



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-07405
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

August 5, 2011

**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, 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 Case**

On March 20, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On March 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 provided a notarized answer to the SOR, dated March 29, 2011, and requested that his case be determined on the written record. The Government compiled

its File of Relevant Material (FORM) on April 29, 2011. The FORM contained documents identified as Items 1 through 8. By letter dated May 6, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on May 16, 2011. His response was due on June 15, 2011. Applicant did not submit any information within the required time period. On July 27, 2011, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains five allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.e.). In his Answer to the SOR, Applicant admitted all allegations and provided additional information. Applicant's admissions are entered as findings of fact. (Item 1; Item 2.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's March 20, 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;<sup>1</sup> and Applicant's credit reports of April 29, 2010, and February 8, 2011. (See Items 4 through 8.)

Applicant is 49 years old and a high school graduate. He and his wife married in 1990. They have no children. He is employed by a federal contractor as a project engineer. He has worked for his present employer since February 2010. He seeks a security clearance for the first time. (Item 4.)

Applicant's e-QIP reveals that from February 1989 to November 2003, he worked for a private company as a designer. From November 2003 until February 2004, he was self-employed as a draftsman. From February 2004 until March 2009, he was employed by a private business as a project engineer. After one month of unemployment in April 2009, Applicant worked again as a project engineer for a private company until he accepted a position with his current employer. (Item 4.)

The SOR alleges that Applicant owes five delinquent debts totaling approximately \$13,106. The debts appear to be for household living expenses which benefitted both Applicant and his wife. They include a medical debt for \$126 (SOR ¶ 1.e.) and an electric bill for \$397 (SOR ¶ 1.a.). Additionally, the SOR alleges that Applicant is responsible for three delinquent consumer accounts in collection status. The delinquent accounts are for \$6,479, \$1,575, and \$4,529 (SOR ¶¶ 1.c. through

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<sup>1</sup>Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on May 13, 2010. In response to DOHA interrogatories, Applicant reviewed the investigator's report and made no additions or deletions. On December 30, 2010, Applicant signed a statement that the investigator's report accurately reflected his May 13, 2010 interview. (Item 6.)

1.e.).<sup>2</sup> The five delinquent accounts are listed on Applicant's credit reports of April 29, 2010, and February 8, 2011. (Item 1; Item 5; Item 8.)

Applicant acknowledged the five delinquent debts in his May 13, 2010, interview with an OPM investigator. Applicant told the OPM investigator that his wife was in charge of all family finances from the time of their marriage in 1990 until 2007, when he assumed responsibility for paying their joint debts. On December 30, 2010, in response to DOHA interrogatories, Applicant stated that he had "not paid anything" to resolve the five debts. (Item 6 at 7; Item 7 at 2-3.)

In his answer to the SOR, Applicant admitted the debts and provided the following additional information:

As I have said and written, the [debts alleged on the SOR] were due to my wife having a gambling problem and not paying bills. I took over the finances in 2007[,] paying all the bills. . . . I should not be held accountable for someone else's problems. She is going to (at some point) pay these accounts off.

She will handle paying these off. I understand they're in my name and that in itself has ruined my name. I have made and paid every bill since 2007. You have to understand, I knew absolutely nothing that was happening until it was too late. At that point, everything was removed from her, my check and all things concerning me were put in my name. She has nothing to do with finances in my home. . . .

(Item 2 at 2-3.)

Applicant did not specify the onset, duration, or nature of his wife's gambling problem. He did not indicate whether his wife had received treatment for her gambling problem or if the treatment had resulted in rehabilitation.

In December 2010, in response to DOHA interrogatories, Applicant provided a personal financial statement. He reported that his net monthly salary was \$2,714 and his wife's net monthly salary was \$1,040, for a total net family monthly income of \$3,754. (Item 7 at 4.)

Applicant reported \$2,650 in the following fixed monthly expenses: rent, \$1,199; groceries, \$450; clothing, \$150; utilities, \$351; car expenses, \$320; life and other insurance, \$25; medical expenses, \$100; and miscellaneous, \$55. Applicant also reported that he paid \$524 each month on three consumer debts. His net monthly

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<sup>2</sup> While the record is sparse, it appears that two of the debts arose from unpaid charges on gasoline credit cards and one debt arose from purchases Applicant made from a jewelry store. (Item 4; Item 6.)

remainder is \$580.<sup>3</sup> The record does not reflect that Applicant has received financial credit counseling. (Item 7 at 4.)

Applicant's facility security officer (FSO) provided a letter of character reference. He stated that Applicant was a valued employee, "known for his meticulous work and attention to detail." The FSO stated that he was aware of Applicant's past financial difficulties. He recommended that Applicant be granted access to classified information. (Item 2 at 4.)

## **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.

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<sup>3</sup> In response to a request for information about his assets, Applicant wrote "N/A." (Item 7 at 4.)

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 \$13,106 in delinquent debts that he and his wife acquired during their marriage. He has been aware of the debts alleged on the SOR since at least 2007, but he has failed to demonstrate that he has paid the 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. In 2007, he learned that his wife had used their joint income for gambling instead of using it to pay their debts. Applicant then took over responsibility for paying the family debts. However, since 2007, he has not paid debts that became delinquent when his wife gambled with money he thought was being used to pay their debts.

Applicant admits the debts alleged on the SOR, and he acknowledges that they remain unresolved. He has made no arrangements to pay or otherwise satisfy these financial delinquencies because he does not believe he should be responsible for paying another person's debts. Instead, he attributes the debts to his wife's gambling problem and her failure to pay joint debts on behalf of the family. Applicant has stated that his wife will pay the debts alleged on the SOR at some unspecified time in the future.

In ISCR 00-0248 (Mar. 21, 2001), DOHA's Appeal Board addressed an applicant's responsibility to pay debts resulting from a spouse's actions:

In general, an applicant should not be held accountable for the actions and inactions of other people. However, when an applicant is legally responsible for financial obligations and debts incurred by a spouse or dependents, then those obligations and debts can be taken into account when assessing an applicant's security eligibility under Guideline F (Financial Considerations).

Applicant claimed that his delinquent debt arose from his wife's failure to pay their joint debts and using their money instead for gambling. Applicant claimed ignorance of his wife's gambling activities and suggested that the subsequent delinquent accounts resulted from a situation beyond his control. However, in 2007, after learning his wife's gambling activities and the creation of their delinquent accounts, Applicant refused to pay the debts. He has continued to refuse to pay the delinquent debts for four years. I conclude that even if his wife's gambling was beyond Applicant's knowledge and control, he has not acted responsibly under the circumstances.

Applicant has been steadily employed for most of his working life. His personal financial statement revealed a net monthly remainder of \$580. His debts, even two relatively small debts of \$126 and \$397, remain unresolved. Applicant failed to demonstrate that he made good-faith efforts to satisfy his delinquent debts. He has not 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), and 20(d) do not apply in mitigation in Applicant's case.<sup>4</sup>

### **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 trusted his wife to pay their joint financial obligations. She failed to do so, and she used their money to support a gambling habit. When Applicant learned of this in 2007, he assumed responsibility for paying the couple's debts.

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<sup>4</sup> AG ¶ 20(e) does not apply to the facts of Applicant's case.

Applicant has not, however, paid the debts that became delinquent when his wife was responsible for managing their finances, even though he has the resources to do so. He says his wife will pay the debts in the future, but he provides no specific plan for doing so. Applicant continues to blame his wife for their financial delinquencies. He has refused since 2007 to satisfy debts that are legitimately and legally his. This raises concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

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
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Subparagraphs 1.a.- 1.e.:	Against Applicant
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### **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