



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-06063
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

September 27, 2011

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concerns. He has accumulated over \$48,000 in delinquent debts and failed to provide proof that he either satisfied his debts or otherwise resolved them. Clearance is denied.

**Procedural History**

On February 16, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.<sup>1</sup> The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges the security concern under Guideline F (Financial Considerations). Applicant responded to the SOR in an undated letter, which was received by DOHA on March 21, 2011 (Answer). He admitted all the allegations in the SOR and requested a decision on the administrative record.

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<sup>1</sup> This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

On May 18, 2011, Department Counsel filed its File of Relevant Material (FORM). The FORM contains Government Exhibits (GE) 1 through 8, which are hereby admitted. Applicant acknowledged receipt of the FORM on June 15, 2011. He had 30 days within which to file a response to the FORM. He did not submit a response. I was assigned the case on August 16, 2011.

### Findings of Fact

Applicant is 73 years old. He has been married to his wife since 1977, and they have one adult child. He served in the Army from 1960 to 1966 and was honorably discharged. He has lived at the same address since 1980. He is a retired police officer, who is currently working as a security guard.<sup>2</sup> Applicant did not provide any information regarding his military service or work as a police officer.

Applicant's financial troubles began in approximately December 2007 when, due to state budgetary cuts, he was laid off from his job working for the department of corrections. He was unable to secure a new job for a year. He went through his savings and was forced to use one of his credit cards to pay for his wife's medical bills. He eventually became delinquent on his financial obligations. He finally secured his current job, as a security guard, in December 2008. This new job pays him less than half of what he earned at his previous job and less than he was receiving in unemployment benefits. Applicant, however, would rather work than just collect unemployment.<sup>3</sup>

The SOR alleges 10 delinquent debts totaling \$68,888. The debts alleged in ¶¶ 1.a and 1.j are for the same debt.<sup>4</sup> It is the debt Applicant incurred paying for his wife's medical bills.<sup>5</sup> The debt alleged in ¶ 1.e is for a cell phone bill that Applicant disputes.<sup>6</sup> Applicant's remaining 7 delinquent debts total \$48,891. He has not satisfied these debts and, except for the debt in ¶ 1.g, he does not have a payment arrangement with his creditors to resolve his debts. He failed to submit documentary proof that he has been paying the debt in ¶ 1.g per the terms of the agreement he purportedly established with the creditor back in November 2010.<sup>7</sup>

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<sup>2</sup> Answer; GE 4; GE 6, *Personal Financial Statement*.

<sup>3</sup> Answer; GE 4; GE 5.

<sup>4</sup> These two debts are for the same amount and list the same original creditor. The debt alleged in ¶ 1.j is not on Applicant's current credit report (GE 8), and his previous credit report notes that the debt was sold or transferred to a collection agency (GE 7 at 11). This debt is listed in the new credit report under a collection agency (GE 8 at 1). Accordingly, I find that the debts alleged in ¶¶ 1.a and 1.j are for the same medical debt.

<sup>5</sup> GE 5, *Personal Subject Interview*.

<sup>6</sup> *Id.*

<sup>7</sup> GE 6.

Applicant will not consider bankruptcy, because he wants to pay his just debts. He plans to satisfy his smaller debts first and then negotiate with the creditors holding his larger debts to resolve his financial delinquencies. He claims to have satisfied some delinquent debts that are not listed in the SOR, but did not submit any documentary proof to substantiate his claim. In his Answer, Applicant states that “[t]here is not a thing in Force Protection worth stealing and this 73 year old man giving up his manhood for.”<sup>8</sup>

## **Policies**

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

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion 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 safeguard

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<sup>8</sup> I have no reason to doubt this statement. However, Applicant elected to have his case decided on the written record. ISCR Case No. 04-12680 at 3 (App. Bd. May 21, 2007) (“When an applicant waives a hearing and chooses to have his or her case decided by a Judge based on a written record, the Judge has no ability to make a credibility determination based on observation of the applicant’s demeanor.”).

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 financial problems is articulated at AG ¶ 18, as follows:

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 disqualifying conditions under AG ¶ 19. Applicant owes over \$48,000 in delinquent debt, which he has accumulated since 2007. This evidence establishes the following disqualifying conditions under AG ¶ 19:

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

An applicant may mitigate the concern raised by his or her accumulation of delinquent debt by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions, and find that the following warrant discussion in this case:

- (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 and provides documented proof to substantiate the basis of the dispute.

Applicant currently has a significant amount of delinquent debt, which he has not satisfied or established a payment plan to resolve. As Applicant's financial problems are current and ongoing, AG ¶ 20(a) does not apply.<sup>9</sup>

Applicant's financial problems were due to matters beyond his control, principally unemployment and underemployment.<sup>10</sup> However, Applicant has been employed since 2008 and failed to submit any documentation to show that he was paying or trying to resolve his delinquent debts.<sup>11</sup> There was also no evidence presented that he has taken a financial counseling course. Due to the lack evidence that Applicant has resolved or attempted to resolve his delinquent debts, AG ¶¶ 20(b) through 20(d) do not apply.

Applicant disputes the relatively minor debt alleged in SOR, ¶ 1.e. AG ¶ 20(e) applies to this debt. However, Applicant failed to mitigate the financial considerations concern. The vast majority of his delinquent debts remain outstanding and his financial problems are far from resolved.

### **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 the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>12</sup> I have considered all the favorable and extenuating

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<sup>9</sup> ISCR Case 09-07792 at 2 (App. Bd. May 10, 2011) (" . . . evidence that Applicant's debts remained delinquent at the close of the record supports . . . conclusion that these debts were ongoing.")

<sup>10</sup> The debts alleged in SOR, ¶¶ 1.a and 1.j, are for the same debt. Applicant incurred this debt when he used his credit card to pay for his wife's uninsured medical bills. Unlike the other debts in the SOR, this debt was for a clear necessity. Applicant is legally obligated to pay this medical debt and, if he was unwilling to pay it, such would raise a security concern. Under the circumstances, this debt does not raise a security concern. I find in Applicant's favor as to these two allegations.

<sup>11</sup> ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue).

<sup>12</sup> (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

factors in this case. Applicant served this country in the military during the Cold War and the Vietnam War. He is a retired police officer. However, as with his claim that he has started to resolve some of his delinquent debts, Applicant did not provide any documentary evidence as to his prior military or law enforcement service. Due to the lack of documentation, Applicant failed to mitigate the security concern at issue. His financial problems continue to raise a security concern.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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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.