



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



In the matter of: )  
)  
) ISCR Case No. 10-10935  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Paul. M. Delaney, Esq., Department Counsel  
For Applicant: *Pro se*

12/30/2011

**Decision**

MASON, Paul J., Administrative Judge:

Applicant has been unemployed or underemployed for approximately two and one-half years in the last five years. However, his part-time employer, who hired him in June 2010, hired him full-time in April 2011. While he has known about the delinquent debts since at least July 2010, and promised to repay them in April and June 2011, he has not even contacted the creditors to negotiate settlements or resolve the debts by alternative means. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant signed and certified his Electronic Questionnaire for Investigations Processing (e-QIP, Item 5) on July 12, 2010. He provided interrogatory responses (Item 6) to adjudicators from DOHA on April 1, 2011. On May 25, 2011, DOHA issued a Statement of Reasons (SOR, Item 1) detailing security concerns under financial considerations (Guideline F). 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).

Applicant furnished his answer to the SOR on June 14, 2011. (Item 4) A copy of the Government's File of Relevant Material (FORM, the Government's evidence in support of the allegations of the SOR) was sent to Applicant on September 23, 2011. He received the FORM on October 7, 2007. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. His response was due by November 6, 2011. No response was received by DOHA. The case was assigned to me on December 21, 2011.

### **Findings of Fact**

The SOR contains two allegations (two delinquent credit card accounts) under the financial considerations guideline. Applicant admitted both allegations.

Applicant is 60 years old and has been married since 1971. He has a 38-year-old son. He has been employed full-time by a defense contractor since April 11, 2011. He was working for this employer as a consultant on a part-time basis since June 2010. He seeks a secret security clearance.

In October 1970, Applicant joined the United States Army (USA). In October 1973, he received an honorable discharge. Applicant obtained a bachelor's degree in biology in June 1977, and a master's degree in business management in July 2009. He is certified in advanced intelligence and satellite tool kit at the expert level. Since December 2001, Applicant has held employment positions in telecommunications, computer sales, banking, and mortgages.

### **Financial Considerations - Background**

Applicant cited the current recession as the reason for his inability to repay the two delinquent credit card accounts. He pointed out that the recession has had a negative impact on a large percentage of the national work force in some negative way, and he is no exception. Applicant noted he was unemployed for almost two years and six months in the last five years.

When Applicant lost his job in 2006, he used his emergency savings to stay afloat. He had to reorganize the family spending. He decided to pay his mortgage and food costs over his credit card debts. As of June 14, 2011 (answer to SOR), Applicant opined that having not had full-time employment for two and one-half years (since 2006), he needed additional time before he could begin repaying the delinquent debt. Applicant indicated that his character and integrity throughout his military and civilian career have been above reproach.

On July 12, 2010, Applicant reported in his E-QIP that he had two delinquent debts that are identified in the SOR. The credit reports (Items 7 and 8) show that the two credit card accounts listed in the SOR belong to him. SOR ¶ 1.a (\$10,378) became delinquent in February 2008, and SOR ¶ 1.b (\$19,291) became delinquent in December 2008.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

## **Analysis**

### **Financial Considerations**

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Applicant admits that he owes the two creditors listed in the SOR. He first acknowledged the fact in his e-QIP dated July 12, 2010. Applicant's credit bureau reports of 2010 and 2011 establish that the two accounts belong to him and became delinquent in February and December 2008. Applicant still owes the two accounts and is unable to repay them, regardless of why he is unable to repay. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

Four mitigating conditions are potentially applicable. No mitigation is available under AG ¶ 20(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 reliability, trustworthiness, and good judgment*). Applicant still owes the accounts. His declarations to repay the accounts carry little weight when he has made no effort to contact either creditor and negotiate a settlement. Though only two accounts are delinquent, Applicant's inaction makes it likely his current financial problems will continue, while inspiring little confidence in his current reliability, trustworthiness and good judgment.

There are two components to AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*). The first is that the financial dilemma resulted from an event or condition beyond an applicant's control. The second component is that the applicant acted responsibly under the circumstances. Applicant has been unemployed for about two and one-half years since 2006. In June 2010, he found part-time employment as a consultant with a defense contractor who ultimately hired him full-time in April 2011. I conclude Applicant utilized good judgment by performing well enough in the part-time position to warrant his hire ten months later into a full-time position.

On the other hand, Applicant exhibited poor judgment in not at least contacting the creditors and advising them of his predicament. Some level of communication with the creditor shows that the debtor cares about his delinquent debts, and lets the creditor know that the debtor is not trying to shrink from his financial obligations. Applicant receives limited mitigation under AG ¶ 20(b).

AG ¶ 20(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*) does not apply. There is no evidence of financial counseling or that the debts are being resolved or under control. AG ¶ 20(c) does not apply.

Applicant receives no mitigation under AG ¶ 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*) because he has made no effort to even contact the creditors. There is no information that Applicant is contemplating or actively seeking a Chapter 7 or Chapter 13 bankruptcy to eliminate the delinquent debt. Judging by the totality of the circumstances, Applicant has offered insufficient evidence to prevail under the financial considerations guideline.

## Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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.

Applicant is 60 years old. He has been married since 1971, and has a 38-year-old-son. He served his country honorably in the U.S. Army from October 1970 to October 1973. He has a bachelor's degree in biology and a master's degree in business management. He was certified in two additional intelligence areas.

Before his part-time employment began with the defense contractor in June 2010, Applicant had been unemployed or underemployed for a substantial period. Though he may not have been able to negotiate a settlement with the two listed creditors, his communication with them may have been successful in tolling interest and penalties on the accounts. Instead, he decided to disregard the accounts to his peril, and the interest and penalties have increased dramatically since 2008. In July 2010, Applicant reported the delinquent debts in his e-QIP. The Government placed Applicant on notice three times in 2011 that the delinquent accounts were a security concern. The last time was October 7, 2011, when Applicant received the FORM advising him that he had an opportunity to explain his intention regarding the delinquent debts. The absence of evidence that shows resolution of the debts by repayment or some other method results in a finding against Applicant under the financial considerations guideline. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

## **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

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge