



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-11221
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

06/06/2013

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant still has more than \$52,000 in unresolved delinquent debts, accrued over the past five years. He made some progress toward resolution of other debts, but offered no evidence of an effective plan to resolve the remaining 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 May 3, 2011.<sup>1</sup> On December 14, 2012, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).<sup>2</sup>

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

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 effective in the Department of Defense on September 1, 2006.

Applicant received the SOR on December 20, 2012.<sup>3</sup> He submitted a written response on January 17, 2013, 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 February 15, 2013. 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 February 22, 2013, and returned it to DOHA. Within the 30 days provided to do so, he submitted no additional evidence, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on April 25, 2013.

In his answer to the SOR, Applicant said that he waived a hearing and wanted an administrative judge to issue a decision based on the administrative record, "given that **ALL** documentation are presented to the Administrative Judge that was submitted to the office at the initial security review." (Emphasis in original.) There was no indication in the record from which to determine what documentation Applicant was referring to in this statement, and Department Counsel did not address the issue in the FORM. Accordingly, I issued an order on May 14, 2013, providing Applicant additional time, until May 23, 2013, to submit copies of any documentation that he submitted during the "initial security review" that he wanted to be considered, but which was not included in the FORM. On May 23, 2013, Applicant submitted Exhibit (AE) A, comprising a cover email; a letter from his "Debt Relief Law Firm" dated March 26, 2013; documents concerning his mortgage loan modification and its current status; and receipt for a credit card payment (of half of the amount owed) to settle a medical debt. Department Counsel did not object to my consideration of this evidence, which is admitted into the record.

### **Findings of Fact**

Applicant is 40 years old, and has worked for a defense contractor since 2003. He has held a Top Secret clearance since 2004. He has no prior military or Federal

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<sup>3</sup>Item 3.

<sup>4</sup>Item 4.

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

Government service. He graduated from high school in 1991. He is married, with four children ages 10, 8, and twins age 7.<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.c, and denied the debts alleged in SOR ¶¶ 1.e and 1.f, all with some explanations.<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.

In September 1993, Applicant opened the credit card account that was charged off in the amount of \$11,341 after he stopped making payments toward it in December 2008. This account was included in the program he entered with a "Debt Relief Law Firm" that is designed to lead to settlement of his delinquent debts for less than 60 cents on the dollar. On March 26, 2013, this firm informed Applicant that the debt had passed the applicable statute of limitations and should be considered uncollectible. This debt, as alleged in SOR ¶1.a, remains unpaid.<sup>9</sup>

Applicant and his wife bought their home in 2003, and refinanced it several times. Their present first (\$343,766) and second (\$40,643) mortgage loans were entered into in November 2006. Applicant and his wife stopped making payments toward these debts in late summer 2009. The lender sold the first mortgage to Select Portfolio Servicing, with whom Applicant negotiated a loan modification during July 2012. His arrearage was included in the principal on this modified loan, increasing the total due to \$375,696. The loan is amortized over 40 years, resulting in lower monthly payments, but after 24 years and 5 months (on December 1, 2036) Applicant must make a balloon payment of \$213,221 by refinancing or otherwise. Applicant made all monthly payments toward this modified first mortgage loan between August 2012 and April 2013. This SOR ¶ 1.c debt is being resolved, although on terms that are unlikely to be met during his lifetime. Applicant claimed to be attempting to renegotiate his second mortgage with Realtime, the new holder of that SOR ¶ 1.b debt, but provided no evidence of such efforts or of any progress toward resolution.<sup>10</sup>

The \$133 delinquent debt alleged in SOR ¶ 1.d was a medical bill for services provided to one of his twins in May 2009. He told an Office of Personnel Management (OPM) investigator in July 2011 that he could not recall anything about the debt, but did not dispute it. In his January 2013 response to the SOR, he said that the debt had been paid, and that documentation to that effect had been provided to someone at what he termed the "initial [security] review." As discussed above, I issued an order affording

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<sup>6</sup>Item 5.

<sup>7</sup>Item 4.

<sup>8</sup>Item 6.

<sup>9</sup>Item 4; Item 6 at 8; Item 8 at 12; AE A(1).

<sup>10</sup>Item 4; Item 6 at 7; Item 8 at 7; AE A(2).

Applicant additional time to provide copies of this and other documentation he claimed to have provided at this “initial review.” In response to that order, he provided a copy of a receipt dated May 23, 2013, purporting to show settlement of the debt through payment of \$66.82 (50%) by charging it to a credit card. The evidence concerning possible resolution of this debt is unclear and contradictory.<sup>11</sup>

Although not listed on his credit reports, Applicant informed the OPM investigator that he and his wife had withdrawn funds from their 401(k) retirement plans in 2009, but failed to pay the resulting income tax obligations. As a result, he was informed in 2011 that he owed the Internal Revenue Service about \$7,000, and entered into a repayment plan. In response to the SOR, he claimed that his total Federal and state tax delinquencies caused by this 401(k) withdrawal had been \$5,600. He said that payments since 2011 had reduced the outstanding balance to \$181 in Federal taxes (due to be paid off in January 2013), and \$343 in state taxes (due to be paid off in March 2013). He provided no documentation to support any of these statements, despite Department Counsel’s explicit comments about the lack of such evidence in the FORM and my provision of additional time to do so.<sup>12</sup>

Applicant claimed in general terms that his financial difficulties stemmed from his wife’s undefined period of unemployment, their growing family, and a lack of sufficient funds to pay their obligations. He did not submit a personal financial statement, a budget, or any evidence of savings or other net worth. He submitted no evidence of financial counseling or other efforts to establish financial responsibility, except for his work with the “Debt Relief Law Firm” that started settling more than \$74,000 in unsecured consumer debt for him in 2011.<sup>13</sup>

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 except his admission to one security violation for which he received a written warning/reprimand in August 2010.<sup>14</sup> He submitted no character references describing his judgment, morality, trustworthiness, integrity, or 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>11</sup>Item 6 at 8; Item 4; AE A(3).

<sup>12</sup>Item 6 at 7; Item 4; FORM at 8; AE A.

<sup>13</sup>Item 4; Item 5 at 37; Item 6.

<sup>14</sup>Item 6 at 5.

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 substantially unresolved, although many other substantial delinquencies have been settled on his behalf during that period. 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 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 SOR-listed delinquent debts arose over the past five years, and more than \$52,000 in such debt remains unresolved to date. These financial problems are frequent, recent, and arose under circumstances that involved Applicant's voluntary choices. He demonstrated no capacity to avoid incurring additional delinquent debt. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to show that his reliability, trustworthiness, and judgment have improved, and failed to resolve several 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 undefined economic impact of his wife's temporary unemployment may or may not have arisen from 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. His work with the law firm toward resolution of many of his formerly delinquent debts is some evidence of responsible action under the circumstances, but it has not yet achieved sufficient debt reduction to fully mitigate security concerns.

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 that his current financial situation has stabilized, that he repaid his Federal and state income tax deficiencies, or that his second mortgage renegotiation efforts will succeed. Plentiful precedent from the Appeal Board establishes that failing to pay a voluntarily incurred delinquent debt until the statute of limitations has run does not constitute a good-faith effort to resolve it, or provide indication that the underlying financial problem is under control. MC 20(c) and 20(d) are therefore inapplicable.

Applicant failed to provide any proof to substantiate a basis to dispute the legitimacy of any of the debts alleged in the SOR, for which the record evidence provides 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 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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans many years, and continues at present. It involves delinquent debts still totaling more than \$52,000, although his work with a law firm did resolve a number of other formerly delinquent consumer debts. He did not demonstrate that these debts arose under circumstances that were beyond his control, or that he initiated any budgetary changes to prevent additional financial difficulties. He offered no evidence of financial counseling, rehabilitation, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	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.

DAVID M. WHITE  
Administrative Judge