



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



In the matter of: )  
 )  
XXXXXXXXXXXXXXXXXX ) ISCR Case No. 11-01698  
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 )  
Applicant for Security Clearance )

**Appearances**

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

12/30/2011

**Decision**

HOWE, Philip S., Administrative Judge:

On October 8, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP) (Item 5 of the file of relevant material (FORM)). On July 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on August 11, 2011. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 27, 2011, Department Counsel submitted the Department's written case. A complete copy of the FORM was provided to the Applicant on

September 28, 2011. The FORM included nine items, including two interrogatory responses from Applicant (Items 6 and 7) and two credit reports dated March 22, 2010 (Item 8), and November 2, 2010 (Item 9). He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 5, 2011. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on November 4, 2011. I received the case assignment on December 1, 2011. Based upon a review of the FORM file, eligibility for access to classified information is denied

### **Findings of Fact**

Applicant admitted all the allegations in the SOR. His Answer did not include any explanations of his delinquent debts and his efforts, if any, to resolve them. His explanations are contained in the interrogatory answers he submitted. (Items 6 and 7)

The SOR lists 10 delinquent debts totaling \$41,707. Applicant pays his current monthly debts on time. His delinquent debts started occurring in 2003 when his wife's arthritis prevented her from working. Her missing income adversely affected Applicant's ability to pay his larger debts. Applicant also did not reduce his spending to match his then-lower income. Applicant was the sole wage earner in the family for six years. (Items 6 and 7)

Applicant's debts consist of three delinquent automobile loans for vehicles that were repossessed (Subparagraphs 1.d to 1.f), a phone bill and utility bill (Subparagraphs 1.b and 1.j), a medical debt (Subparagraph 1.a), two credit cards (Subparagraphs 1.c and 1.h), and two miscellaneous debts (Subparagraphs 1.g and 1.i). None of them has been resolved. Applicant told the government investigator in November 2010 that he would contact the creditors and arrange to repay them. There is no evidence Applicant ever made those repayment plans with his creditors. (Items 1, 6-9)

Applicant did not have sufficient funds withheld from his pay to fully pay his 2008 and 2009 federal income taxes. He owed \$800 in 2008 and \$1,200 in 2009. He started installment payment plans but stopped them when he thought he could not afford them anymore. The Internal Revenue Service (IRS) deducted money from his paychecks to pay the delinquent taxes. Applicant stated the debt was paid in February 2011. (Items 6 and 7)

Applicant has been employed by his current defense contractor company for 15 years. His personal financial statement shows a net remainder income monthly after all expenses of \$737.18. Applicant has not presented evidence he obtained credit counseling or any professional assistance with debt management. (Items 5-7)

Applicant is 51 years old, married since 1984, and has four adult children. Two of his children are married and have children themselves. Applicant immigrated to the

United States from Mexico in 1970. He graduated from high school in 1979. He became a naturalized U.S. citizen in 1980. In 1984 Applicant graduated from a community college with an associate's degree. He joined the Army National Guard in 1988 and served until 1990. From 1990 to 1996 he served on active duty with the U.S. Army when he received an honorable discharge. Applicant reported he had a security clearance when working for a previous employer from 1984 to 1989. (Items 5-7)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 the guidelines in conjunction with the factors listed in the adjudicative process. (AG ¶ 2(a)) 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining 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. 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2003 to the present, Applicant accumulated 10 delinquent debts, totaling \$41,707 that remain unpaid or unresolved. These debts include three repossessed automobiles, credit card purchases, telephone and utility bills, and a medical debt. Applicant has not made any arrangements to resolve these debts since they were incurred.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability:

(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.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past eight years, Applicant's wife has been unemployed. He did not reduce his spending to match his one income. However, Applicant did not show what his wife earned while she worked and

how her arthritis prevented her from working and him paying their debts as listed in the SOR. He failed to meet his burden of proof on that issue.

I considered the other five mitigating conditions. None apply. Applicant's lack of debt repayment is current and casts doubt on his present reliability, trustworthiness, and good judgment. AG ¶ 20 (a) does not apply.

Applicant has not shown he obtained any financial counseling for his problem or that it is under control or being resolved in any way. Applicant did not show he has taken any action to resolve his delinquent debts. AG ¶ 20 (d) does not apply.

Applicant has not taken any good-faith efforts to resolve his debts. AG ¶ 20 (d) does not apply.

Applicant has not shown he disputed any debt or had any legitimate reason for such action. Nor is affluence an issue in this case. Therefore, neither AG ¶ 20(e) nor (f) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant

displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past eight years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

### **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 to 1.j:	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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PHILIP S. HOWE  
Administrative Judge