



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



In the matter of: )  
)  
) ISCR Case No. 06-22295  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel  
For Applicant: David P. Price, Esquire

December 23, 2008

---

**Decision**

---

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant mitigated the Government’s security concerns under Guideline F, Financial Considerations, Guideline K, Handling Protected Information, and Guideline E, Personal Conduct. His eligibility for a security clearance is granted.

Applicant signed his Security Clearance Application (SF-86) on August 20, 2004. On that date, he also signed a release, which he then countersigned on June 29, 2006. On November 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. 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.

On December 29, 2007, Applicant answered the SOR in writing. He elected to have a hearing before an administrative judge. DOHA served Applicant with an undated and amended SOR, which, in addition to the previously alleged Guideline F security concerns, also contained one allegation of disqualifying conduct under Guideline K, Handling Protected Information, and one allegation under Guideline E, Personal Conduct. Applicant answered the amended SOR on June 22, 2008 and July 30, 2008. The case was assigned to me on September 16, 2008. I set a hearing for October 6, 2008, which was continued, for good cause shown, at the request of Applicant's counsel. I convened a hearing on December 3, 2008 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 nine exhibits, which were marked Ex. 1 through 9 and admitted to the record without objection. Applicant testified on his own behalf and called one witness. He introduced 62 exhibits, which were identified and marked as follows: Ex. A (Answer to SOR); Ex. B (Answer to SOR); Ex. C (Answer to SOR) Ex. D (Answer to SOR); Ex. E (Answer to SOR); Ex. A (Answer to Amended SOR); Ex. B (Answer to Amended SOR); Ex. C (Answer to Amended SOR); Ex. A, 1 through 37; Ex. B, 1 and 2; Ex. C, 1 through 10, Ex. D, 1 and 2; and Ex. E, 1 through 3. Applicant's exhibits were admitted to the record without objection.

At the conclusion of the hearing, I left the record open until close of business on December 15, 2008, so that Applicant could provide additional information for the record. Applicant timely filed six additional exhibits. Department Counsel did not object to Applicant's post-hearing submissions. I marked the post-hearing submissions as Ex. F through K, and they were admitted to the record. DOHA received the transcript (Tr.) of the hearing on December 11, 2008.

### **Findings of Fact**

The amended SOR contains 13 allegations of disqualifying conduct under AG F, Financial Considerations, one allegation under AG K, Handling Protected Information, and one allegation under AG E, Personal Conduct. Applicant admitted three allegations under AG F (¶¶ 1.e, 1.g, and 1.m). He denied the remaining AG F allegations (¶¶ 1.a, 1.b, 1.c, 1.d, 1.f, 1.h, 1.i, 1.j, 1.k, and 1.l). He admitted the AG K allegation (¶ 2.a) and the AG E allegation (¶ 3.a). Applicant's admissions are admitted as findings of fact. (Answer to SOR; Answer to Amended SOR.)

Applicant is 49 years old and a college graduate. He has been married to his wife for 24 years. In 1984, the same year he and his wife were married, Applicant enlisted in the military. He served in the U.S. military until 2004, when he retired honorably. Applicant has held a security clearance for more than 20 years. (Ex. 1; Tr. 83, 91-93, 128.)

Applicant and his wife are the parents of two children, ages 20 and 16. Applicant's second child, a son, was born prematurely and has experienced

developmental delays and difficulties. About one year after the birth of their son in 1992, Applicant's wife gave birth to an infant daughter, who was stillborn. (Ex. 1; Tr. 48-51, 65-66.)

During his Navy career, Applicant served as a radioman. When he was deployed, his wife was responsible for paying bills and managing the family's finances. Applicant's son had poor health as a young child, requiring his wife's full-time attention. During this time, she was unable to carry out full-time work outside the home. (Tr. 59-60, 92.)

In 2001, Applicant was stationed in a Middle Eastern country, where he served until 2003. His family was scheduled to accompany him to this duty station. Applicant acquired a rental property for himself and his family. However, Applicant's son was not medically screened to reside abroad because of his health issues. As a result, Applicant's wife and children remained in the United States while he was stationed overseas, and Applicant maintained two households for a period of time. (Tr. 57-59, 68.)

Applicant's wife sometimes had difficulty managing the family's finances. Sometimes, she fell behind in paying debts. When Applicant and his wife sought financial counseling, a financial counselor advised them to use their resources to pay current debts because old debts, if unpaid, would eventually fall off their credit report and would no longer be a cause for concern. They followed this advice. (Tr. 60-61, 127-128.)

Since his retirement from the Navy in 2004, Applicant has been employed by a federal contractor. His wife has also worked full time since 2004. Their combined net monthly incomes, including Applicant's military retirement pay, total \$7,747. Their fixed monthly expenses total \$4,389. Their monthly net remainder totals \$3,253. (Tr. 74; 154-158; Ex. H; Ex. I; Ex. J.)

In his current civilian employment, Applicant works in secure guarded building. He works in a secure office and must present a badge to enter the office. He is also cleared to enter and work in other secured areas and must use a special code to access his assigned secure computer, which has a classified removable hard drive. He is required to remove the hard drive at the end of the work day for storage in a secure area. Each day, when the office is closed for the night, the last person to leave the premises is charged with preparing a checklist certifying that all classified materials are appropriately secured. (Tr. 129-132.)

In March 2008, when Applicant left his office for the day, he did not remove his classified hard drive from his computer and secure it as required. The individual charged with the final security check of the office did not notice that Applicant's classified hard drive had not been removed and stored appropriately. It was not until the next day that it was discovered that Applicant's classified hard drive had not been secured according to office policies. (Tr. 132-135.)

Applicant's failure to properly secure the classified hard drive was reported to responsible authorities, and he was suspended for one week without pay. This was Applicant's first security infraction. The policy of Applicant's employer policies was to issue a letter of warning for first-time security infractions and to counsel the employee. After an internal investigation, it was determined that "the likelihood of a compromise of National Security Information was not a threat." (Tr. 135-136; Ex. 9; Ex. D-1; Ex. D-2.)

The amended SOR alleged under Guideline K that Applicant's failure to secure the classified hard drive violated paragraphs 5-100, 5-300, 5-302 and/or 5-303 of DoD 5220.22M, National Industrial Security Program Operating Manual, February 28, 2006 ("NISPOM"). The amended SOR also alleged that Applicant's failure to secure the classified hard drive also raised security concerns about his reliability, trustworthiness, and willingness to comply with rules and regulations under Guideline E. (Amended SOR ¶ 2.a; Amended SOR ¶ 3.a.)

The amended SOR also alleged Applicant was responsible for 13 financial delinquencies. At his hearing and in post-hearing submissions, Applicant provided documentation to corroborate his statements that he had satisfied the debts alleged at amended SOR ¶¶ 1.a, 1.c, 1.d, and 1.j, and 1.l. (Tr. 113-117, 122-124 144-145, Amended SOR Ex. A; Ex. C-5; Ex. C-6, Ex.3; Ex. G; Ex. F-2; Ex. F-8.)

Applicant provided documentation to corroborate his statements that he was meeting payment plans for debts alleged at amended SOR ¶¶ 1.e, 1.g, 1.h, and 1.m. (Tr. 118-121, 125-126, 147-152; Ex. C-7; Ex. F-2; Ex. C-8, C-9.)

Applicant also provided documentation showing he had written to the three national credit bureaus and formally disputed the debts alleged at amended SOR ¶¶ 1.b and 1.f. In his letter to the credit bureaus, he also requested their assistance in locating the creditors identified at amended SOR ¶¶ 1.i and 1.k so that he could contact them to determine the amount of his indebtedness. Applicant expressed a willingness to fully satisfy all of his debts. (Tr. 114-115, 119-122, 124-127, 145-146, 150-151; Ex. F at 1-2.)

Several of Applicant's co-workers provided letters of character reference on his behalf. They praised him as diligent, responsible, and a hard worker. They identified him as productive, dedicated to the mission of his office, and the "go-to-person" sought out by co-workers and customers for his expertise. (Ex. E-1; Ex. E-2; Ex. E-3.)

## **Policies**

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines 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(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. 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This 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. 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 admitted a history of financial difficulties that spanned a period of several years when Applicant was in the military and stationed unaccompanied overseas. Applicant and his wife have been steadily employed since he retired from the military in 2004. Their annual income, including his military pension, is approximately \$93,000.

Applicant provided documentation to corroborate that he had paid, settled, or established active payment plans for nine of the debts alleged in the amended SOR. He also provided documentation to show he had written to the three national credit bureaus to dispute the legitimacy of two debts alleged on the amended SOR and to request assistance in identifying two other creditors so that he could contact them regarding payment.

Applicant and his wife sought financial counseling. Unfortunately, the financial counselors advised them to ignore their old debt, advice which caused their financial delinquencies to remain a security concern. At his hearing, Applicant acknowledged that this had been bad advice. He admitted his financial delinquencies, and it was clear that he understood his financial problems and had taken active steps to resolve them. I conclude that all of the Financial Consideration mitigating conditions apply to the facts of Applicant's case.

### **Guideline K, Handling Protected Information**

AG ¶33 describes the Guideline K security concern as follows: "Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information. . . ."

Applicant's failure to remove his classified hard drive from his computer and to secure it properly raises surety concerns under AG ¶¶ 34 (b) and 34 (g).<sup>1</sup>

One Guideline K mitigating condition might be applicable to the facts of Applicant's case. AG ¶ 35(a) reads as follows: "so much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."

Applicant's security infraction occurred in March 2008, and it is therefore recent. However, the record reflects that prior to Applicant's action in March 2008, he had held a security clearance for over 20 years without incident. Applicant's co-workers noted he was careful and diligent. His action did not result in the compromise of classified information. It was a one-time event and, when viewed in light of Applicant's reputation for care and diligence, is unlikely to recur. Accordingly, I conclude that AG ¶ 35(a) applies to the facts of Applicant's case.

### **Personal Conduct**

The amended SOR concluded that Appellant's personal conduct related to his failure to properly secure his classified hard drive at the end of the work day raised doubts about his judgment, reliability, and ability to comply with laws, rules, and regulations. Under the Personal Conduct guideline "[c]onduct 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." AG ¶15.

---

<sup>1</sup> AG ¶ 34(b) reads: "collecting or storing classified or other protected information at home or in any other unauthorized location." AG ¶ 34(g) reads: "any failure to comply with rules for the protection of classified or other sensitive information."

I have considered all of the Personal Conduct disqualifying conditions. Appellant was entrusted with a security clearance, which his employer relied upon in employing him. He was responsible for following his employer's and the NISPOM's policies for protecting classified information. I conclude that his failure to properly secure his classified hard drive raises a security concern under AG ¶ 15.

Appellant's disqualifying personal conduct might be mitigated if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." AG ¶17(c).

Applicant's action in failing to properly secure his classified hard drive was not minor, and it was a recent act. However, it was his first and only security infraction in over 20 years of holding a security clearance. An investigation concluded that no compromise of national security information had occurred as a result of his infraction. He had a reputation in his office among his co-workers as diligent and responsible. It does not appear that this behavior is likely to recur. Accordingly, I conclude that AG ¶ 17(c) applies to the facts of Appellant's case.

### **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) 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 49 years. His financial problems began when he was a younger man serving in the military and frequently deployed. In his absence, his wife was responsible for handling the family's finances. She sometimes found it difficult to timely pay their creditors. Since 2004, both Applicant and his wife are employed full-time. Their annual family income is



over \$90,000 a year, and there appear to be no impediments to prevent them from timely meeting all of their financial obligations.

Applicant has shown good faith in contacting his creditors and paying or settling his delinquent accounts. He has contacted the three national credit bureaus to dispute two accounts and to obtain additional information about two others. He is currently living within his means and paying attention to his financial obligations.

I observed Applicant carefully at his security clearance hearing. I found him to be a serious and responsible person. I believe it is highly unlikely that in the future he will fail to carry out any of the responsibilities of a person entrusted with a security clearance and the protection of classified information. I conclude that he is not a security risk at this time.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's judgment and eligibility and suitability for a security clearance, and I conclude Applicant mitigated the security concerns arising under Guideline F, Guideline K, and Guideline E.

### **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:	FOR APPLICANT
Subparagraphs 1.a. through 1.m:	For Applicant
Paragraph 2, Guideline K:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Joan Caton Anthony  
Administrative Judge