



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09047
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: Peter Ross, Personal Representative

10/31/2012

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, 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 the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 27, 2010. On August 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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.

On August 24, 2012, DOHA received Applicant’s notarized answer to the SOR. He elected to have a hearing before an administrative judge. The case was assigned to me on September 7, 2012. I convened a hearing on October 10, 2012, to consider

whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and entered in the record without objection. Applicant testified and called one witness. He introduced ten exhibits, which were marked as Applicant's Ex. A through J and entered in the record without objection. DOHA received the hearing transcript (Tr.) on October 18, 2012.

### **Findings of Fact**

The SOR contains seven allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.) In his Answer to the SOR, Applicant admitted three allegations (SOR ¶¶ 1.a., 1.b., and 1.g.). He denied four SOR allegations at ¶¶ 1.c., 1.d., 1.e., and 1.f. Applicant's admissions are entered as findings of fact.

Applicant is 32 years old, divorced, and the father of a six-year-old child. Applicant and his wife share joint legal and residential custody of their child. For the last four years, Applicant has been employed as a senior machinist by a government contractor. He is a high school graduate. In the past, he has worked as a carpenter. He is also a certified locksmith. He seeks a security clearance for the first time. (Ex. 1; Tr. 38-39, 91.)

In 2003 or 2004, Applicant was working as a carpenter. He punched a wall and broke his right hand. He was unable to work for three months. At the time, he had no medical insurance and was not eligible for unemployment benefits, since the injury was not work-related. Applicant was again unemployed for three months in 2006. Other than these two periods of unemployment, Applicant has been steadily employed for the past nine years. (Ex. 1; Ex. 3; Tr. 72-75.)

The SOR alleges seven delinquent debts totaling approximately \$24,802. Applicant acknowledged that a \$240 debt to a communications provider, alleged at SOR ¶ 1.a., remained unsatisfied. He stated that he had disputed the debt; however, he failed to provide documentation to corroborate the dispute. (Answer to SOR; Tr. 56-57, 85.)

Applicant also acknowledged that an \$11,914 delinquent debt, alleged at SOR ¶ 1.b., remained unsatisfied. He stated that the debt arose in 2003, when his truck was repossessed. Originally, the debt totaled approximately \$3,000. Applicant speculated that the debt increased over nine years when finance charges and late fees were added to the original debt. He has not contacted the creditor to make a payment arrangement or to settle the account. (Tr. 41-43, 59-60.)

Applicant provided documentation establishing that in November 2010 he had satisfied a \$1,201 debt alleged at SOR ¶ 1.c. He also provided documentation that a \$3,938 debt alleged at SOR ¶ 1.d. had been subject to litigation and had been dismissed. Additionally, Applicant provided documentation establishing that he had a

payment plan in place to satisfy the \$4,674 delinquent debt alleged at SOR ¶1.e. Applicant demonstrated that he owed a balance on the debt of \$1,600 and was making monthly payments of \$100. He also claimed he had satisfied the \$335 delinquent debt alleged at SOR ¶ 1.f. but had lost documentation showing the debt had been satisfied. (Answer to SOR; Ex. C; Ex. B; Ex. A; Ex. J; Tr. 60-61, 86-88.)

Applicant acknowledged he owed the delinquent debt alleged at SOR ¶ 1.g. The debt is listed on the SOR as totaling \$2,500. Applicant acknowledged the debt was unpaid, was over seven years old, and had increased to \$4,849. (Answer to SOR; Ex. I; Tr. 69-70.)

Applicant was interviewed by an authorized investigator from the Office of Personnel Management (OPM) in October 2010. At that time, he acknowledged several delinquent debts and stated that he lived day-to-day and did not make enough money to pay his delinquent debts. At his hearing, he stated that he intends to pay all of his existing financial delinquencies systematically over time. (Ex. 3; Tr. 53-55.)

In September 2011, Applicant purchased a home. The purchase price was \$257,000. Applicant put no money down and financed 100% of the purchase price. (Tr. 81.)

Applicant provided a personal financial statement dated July 5, 2012. He reported a monthly net income of \$3,309. His fixed monthly living expenses total \$1,370. His monthly debt payments include the following: mortgage: \$1,434; two credit card payments: \$100; automobile payment: \$435; and payment of the debt identified at SOR ¶ 1.e.: \$100. Applicant's total debt and monthly living expenses total \$3,439, indicating that each month Applicant spends approximately \$129 more than he earns. (Ex. 2.)

At his hearing, Applicant reported that he received \$162 a month in child support, and that amount was not reflected on his personal financial statement. He noted that this amount offset the negative monthly remainder on his financial statement. (Tr. 77-81.)

Applicant reported he had \$200 in his checking account, \$100 in his savings account, and approximately \$18,000 in his 401(k) account. The record does not reflect that Applicant has had financial credit counseling. (Tr. 82-83.)

Applicant's supervisor for the past four years appeared as a witness. He praised Applicant's work ethic, and he stated that Applicant is well-respected in the workplace. He noted that Applicant was reliable and paid his current financial obligations. Applicant's recent performance evaluations were received into evidence. They showed that his job knowledge, analytical, and problem-solving skills were consistently rated as excellent. (Ex. F; Ex. G; Ex. H; Tr. 98-106.)

## 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 and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider and apply 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.

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. 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. Since 2003, Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

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 has initiated a good-faith effort to repay

overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, 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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant was unemployed for three months in 2003 and 2004. He was again unemployed for three months in 2006. He failed to establish that his inability to satisfy his delinquent debts resulted from unemployment conditions over which he had no control. He has been steadily employed for the last four years. Even so, Applicant admitted a history of financial difficulties and inattention to his financial responsibilities. To his credit, he provided documentation establishing that he had paid one debt and had a payment plan in effect for a second debt. Additionally, he claimed to have satisfied a third debt, but failed to provide documentation to corroborate payment. A fourth debt was resolved by judicial action.

Two of Applicant’s three remaining delinquent debts date back at least seven years, and those three delinquencies currently total approximately \$17,000. Applicant failed to provide documentation showing that he had a plan to resolve these debts in light of his limited resources. His personal financial statement and his testimony suggest he allocates nearly all of his monthly income to current expenses and debts and has little money left over to pay his long-term financial delinquencies or to address unforeseen financial emergencies.

According to Applicant’s personal financial statement, he spends \$129 more than he earns each month. At his hearing, he noted that in addition to the income listed on his financial report, he receives \$162 each month in child support. He observed that the child support offset the monthly deficit reported on his personal financial report. When the monthly child support payments are added to Applicant’s income, he reports a net remainder each month of \$33. These facts suggest that Applicant’s financial situation could become unstable if unexpected financial emergencies should occur.

The record does not reflect that Applicant has had financial credit counseling. Applicant’s current financial situation raises security concerns about his reliability, trustworthiness, and good judgment.

At his hearing, Applicant stated he planned to pay the delinquent debts identified at SOR ¶¶ 1.b. and 1.g. at some time in the future. In determining an individual’s security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

Applicant has made a good-faith effort to resolve one of his debts (SOR ¶ 1.c.), and he has an active payment plan in place to resolve another (SOR ¶ 1.e.) I conclude AG ¶ 20(d) applies in part to his case. However, Applicant’s unresolved financial delinquencies total over \$17,000, and he does not appear to have the financial resources to resolve those debts and meet his monthly living expenses. After carefully

weighing the facts of Applicant's case, I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(e) not apply in mitigation.

### **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 the facts and circumstances surrounding this case. Applicant is a mature person of 32 years. His supervisor testified that he is hard-working and well-respected in the workplace. His performance reviews revealed that his job knowledge, analytical, and problem-solving skills were excellent. His financial problems began several years ago and are ongoing. Despite a steady income for at least four years, he has failed to budget his income to satisfy two substantial debts, which have increased in size because he has failed to address them.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude 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

Subparagraphs 1.a. - 1.b.: Against Applicant  
Subparagraph 1.c. - 1.e.: For Applicant

Subparagraphs 1.f. - 1.g.: 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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Joan Caton Anthony  
Administrative Judge