



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



In the matter of:

ISCR Case No. 07-03137

Applicant for Security Clearance

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: *Pro Se*

August 17, 2009

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 answered the SOR on December 24, 2008, and requested a hearing before an administrative judge. The case was assigned to me on May 13, 2009. DOHA issued a notice of hearing on June 9, 2009, scheduling the hearing for July 6, 2009. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through

11, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through E, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted four pages of documents, which were marked AE F through I, and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on July 15, 2009.

### **Findings of Fact**

Applicant is a 43-year-old employee of a defense contractor. He has worked for his current employer since 1998. He served in the U.S. Air Force from 1986 to 1996, and was honorably discharged as a sergeant (E-4). He joined the Air National Guard and is currently a technical sergeant (E-6). He attended college for a period but did not obtain a degree. He was married from 1990 until his divorce in 2004. He has a 23-year-old child and 18-year-old twin children.<sup>1</sup>

Applicant started having financial problems after he was discharged from the Air Force. His civilian job did not pay as much as the military. He attended college for a period and his income was further reduced while he was in school. His separation and divorce also had an adverse impact on his finances. Applicant's industrial security clearance was revoked in 2003, after he did not adequately respond to DOHA interrogatories about his finances. Applicant may have been confused and believed that he was not required to respond because he had a clearance through the Air Force. He responded to DOHA interrogatories in November 2005, and requested reinstatement of his industrial security clearance. He reapplied for his industrial security clearance in November 2006.<sup>2</sup>

The SOR alleges three delinquent debts totaling about \$7,243. In his answer to the SOR, Applicant admitted to all the debts alleged in the SOR. Specific debts are addressed below.

Applicant attended college from September 2001 through November 2001. He was activated in December 2001, following the September 11, 2001 terrorist attacks. He stopped attending the university. SOR ¶ 1.a alleges \$6,031 owed to the university for his tuition from 2001. Applicant hoped to have the tuition paid through his GI Bill, but he did not apply for the benefits before he left school. He paid \$500 to the attorney handling the debt on July 8, 2009, and has a payment plan to pay \$100 per month until the debt is paid.<sup>3</sup>

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<sup>1</sup> Tr. at 19-20, 23, 37-38; GE 1-5.

<sup>2</sup> Tr. at 20-24; GE 1-5.

<sup>3</sup> Tr. at 20-22, 28-31, 39-42; Applicant's response to SOR; GE 1, 5; AE G.

Applicant settled in full the delinquent debt of \$180 owed to a telephone services company, as alleged in SOR ¶ 1.b, with a payment of \$130 on March 10, 2009.<sup>4</sup>

SOR ¶ 1.c alleges a delinquent debt of \$1,032 owed to a bank. Applicant paid or settled this debt in full with a payment of \$1,100 on March 4, 2009.<sup>5</sup>

Applicant has not received credit counseling. He does not have an excess of disposable income, but with discipline he will be able to pay the monthly payments on his university debt, and remain financially solvent.<sup>6</sup>

Applicant has been very active in the Air National Guard. He has been activated and deployed on several occasions. He has served in Iraq and in other overseas locations. Letters on his behalf from his civilian employer and military personnel praise his integrity, loyalty, intensity, passion, patriotism, dedication, leadership, and professionalism. He is recommended for a security clearance.<sup>7</sup>

### **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 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, administrative judges apply the 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.

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<sup>4</sup> Tr. at 22, 25; Applicant's response to SOR; AE H, I.

<sup>5</sup> Tr. at 22, 25; Applicant's response to SOR; AE B.

<sup>6</sup> Tr. at 31-34, 38.

<sup>7</sup> Tr. at 21, 23, 34-35; GE 4, 5; AE A, C-E.

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 the 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 adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not yet completely resolved the largest debt alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable. Applicant's financial problems started after he left active duty in 1996. His civilian salary was lower than his military pay. He attended college for a period and earned even less. He had to leave college after he was activated in December 2001, leaving him with a large tuition bill. His finances were further damaged by his separation and divorce. These conditions were not completely within his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. The above events all occurred some time ago and Applicant did not begin to address his delinquent debts until March 2009. He only recently began to truly act responsibly about his finances. AG ¶ 20(b) is minimally applicable.

Applicant has paid two of his debts and initiated a payment plan on the third. I find that he has made a good-faith effort to pay his delinquent debts. AG ¶ 20(d) is applicable. He has not received financial counseling, but there are clear indications that the problem is being resolved and is under control. AG ¶ 20(c) is partially applicable.

### **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 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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. I considered Applicant's honorable service in the Air Force and the Air National Guard. He has risked life and limb and deployed on several occasions. He has not completely resolved all his delinquent debts, but he credibly testified that he plans to address all his delinquent debt. The Appeal Board has noted that an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant must demonstrate that he has "established a plan to resolve his financial problems and taken significant actions to implement that plan."<sup>8</sup> I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

### **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
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Subparagraphs 1.a-1.c:	For Applicant
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<sup>8</sup> ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).

## **Conclusion**

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge