



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



In the matter of: )  
)  
) ISCR Case No. 10-05580  
)  
Applicant for Security Clearance )

**Appearances**

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

December 29, 2011

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the 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.

**Statement of the Case**

On February 22, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On May 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on June 10, 2001. He requested that his case be determined on the written record. The Government compiled its File of Relevant

Material (FORM) on June 20, 2011. The FORM contained documents identified as Items 1 through 9. By letter dated July 29, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on August 10, 2011. His response was due on September 9, 2011. Applicant did not submit additional information or file objections to the FORM within the required time period. On October 7, 2011, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains 12 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.l.). In his Answer to the SOR, Applicant admitted all allegations. Applicant's admissions are admitted as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government. The record evidence includes Applicant's February 22, 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;<sup>1</sup> and Applicant's credit reports of March 9, 2011 and March 4, 2010. (See Items 5 through 9.)

Applicant is 36 years old, married, and the father of three children. He is employed by a federal contractor as an aircraft mechanic-electrician. He has worked for his present employer since August 2009. He seeks a security clearance for the first time. (Item 5.)

On his e-QIP, Applicant reported a record of steady employment from 2001 to the present. His e-QIP indicates that from March 2001 until May 2003, he worked full-time as an order picker. From May 2003 until January 2004, he was employed part-time in sales. From January 2004 until July 2009, he worked full-time as a service technician. He began his present full-time employment in August 2009. (Item 5.)

However, in his March 29, 2010, interview with an OPM investigator, Applicant reported that he was unemployed for all of 2004 while attending a technical college. He told the investigator that he fell behind in paying his debts during this time, and he acknowledged that some of the debts he incurred in 2004 remained unsatisfied. He also asserted that he was currently living within his means and had sufficient financial resources to timely satisfy his rent, utilities, and car payments. (Item 7.)

The SOR alleges that Applicant owes 12 delinquent debts totaling approximately \$30,279. The debts include three medical debts in collection status, one for \$96, one for \$431, and one for \$182 (SOR ¶¶ 1.h., 1.k., and 1.l.). The SOR also alleges that Applicant is responsible for four additional debts in collection status: SOR ¶¶ 1.d.

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<sup>1</sup>Applicant was interviewed about his financial issues by an authorized investigator from the U.S. Office of Personnel Management (OPM) on March 29, 2010. On April 11, 2011, after reviewing the investigator's report of the interview, Applicant signed a statement affirming that the investigator's report accurately reflected his March 29, 2010 interview. (Item 7.)

(\$581), 1.f. (\$711), 1.i. (\$381), and 1.j. (\$3,795). Additionally, Applicant owes four debts in charged-off status: SOR ¶¶ 1.a. (\$8,672), 1.b. (\$8,120), 1.c. (\$3,401), and 1.g. (\$909). The SOR also alleged Applicant also was 180 days or more past due on a \$3,000 student loan account (SOR ¶ 1.e. (Item 1.)

In response to DOHA interrogatories, Applicant asserted that he had disputed the debts alleged at SOR ¶¶ 1.b., 1.e., 1.f., and 1.g. However, he provided no documentation to corroborate that he had disputed those debts. (Item 6.)

In his response, Applicant also provided a credit report dated March 16, 2011, and he reported that the debts alleged at SOR ¶¶ 1.h., 1.i., 1.k., and 1.l. were no longer listed on the credit report. He stated that he need more time to address the delinquent accounts identified at SOR ¶¶ 1.a. and 1.j. He asserted that he had made payments on his student loan account (SOR ¶ 1.e.), and it was no longer in default. He provided documentation to corroborate that he did not owe past due amounts on his student loan account and the loan was in repayment status. (Item 6.) He failed to provide documentation establishing that he had made payments on any other debts alleged in the SOR. He stated that he needed more time and more income to satisfy his debts, but he intended, at some unspecified time in the future, to satisfy his delinquent debts (Item 6.)

Applicant provided a personal financial statement in response to DOHA interrogatories. The statement showed that Applicant had a negative monthly net remainder of \$35, and he had no scheduled payments on the delinquent debts alleged on the SOR. (Item 6.)

In response to DOHA interrogatories, Applicant asserted that he and his wife had “been working with a credit advocate for about a year now to get our credit issues resolved.” However, he did not provide documentation to corroborate that he had received consumer credit counseling. (Item 6.)

## **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 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 revised adjudicative guidelines (AG). In addition

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially 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 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 notes several conditions that could raise security concerns in this case. 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.

Applicant owes approximately \$30,279 in delinquent debts. While he asserts that he was unemployed seven years ago, in 2004, he appears to have had steady employment since 2005, and he has worked for his present employer since August 2009. However, with the exception of providing information on the repayment status of his student loan debt, he has failed to demonstrate that he has paid his 11 other delinquent debts or has negotiated payment plans with his creditors. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of 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, (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." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that "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 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 has a history of financial delinquencies. Eleven of the 12 debts alleged in the SOR remain unresolved. He has provided no documentation to establish that he has made arrangements to pay or otherwise satisfy those 11 financial delinquencies. His financial delinquencies are ongoing and are likely to recur. Applicant intends to resolve his debts at some unspecified future time. 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).

Applicant claimed that his delinquent debt arose when he was unemployed in 2004. However, he failed to provide documentation to corroborate his claim. Moreover, he provided no documentation that he informed his creditors of his financial hardship and requested forbearance or reduced payment arrangements. While Applicant may have been unable to control the circumstances that led to his unemployment, he failed to show that he acted reasonably under the circumstances.

Applicant has been employed at his current position since August 2009. His personal financial statement shows that he lacks sufficient funds to meet his monthly living expenses and has no money available to pay his delinquent debts. His debts, even relatively small debts of \$96 and \$182, remain unresolved. While he claimed that he had disputed some of his delinquent debts, he failed to provide documentation to corroborate his claim. Additionally, Applicant failed to demonstrate that he made good-faith efforts to satisfy his delinquent debts. He has not demonstrated that he has had financial counseling, and there is no evidence that his financial situation is under control. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply in mitigation in 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. He has had difficulties in managing his finances and paying his delinquent debts. However, he took no action to inform his creditors his financial problems and to arrange payment plans. In 2004, he was unemployed and unable to pay his debts. He merits credit for establishing a plan to bring his delinquent student loan out of default and into repayment status. However, he has not demonstrated that he has taken action to pay the 11 other delinquent debts alleged on the SOR. He has had a steady job since August 2009, and yet he has taken no action to satisfy even the smallest debt alleged on the SOR. He says he will pay his debts in the future, but he provides no specific plan for doing so.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that 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.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraphs 1.f. – 1.l.:	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