



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-04362  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel Crowley, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 31, 2008

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on July 18, 2005. On November 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant requested a hearing before an Administrative Judge. I received the case assignment on July 2, 2008.<sup>1</sup> DOHA issued a notice of hearing on September 16, 2008, and I convened the hearing as scheduled on October 15, 2008. The Government

---

<sup>1</sup>The hearing was scheduled for August 13, 2008 but was cancelled because Applicant was not available due to overseas employment.

offered Exhibits (GE 1-5), which were received without objection. Applicant testified in his own behalf. He submitted Exhibits (AE A-D), without objection. I held the record open until October 22, 2008 so that Applicant could submit documents. The submissions were timely received and marked as (AE) E and (AE) F. Department Counsel did not object to the documents. DOHA received the transcript on October 22, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, dated June 17, 2008, Applicant admitted the factual allegations in ¶¶ 1.b., 1.e, 1.j., 1.k., 1.n.,1.o., and 1.p of the SOR. He denied the other allegations, including ¶ 2.a-2.b of the SOR. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 34-year-old employee of a defense contractor. He graduated from high school in June 1992. He served in the United States Navy (USN) from 1993 until 2000. He has worked for his current employer since April 2005 (GE 1). Applicant held a security clearance during his military career until the present (Tr. 26).

Applicant married in 1997. He and his wife separated/divorced in 2001. He does not have any children (Tr. 19). His wife opened many credit accounts while she was married to Applicant without his knowledge.

Applicant had a difficult transition after leaving the military in 2000. He was unemployed for three months. When he did find employment, he did not have sufficient income. His wife left the marriage and Applicant had her bills from the various credit accounts to pay as well as his living expenses. He fell behind in payments.

The SOR alleges 16 delinquent debts, including a vehicle repossession. The total amount of debt that Applicant owes is approximately \$40,000 (GE 7). The largest debt is \$12,116 for a vehicle repossession in 2005.

Applicant admitted owing a few debts listed in the SOR. Applicant has paid one account (¶ 1.c for \$986) (AE A). The other debts have not been paid. Applicant plans to refinance his house this year and to use the proceeds to pay his delinquent debts. He purchased the house last year and believes the value is approximately \$150,000.

Applicant had not looked at his credit report prior to the security investigation. He does not recognize some of the debts. He attended a few financial counseling classes in 2006. He called a credit hot line to get information on his credit standing.

Applicant's current monthly net income is \$3,922 (Tr. 75). After monthly expenses he has a net remainder of approximately \$681. He is paying on his current car loan.

Applicant completed his July 18, 2005 security application. In that application he answered “no” to section 28(a) and (b) which asks for information on debts either 180 days delinquent in the last seven years or 90 days currently delinquent (GE 1 ).

Applicant explained that he completed the security questionnaire online at home. He indicated that he did not believe he had delinquent debts because the car was voluntarily repossessed and the other accounts were in collection. He said it was a misunderstanding. He was credible in his testimony that he had no intent to deceive the government.

In June 2006, Applicant was interviewed as part of the security clearance process. He explained his financial status and his delinquencies. He explained that he purchased a vehicle in 2000. He could not keep up with the payments after a year. He returned the car to the dealer. He indicated that he did not recognize the names of some of the accounts. He reported to the investigator that in his 2006 credit report the debts were not listed. He did recognize the Navy Exchange account and the CitiFinancial account. He is now living with his girlfriend and they have a two-month-old daughter (GE 4).

Applicant is a trusted co-worker and friend. He has been trained how to deal with classified materials and has never had an issue in that area (AE B). He has a high degree of integrity and responsibility in the workplace. He is recommended for a security clearance (AE C).

### **Policies**

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider 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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, 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. 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, 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 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.

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<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on numerous accounts and judgments and did not meet some of his financial obligations from 2000 until the present time. His credit reports confirm the debts. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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. Applicant's financial worries arose in 2000. He accumulated some delinquent debt due to his ex-wife and a few months of unemployment when he retired from the military. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He admits that he paid one account. He paid one debt in the SOR and intends to refinance his house to pay the rest. His conduct over the last six months with his creditors does not remove security concerns or doubts about his current reliability, trustworthiness, and good judgment. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where 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. Applicant has been steadily employed except for three months after leaving the military. He did experience separation and divorce but he also has debt that do not stem from that situation. Applicant was not as aggressive as he should have been in initially addressing or resolving his delinquent debts. I find this potentially mitigating condition partially applies.

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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant attended a few classes for financial counseling. He is investigating his credit report to dispute some accounts. He paid one account. I find his efforts are insufficient to carry his burden in this case. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that he called and contacted most of the creditors. He submitted a generic letter that he claims he sent to all creditors. I conclude this potentially mitigating condition partially applies.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" is potentially disqualifying.

In this case, when Applicant completed his 2005 security application, he did not list any debts that were 90 or 180 days delinquent. He explained that he believed because the repossession was voluntary and the accounts were closed that he did not have delinquent debts of 90 or 180 days. Despite the fact that the questionnaire was not checked 'yes" on either section, I found him credible. The allegation of falsification is unsubstantiated. I do not find that he deliberately provided false information on his SF 86 in 2005.

Thus, Applicant's allegation of deliberate omission is mitigated under AG 17(f) "the information was unsubstantiated or from a source of questionable reliability."

### **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 the 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) 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 common sense 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 and conclude they are not sufficient to overcome the government's case. Applicant served in the USN for many years. After leaving the military, he had a difficult transition to civilian life. His wife left the marriage and he had many bills to pay. He has not been aggressive with his delinquent debts. His

plan of action is to refinance his house and use the proceeds to pay for the delinquent debts. This plan is not in place at this time. He has disputed many accounts but did not provide sufficient documentation for this proposition. He is now engaged and has an infant daughter. He is working to provide for his family. However, at this time, Applicant has not met his burden of proof to overcome the government's case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d-p:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

NOREEN A. LYNCH  
Administrative Judge