



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-13286
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

10/02/2013

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and exhibits in this case, 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 Case**

On August 8, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On April 10, 2013, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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.

Applicant provided a notarized answer to the SOR, dated April 28, 2013, and he requested that his case be determined on the written record. The Government compiled

its File of Relevant Material (FORM) on July 18, 2013.<sup>1</sup> The FORM contained documents identified as Items 1 through 9. By letter dated July 22, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on July 31, 2013. His response was due on August 30, 2013. Applicant did not submit any information within the required time period, and he did not ask for an extension of time. On September 24, 2013, the case was assigned to me for a decision.

### **Findings of Fact**

The SOR contains two allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. and 1.b.). In his Answer to the SOR, Applicant denied both allegations. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government. The record evidence includes Applicant's answer to the SOR; his August 8, 2011, e-QIP; a summary of Applicant's personal subject interview, prepared by an authorized investigator from the U.S. Office of Personnel Management;<sup>2</sup> Applicant's credit reports of March 28, 2013, and August 30, 2011; and e-mail correspondence. Absent any objections, all Items in the FORM are entered as evidence in this case. (See Items 4 through 9.)

Applicant is 52 years old, married, and employed by a government contractor as an electrical foreman. He has been married three times. He was married to his first wife from 1983 to 1988. He was married to his second wife from 1996 until 2008. In 2009, he married his third wife. He listed no children on his 2011 e-QIP. (Item 5; Item 6.)

He has worked for his current employer since 2003. In 2004, he submitted a security clearance application, but he reported his investigation was not completed because his second wife, with whom he had co-owned a company, would not release information about a delinquent debt the company owed. He now seeks a security clearance. (Item 5; Item 6.)

The SOR alleges that Applicant owes two delinquent debts totaling approximately \$19,688. They include a \$3,479 delinquent account in collection status to an apartment complex for unpaid rent (SOR ¶ 1.a.) and a \$16,209 credit card debt in

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<sup>1</sup> At page 5, the FORM incorrectly references allegations 1.a. through 1.f. The discussion, however, references only allegations 1.a and 1.b., as found in the SOR.

<sup>2</sup> As a part of his investigation for a security clearance, Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on September 14, 2011. He did not authenticate the summary, which was provided to him as Item 6 of the FORM. Moreover, Applicant did not file a response to the FORM, correcting or revising the information in the investigator's summary, nor did he, pursuant to ¶ E3.1.20 of the Directive, object to its admissibility. (Item 6.)

charged-off status (SOR ¶ 1.b.). Applicant's delinquent accounts are listed on his credit reports of March 2013 and August 2011. (Item 1; Item 7; Item 8.)

In his answer, Applicant denied the debt at SOR ¶ 1.a. In 2005, Applicant and his second wife were living in an apartment and decided to separate and divorce. He asserts that he requested that the apartment manager remove his name from the lease and put his wife's name only on the lease. He then moved to other quarters. Two months later, when his wife defaulted on her lease payments and was evicted, the apartment manager sought payment from Applicant. Applicant denies responsibility for the debt, which he claimed in his personal subject interview he became aware of in 2010. He asserts he has attempted to negotiate a settlement with the creditor and has offered to pay up to \$2,000 on the debt. He reports that the creditor seeks full payment of the debt from him, an action which he opines is unfair. Applicant provided no documentation to corroborate his assertions that that he had no responsibility under the lease. He failed to provide documentation showing settlement negotiations with the creditor. The debt alleged at SOR ¶ 1.a. remains unsatisfied. (Item 4; Item 5; Item 6.)

In his answer, Applicant acknowledged that the debt alleged at SOR ¶ 1.b. represented his credit card debt. He stated he was financially damaged when a hurricane in 2005 affected the area where he lived and caused him to have increased expenses, which he charged on his credit card account. He denied responsibility for the debt and stated that he was contacted by an individual representing himself as a collections attorney working on behalf of the creditor identified at SOR ¶ 1.b. According to Applicant, the individual offered to settle the debt for \$3,300. Applicant asserted that he accepted the settlement offer and paid the individual \$3,300 in 2010. Later, Applicant determined that the debt alleged at SOR ¶ 1.b. did not reflect his settlement payments. He stated that he contacted the creditor, who denied an affiliation with the collections attorney. Applicant then concluded the individual who represented himself as a settlement attorney for the creditor had acted fraudulently. Applicant stated that he filed a complaint with the judicial system in the collections attorney's home state. (Item 4; Item 5; Item 9.)

Applicant provided two documents from the individual identified as the settlement attorney for the debt alleged at SOR ¶ 1.b. The first document was illegible. The second document referenced a debt of \$4,741 to another creditor and acknowledged receipt from Applicant of \$3,300 in satisfaction of the debt. Applicant did not provide copies of documents he filed with the creditor and other responsible officials alleging fraud. The debt alleged at SOR ¶ 1.b. remains unpaid. (Item 9.)

Applicant failed to provide information on his net monthly income, monthly living expenses, and current debts. He also failed to provide information on his savings and other assets. The record does not reflect that Applicant has had financial counseling.

## 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.

When evaluating an applicant’s suitability for a security clearance, an 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 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 in this case. 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.

Applicant denied responsibility for the two debts, totaling approximately \$19,688, alleged in the SOR. Both debts alleged on the SOR appear on Applicant’s two credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), DOHA’s Appeal Board explained: “It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.” (Internal citation omitted).

Applicant has been aware of these debts since at least 2010, but he has failed to demonstrate that he has paid them or negotiated payment plans with his creditors. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

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 initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated 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 actions to resolve the issue.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies. He denies responsibility for a debt resulting from his former wife’s failure to pay a lease. While he declares he was no longer on the lease with her, and requested that the lease manager remove his name from the lease, Applicant failed to provide documentation corroborating his declarations.

Applicant acknowledges a delinquent credit card debt of over \$16,000, and argues that he was a victim of fraud when he agreed to settle the debt for \$3,300. However, he fails to establish that he was a victim of fraud, which would be a condition beyond his control. The documentation he provided fails to show that he is no longer responsible for the debt alleged at ¶ 1.b. in the SOR. He has been steadily employed with his current employer since 2003. He failed to provide information on his current net monthly income, expenses, and resources available for paying his delinquent debts. The record does not reflect that Applicant has had financial credit counseling or that his finances are under control.

DOHA’s Appeal Board has explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option . . . in order to claim the benefit of [the “good-faith” mitigating condition.]

(ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001))).

Applicant's two debts remain unsatisfied and current. His failure to address his delinquencies reflects a lack of good faith in resolving his obligations to his creditors. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply in mitigation in Applicant's case.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 adult. His financial delinquencies are significant and have existed for several years. While he denied the debts, he failed to provide documentation to corroborate his denials. He has been steadily employed since 2003. His failure to accept responsibility for his debts and to resolve them raises concerns about his trustworthiness, judgment, reliability, and ability to protect classified information.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that 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

### **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