



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 07-03665

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

January 13, 2009

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 7, 2005 (Government Exhibit 1). On April 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on May 6, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on June 9, 2008. I received the case assignment on June 16, 2008. DOHA issued a notice of hearing on July 10, 2008, and I convened the hearing as scheduled on August 13, 2008. The Government offered Government Exhibits 1 through 7, which were

received without objection. Applicant testified on his own behalf, and requested that the record stay open for presentation of additional information. The Applicant submitted Applicant's Exhibit A, which was received without objection. DOHA received the transcript of the hearing on August 20, 2008. The record closed on August 27, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The Applicant is 48, retired from the Armed Forces, and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

### **Guideline F, Financial Considerations**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admits all of the allegations in this paragraph of the SOR.

The Applicant submits that the majority of his financial problems began when his wife left her job with the United States Postal Service in 2000. She has not been employed since that time. (Transcript at 27-28.) However, the Applicant later testified that his financial problems actually began about 2004. (Transcript at 29-30.)

The Applicant signed up with a debt consolidation company in January 2008. (Government Exhibit 2 at 5.) He testified that he has a direct deposit to this company of \$109.00 a month. They are supposed to negotiate payment arrangements with three of his creditors. He had no information as to whether this company has made any payments to his creditors and, if so, how much has been paid. The Applicant further stated that this company indicated his debts will be paid off within three years. (Transcript at 30-31, 41-42.) As will be further discussed, below, he is paying the creditor in paragraph 1.b. separately.

During his testimony, the Applicant was often vague about the state of his financial affairs. He explained that his wife handled the finances, as she had when he was in the Service. (Transcript at 46-47.) At one point he stated, "I should keep an eye on my financial business." (Transcript at 42.)

1.a. The Applicant admits that he is indebted to Cach LLC as the result of a judgment entered against him in the amount of \$3,847.00. (Government Exhibit 7 at 1.) The Applicant has made no payments on this debt, but has turned this debt over to his credit consolidation company. (Transcript at 25, 37-38.)

1.b. The Applicant admits that he is indebted to UNLV/Citi in the amount of \$846.00. The Applicant has been making payments on this account himself of \$75.00 a

month. As of the day of the hearing, this debt had been reduced to \$171.00. (Government Exhibit 6 at 1; Government Exhibit 7 at 2; Transcript at 38-41.)

1.c. The Applicant admits that he is indebted to Citi in the amount of \$4,556.00. The Applicant has made no payments on this debt, but has turned this debt over to his credit consolidation company. (Transcript at 27.)

1.d. The Applicant admits that he is indebted to Beneficial/HFC in the amount of \$4,527.00. The Applicant has made no payments on this debt, but has turned this debt over to his credit consolidation company. (Transcript at 29.)

## **Mitigation**

The Applicant submitted Applicant's Exhibit A, containing his DD 214, two letters of achievement from his employer, and his performance evaluations from 2002 through 2008. They show him to be a highly respected employee, who is consistently rated as "Outstanding" in his work.

## **Policies**

Security clearance decisions are not made in a vacuum. 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(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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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. The Applicant, by his own admission, has over \$13,000.00 in past due debts, all of which have been due and owing for several years. 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 difficulties arose primarily between about 2000 and 2004. However, it took him until 2008 to begin to pay off any of the past due indebtedness. In addition, the evidence is meager as to how much he has paid. It is the Applicant’s burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment . . .), and the individual acted responsibly under the circumstances.” The Applicant’s wife left her job in 2000 and has not worked since. With the available record, I cannot find that this act is sufficient to mitigate his long-term failure to pay his debts. I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

The Applicant has barely initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$13,000.00 in debt, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

### **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 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. The Applicant is a respected employee who is under financial strain, and has been for several years. He has not made a sufficient showing that his debt situation is under control. Under AG ¶ 2(a)(3), the Applicant’s conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the

present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8)), or that the likelihood of recurrence is close to nil (AG ¶ 2(a)9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial considerations at this time. If he continues to pay down his debts, and is able to document these payments, he may be eligible for a clearance in the future. He is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **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 THE APPLICANT

Subparagraphs 1.a through 1.d.:

Against the 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.

WILFORD H. ROSS  
Administrative Judge