011

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed a Questionnaire for National Security Positions (SF 86) on March 3, 2010. Also on March 3, 2010, he completed a Counterintelligence Screening Questionnaire (CI). On October 5, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 for SORs issued after September 1, 2006.

Applicant submitted an answer to the SOR on October 31, 2010. He requested that his case be adjudicated on the written record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on January 3, 2011. The FORM

contained documents identified as Items 1 through 11. By letter dated January 5, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on January 14, 2011. His response was due on February 13, 2011. Applicant did not submit any information within the 30-day time period. On March 17, 2011, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains six allegations raising security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.f.). Three allegations recite delinquent accounts in collection status. The amounts of alleged delinquent debt in collection status are: \$84 (SOR ¶ 1.a.); \$11,588 (SOR ¶ 1.e.); and \$4,621 (SOR ¶ 1.f.). Three additional allegations recite delinquent credit card debt in charged-off status. The amounts of alleged delinquent debt in charged-off status are: \$4,130 (SOR ¶ 1.b.); \$5,808 (SOR ¶ 1.c.); and \$8,717 (SOR ¶ 1.d.). In his Answer to the SOR, Applicant admitted five of the six allegations. He denied the allegation at SOR ¶ 1.a. and stated that the debt had been paid. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

Additional facts in this case are established by the record provided by the Government. The record evidence includes Applicant's SF 86 and CI, his personal financial statement, his personal subject interview and responses to DOHA interrogatories;<sup>1</sup> and his credit reports of February 17, 2010, February 23, 2010, March 16, 2010, and August 27, 2010. (See Items 4 through 11.)

Applicant, who is 54 years old, immigrated to the United States as a refugee in 1982 and became a naturalized U.S. citizen in June 2004. In February 2010, he was hired as a linguist by his current employer, a government contractor. Before working as a linguist, Applicant was employed as a taxi driver, convenience store manager and clerk, cook, and pizza delivery person. (Item 4 at 5; Item 5 at 1-2; Item 10 at 4.)

Applicant has never married. He is the father of a daughter born in 1990. In about 2004, Applicant, who was employed as the manager of a convenience store, purchased a condominium secured by a mortgage of \$270,500. When he purchased the property, Applicant did not realize that he was responsible for homeowners' fees and property taxes in addition to the monthly mortgage payment. He used credit cards to make his monthly mortgage payments and to pay other expenses associated with condominium ownership. He tried, unsuccessfully, to sell the property in 2005. Applicant defaulted on the mortgage, and the property went into foreclosure in about

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<sup>1</sup> Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management on March 23, 2010. On August 20, 2010, in response to DOHA interrogatories, Applicant reported that he had moved, and he provided his new address. He then signed a notarized statement affirming that he had read the summary of the interview and found it to be true and correct. Other than providing his current address and correcting the spelling of his daughter's and his sister's first names, he made no changes, corrections, or revisions to the investigator's summary of the interview. (Item 10.)

2008. The condominium foreclosure was not alleged on the SOR.<sup>2</sup> (Item 1; Item 4 at 29, 46; Item 5 at 11; Item 10 at 4.)

In his interview with the OPM investigator, Applicant stated that he had paid the \$84 debt alleged at SOR ¶ 1.a. He denied the debt in his Answer to the SOR and asserted that it had been paid. His credit report of August 27, 2010 shows the debt as unsatisfied. Applicant failed to provide documentation establishing that the debt had been paid or otherwise satisfied. (Item 10 at 4; Item 3 at 1; Item 11 at 1.)

In his interview, Applicant admitted the debts alleged at SOR ¶¶ 1.b. through 1.f. He told the investigator that he would satisfy the debts with money he would earn as a linguist. In response to financial inquiries on his CI, Applicant asserted that he would satisfy the five delinquent debts at a later date when he had sufficient money to do so. Applicant failed to provide evidence that any of the five delinquent debts alleged at SOR ¶¶ 1.b. through 1.f. had been satisfied. (Item 5 at 11; Item 10 at 4-5.)

On March 3, 2010, Applicant provided a personal financial statement. He identified his occupation as “self-employed taxi driver.” His net monthly income was \$4,300. His monthly expenses were \$4,615. Included in Applicant’s monthly expenses was a \$1,720 taxi lease. His personal financial statement showed that he made no monthly payments on his delinquent debts. Applicant’s March 2010 personal financial statement showed that each month he spent \$315 more than he earned in monthly income. The record does not reflect that Applicant has had financial credit counseling. Applicant failed to provide information showing his current income as a linguist and any agreements he may have entered to satisfy his delinquent debts. (Item 8.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

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<sup>2</sup> I did not consider this information in my analysis of Applicant’s financial situation under Guideline F. However, I did consider it in my assessment of his judgment under the whole-person analysis.

disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 has the ultimate burden of persuasion in seeking to obtain 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 that the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. For several years, Applicant has accumulated delinquent debt which has not been paid. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

The guideline also recites conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if "it 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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control," such as "loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence "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" (AG ¶ 20(c) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20 (e)).

Applicant's six unresolved delinquent debts total approximately \$35,000. He failed to provide documentation showing that the debts had been resolved or otherwise satisfied. The record reflects that the delinquencies alleged on the SOR remain unpaid and have occurred under circumstances that are likely to recur. Applicant has not had financial counseling, and he lacks a clear and timely strategy for resolving his delinquent debts.

In March 2010, Applicant told an OPM investigator that he intended to pay his delinquent debts in the future with his earnings as a linguist. More than a year later, however, all of his financial delinquencies remain unresolved. In determining an individual's security worthiness, the Government cannot rely on the possibility that an

applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). Accordingly, I conclude that none of the Guideline F mitigating conditions fully applies to the facts of Applicant's case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 the facts and circumstances surrounding this case. Applicant is a mature adult of 54 years. He purchased a condominium and used credit cards to make his monthly mortgage payments and to pay other fees associated with condominium ownership. He lost the condominium to foreclosure. His personal financial statement reflects that each month he spends \$315 more than he earns, and he lacks sufficient income to pay his monthly living expenses. He has no money available to pay the six delinquent debts alleged on the SOR, and they remain unaddressed. Applicant's failure to satisfy his creditors raises security concerns about his judgment, trustworthiness, and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

## **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

Subparagraphs 1.a. - 1.f.:               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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Joan Caton Anthony  
Administrative Judge