



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



In the matter of: )  
 )  
 ) ISCR Case No. 11-07103  
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 Applicant for Security Clearance )

**Appearances**

For Government: Christopher N. Morin, Esq., Department Counsel  
For Applicant: *Pro se*

12/17/2012

**Decision**

WHITE, David M., Administrative Judge:

Applicant accrued about \$65,800 in delinquent debts over the past five years. He made no progress toward resolution of any of them, and offered no evidence of an effective plan to resolve these debts or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on February 23, 2011.<sup>1</sup> On August 1, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup> 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*

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

*Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective in the Department of Defense on September 1, 2006.

Applicant received the SOR on August 19, 2012.<sup>3</sup> He submitted a written response on September 5, 2012, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>4</sup> Department Counsel submitted the Government's written case on October 1, 2012. A complete copy of the File of Relevant Material (FORM)<sup>5</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on October 16, 2012, and returned it to DOHA. He submitted a cover letter, dated November 11, 2012, forwarding four letters of recommendation for consideration in deciding his case, and expressed no objection to my consideration of the evidence submitted by Department Counsel. On November 19, 2012, Department Counsel expressed no objection to the admissibility into evidence of Applicant's FORM response. I received the case assignment on November 26, 2012.

### **Findings of Fact**

Applicant is 59 years old, and has applied for employment with a defense contractor. He has no prior military or Federal Government service. He graduated from college with a bachelor's degree in 1977, and subsequently attended some law enforcement training. He is twice divorced, with an adult son and a 19-year-old daughter. This is his first application for a security clearance.<sup>6</sup>

In his response to the SOR, Applicant admitted the truth of the factual allegations set forth in SOR ¶¶ 1.a through 1.d, 1.f, 1.h, 1.j, and 1.k. He also admitted to owing an unspecified part of the debt alleged in SOR ¶ 1.i. He claimed, without corroborating evidence, that he thought he had been released from the debts alleged in SOR ¶¶ 1.e and 1.g. The total due on Applicant's 11 delinquent debts alleged in the SOR, and supported by entries in the record credit bureau reports, is \$65,809.<sup>7</sup> Applicant's admissions, including those made in response to DOHA interrogatories,<sup>8</sup> are incorporated into the following findings of fact.

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<sup>3</sup>Item 3.

<sup>4</sup>Item 4. *See also*, footnote 1 in Department Counsel's File of Relevant Material.

<sup>5</sup>The Government submitted eight Items in support of the SOR allegations.

<sup>6</sup>Items 4 and 5.

<sup>7</sup>Items 1, 7, and 8.

<sup>8</sup>Item 6.

Applicant worked as a real estate broker/agent from 1999 until December 2008, when the economy and real estate market deteriorated to the point that he could no longer earn a living. He then took a salaried position with a company in the healthcare industry for about six months, but was laid off when the company was sold. From July 2009 to March 2010, Applicant was unemployed. Since then he has held several part-time and temporary positions that did not pay very well, most recently as a store management trainee with a uniform company.<sup>9</sup>

Applicant and his second wife separated in August 2008, which increased their cost of living in two households. He rented an apartment until January 2010, and has been living with relatives or friends since then while looking for employment. The \$832 debt alleged in SOR ¶ 1.d arose when he broke an apartment lease in May 2009. He claims that the landlord released him from further obligations, but provided no documentation to corroborate this claim and the debt was turned over to a collection agency by the landlord. The \$233 debt alleged in SOR ¶ 1.g arose from Applicant's membership in a gymnasium. Applicant claims, again without corroboration, that the gym manager released him from further obligations under his membership contract in September or October of 2010 because he could no longer afford the fees. He was subsequently billed for two additional months of dues, but did not pay them.<sup>10</sup>

Applicant's remaining delinquent debts include several credit card accounts, a loan for a vehicle that was repossessed in 2008, several utility accounts, and one medical bill from June 2011. The debts became delinquent at various times from early 2008 through 2011. Applicant submitted a personal financial statement reflecting a net monthly surplus of \$25 after paying \$1,475 in monthly living expenses. The statement also reflected total assets of \$800 in the form of a savings account. Applicant said that he wants to repay his debts, and intends to do so as soon as he finds a job that pays enough to permit that.<sup>11</sup> He submitted no evidence of financial counseling.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted several letters with character references describing his good judgment, morality, trustworthiness, integrity, and reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief

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<sup>9</sup>Items 4, 5, and 6.

<sup>10</sup>Items 4, 5, 6, and 7.

<sup>11</sup>Items 4, 6, 7, and 8.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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 clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's SOR-listed delinquent debts arose over the past five years, and remain completely unresolved. His financial problems were not shown to have arisen from incidents beyond his control, but rather resulted from his choices to incur debts for goods and services while he knew his lack of income would prevent him from meeting those obligations. He provided no evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 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.

Applicant's eleven delinquent debts arose over the past five years, total more than \$65,800, and continue to date. They are frequent, recent, and arose under circumstances that involved Applicant's voluntary choices. He showed no capacity to avoid additional delinquent debt. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved, and failed to resolve any of these debts even after their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). The economic downturn and his reduced income-earning ability were conditions beyond his control, but he did not demonstrate that incurring these obligations without the means to satisfy them was responsible activity under those circumstances. Neither the medical debt nor his divorce were shown to have been unexpected or contrary to his wishes. He knowingly contracted for the remaining delinquent consumer obligations. Finally, his inaction toward resolution of any of these debts is not responsible action under the circumstances.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. He provided no evidence to establish any good-faith effort to repay his many overdue creditors or otherwise resolve his debts, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore inapplicable.

Applicant failed to provide any proof to substantiate a basis to dispute the legitimacy of the debts alleged in SOR ¶¶ 1.e, 1.g, or 1.i, for which the record credit reports provide substantial evidence. Accordingly, he failed to mitigate those allegations under MC 20(e).

### **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

