

KEYWORD: Financial

DIGEST: Applicant is a 35-year-old linguist who has worked with the U.S. Armed Forces for the past couple of years. Prior to his current position, he was unemployed for a period of time after being injured in an automobile accident. While unemployed, he accumulated debts that he was unable to pay. He mitigated the security concerns raised by financial considerations. Clearance is granted.

CASENO: 06-14949.h1

DATE: 10/03/2007

DATE: October 3, 2007

In re:	)	
	)	
	)	
-----	)	ISCR Case No. 06-14949
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

Caroline Jeffreys, Esq., Department Counsel

**FOR APPLICANT**

Ethan D. Dunn, Esq.

**SYNOPSIS**

Applicant is a 35-year-old linguist who has worked with the U.S. Armed Forces for the past couple of years. Prior to his current position, he was unemployed for a period of time after being injured in an automobile accident. While unemployed, he accumulated debts that he was unable to pay. He mitigated the security concerns raised by financial considerations. Clearance is granted.

### **STATEMENT OF THE CASE**

On July 4, 2004, Applicant electronically submitted a security clearance application (SCA). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2. (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on April 23, 2007, detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) of the Adjudicative Guidelines (Guidelines) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. Applicant answered the SOR in writing on May 18, 2006, and elected to have a hearing before an administrative judge. The case was initially assigned to another administrative judge on June 21, 2007, and reassigned to me on August 2, 2007. DOHA issued a Notice of Hearing on August 24, 2007, setting the case for September 11, 2007.

At the hearing, Department Counsel introduced Government Exhibits (GX) 1 through 4 into evidence without objections. Applicant testified in his case and introduced 17 documents that I marked as Applicant Exhibits (AX) A through Q. At the conclusion of the hearing, I left the record open until September 21, 2007, to give him an opportunity to submit additional information. I extended that deadline to September 25, 2007. On that day I received three exhibits that I marked as AX S through T, and admitted into evidence without objections from Department Counsel. DOHA received the hearing transcript (Tr.) on September 21, 2007.

### **PROCEDURAL MATTERS**

At the commencement of the hearing, Department Counsel withdrew the allegation contained in SOR ¶ 1.b without an objection from Applicant.

### **FINDINGS OF FACT**

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is 35 years old. He is unmarried and has one child who lives with him. He was born in Iraq, but fled it along with his family in the 1990's and lived in Saudi Arabia for a period of time. In 1994, he and his family arrived in the United States. He became a U.S. citizen in June 2001. After arriving here, he worked at various jobs and obtained some vocational training at a local

school. From December 2000 until February or March 2002, he was unemployed, as a result of an automobile accident that occurred while driving a truck for a former employer. During his recovery, he lived with his family. (Tr. 69). After returning to work, he drove for another trucking firm until he found a job with his present employer. (Tr. 45).

In June 2004, Applicant started a position as a linguist with a federal contractor and submitted a SCA in July 2004. He subsequently received an interim clearance. As part of his duties for his employer, Applicant trained U.S. forces in the Iraqi language and culture. He later served as an interpreter for the armed forces during two separate deployments to Iraq: from November 2004 through March 2005, and from November 2005 until December 2006. (Tr. 70).

After submitting his SCA, Applicant met with a government investigator in early 2005 and discussed his financial problems. On March 29, 2005, Applicant began meeting with a credit counselor to address his financial problems with whom he continues to work. (AX S).

Based on an August 2004 and April 2007 credit report, DOHA filed an SOR alleging that Applicant is indebted to four creditors for delinquent debts, totaling \$24,815. The debts arose during the period of time that Applicant was unemployed. The status of the debts is as follows:

SOR ¶ 1.a. Applicant acknowledged the underlying debt for furniture, but denied owing \$1,196. After he returned to work in February or March of 2002, he attempted to negotiate a settlement for the balance owed of about \$700, but was unsuccessful because the company insisted that he pay all of the interest charges. (Tr. 46-47; 52). In April 2005, he disputed the matter through a credit reporting agency. (Answer; Tr. 46; AX A). According to his credit counselor, the debt is resolved. (AX S). At this time, Applicant asserts that it was illegally re-aged by the creditor. (Tr. 72).

SOR ¶ 1.c. Applicant admitted that he owed money to this creditor, an automobile loan company, but disputed the amount. When he realized that he could not manage this debt during his unemployment, he requested the creditor repossess the vehicle by which time he had paid approximately \$4,000 on a \$22,000 loan. (Tr.52). The loan company sold the car for \$11,000, but insisted that Applicant repay the entire loan without crediting him for his payments or the proceeds of the sale of the car. (Tr. 34; 52-53; Answer). In April 2005, he disputed the debt with the assistance of his credit counselor. (AX A). According to recent information, in 2001 the amount owed was \$15,439, the amount was \$23,128 when the SOR was filed, and was \$32,000 as of September 19, 2007.<sup>1</sup> (AX R). The credit counselor considers the matter resolved from a credit standpoint. (AX S). It does not appear on the August 29, 2007 credit report. (GX 2). He was previously willing to pay about \$7,000 to the creditor (the amount he believes he owed), but was unable to negotiate a resolution with the creditor. (Tr. 52-53; 72).

SOR ¶ 1.d. Applicant paid the \$408 telephone bill on January 1, 2006. (AX D; AX P at 19).

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<sup>1</sup>AX R lists a debt amount owed for 2001 and a debt amount for "September 19, 2001." Obviously, 2001 is a typographical error and should be "2007" based on Counsel's inquiry.

SOR ¶ 1.d. Applicant paid the cell phone bill for \$110 on November 5, 2005. (*Id.*; Tr. 37).

During his meetings with the credit counselor, Applicant learned that the creditors in SOR ¶¶ 1.a and 1.c could no longer legally enforce the outstanding debts and that it was his option to pay the debts. (Tr. 64). Up to the time of the hearing, he did not want to repay the loans because of the fees and charges attached to the underlying debt, however, while testifying he acknowledged that he is willing to repay a fair amount. (Tr. 50).

Applicant earns approximately \$65,000 annually. (Tr. 38). His monthly expenses are about \$3,600, leaving sufficient monies to cover his taxes and other incidentals. (AX T). A September 7, 2007 credit report notes that Applicant's last missed payment occurred four years ago and related to one account. (AX O at 3). The report indicates that he has kept his non-mortgage installment loans low, or below the recommended \$5,000 average. (*Id.*). "According to his most recent credit report, [Applicant] has no account that reflects an outstanding balance." (AX S)

Throughout his deployment with the Armed Forces through his employer, Applicant received numerous awards and strong recommendations. After training troops for the U.S. Army from December 2003 to February 2004, he received a Certificate of Appreciation from the Director of Operations. (AX F.) According to an evaluation written by a Colonel, Applicant is a dedicated interpreter, who "led several high level meetings and received praise from all participants" during a deployment. (AX M). On August 5, 2005, a Special Agent for the Department of Air Force wrote a letter of recommendation that referenced his deployment from November 2004 through March 2005. In it, he referred to Applicant as "reliable, loyal and a leader. I cannot say enough about [Applicant] and his contribution to my better understanding the Muslim culture and surviving 6 months in a combat zone." (AX J). A gunnery sergeant with the Army wrote that from April 2006 until October 2006, Applicant "distinguished himself both personally and professionally in all matters." (AX I). One of the team leaders of another operation's group praised Applicant's outstanding support as an interpreter from December 2006 to March 2007. (AX K).

## POLICIES

"[N]o 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 . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants 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). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

In an evaluation of an applicant's suitability for a security clearance, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility for Access to Classified Information" (Guidelines). These revised Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

In addition to evaluating those disqualifying and mitigating conditions under each guideline, the adjudicative process requires a thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is known as the "whole person" concept. Guideline ¶ 2(c). Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 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 voluntariness of participation; (6) the presence or absence of rehabilitation and other 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."

## CONCLUSIONS

Upon consideration of all facts in evidence and application of the appropriate adjudicative factors and legal standards, I conclude the following with respect to the allegations set forth in the SOR:

### Guideline F - Financial Considerations

Guideline ¶ 18 articulates the Government's concern regarding financial problems. "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."

Two Financial Considerations' Disqualifying Conditions (FC DC) could raise a security concern and be disqualifying in this case: "inability or unwillingness to satisfy debts," and "a history of not meeting financial obligations." Guidelines 19(a) and (c). Based on credit reports and Applicant's acknowledgment of the underlying debts listed in the SOR, he was unable to manage his debts from approximately 2001 until recently. After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to mitigate or rebut the allegations.

Four Financial Considerations' Mitigating Conditions (FC MC) under Guideline ¶ 20 are potentially applicable:

(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;

(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.

Based on my evaluation of the record evidence, I conclude Guideline ¶ 20(b) applies. The two large delinquent debts arose while Applicant was unemployed for 15 months, a factor beyond his control. He relinquished his automobile during that time because he could not meet the payments and attempted to resolve that debt along with the furniture debt after he became employed in February 2002. Those actions provide evidence of responsible behavior under the circumstances. Guideline ¶ 20(c) applies because Applicant obtained credit counseling in late March 2005, which continues to the present. According to the credit counselor, all of the debts are resolved and his latest credit report does not reflect outstanding balances. There is also evidence to support the establishment of Guideline ¶ 20(d) because he paid the two small debts in 2005-2006, and disputed the larger two immediately after meeting with his credit counselor. Both actions demonstrate a good-faith effort to pay or resolve his debts and support the application of Guidelines ¶ 20(d) and (e).

#### Whole Person Analysis

In addition to the enumerated disqualifying and mitigating conditions, I considered the totality of the evidence in view of the “whole person” concept, including Applicant’s age, the fact that he has held an interim security clearance for almost three years, while working in Iraq for the U.S. Armed Forces where he received very high recommendations for his work. I took into account the fact that he exhibited good judgment when he sought credit counseling after an interview with a government investigator about his financial problems, as well as his candid explanations for not paying two debts because of the high interest charges and inability to negotiate a settlement. I also considered the law which does not require one to have paid-off every debt in full nor contemplates that this Department should become a collection agency for two disputed claims. Given his current awareness of the impact that his financial situation has on his employment, and his current income and budget, along with his credit counselor’s assistance, I believe he will continue to monitor and resolve his obligations. At this time I find that he does not pose a security risk and the allegations under Paragraph 1 of the SOR are concluded for him. Accordingly, Guideline F is found in his favor.

### **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 as follows:

Paragraph1: Guideline F (Financial Considerations)

FOR APPLICANT

Subparagraphs 1.a , 1.c, 1.d and 1.e:

For Applicant

**DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Shari Dam  
Administrative Judge