



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-04491
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

May 27, 2008

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF-86), on March 13, 2006 (Government Exhibit 1). On September 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 filed an Answer to the SOR on October 9, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 15, 2008. I received the case assignment on January 25, 2008. DOHA issued a notice of hearing on February 6, 2008, and I convened the hearing as scheduled on February 26, 2008. The government offered Government Exhibits 1

through 8, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through L, without objection. DOHA received the transcript of the hearing on March 6, 2008. The record closed on March 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The Applicant is 56 and married. He is employed by a defense contractor as an aircraft mechanic and seeks to retain a security clearance previously granted in connection with his employment.

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

Subparagraph 1.a. The Applicant denied this allegation. This alleged past due debt with Bank of America is shown on several of the Government's credit reports under two different account numbers. (Government Exhibit 2 at 2 and Government Exhibit 3 at 2.) The Applicant provided a letter from the creditor referring to both account numbers and stating, "The above referenced obligation with Bank of America was settled in full and closed." (Applicant's Exhibit A.)

Subparagraph 1.b. The Applicant denied this allegation. The Applicant has consistently denied that he has ever had a past due account with Citi, or that he owes any money to this creditor, or their collection agency. The record shows that the Applicant has attempted to resolve this situation since 2006. (Government Exhibits 2 at 4, 5 at 3, 6 at 3; Applicant's Exhibits C, E and H; Transcript at 64-72.) Applicant's Exhibit H at page 1 is a letter from one of the collection agencies on this account. This letter is dated August 10, 2007, and states, "Information provided by you regarding this account has been forwarded to the Customer Service Department for Research." The Applicant also submitted three different credit reports, each dated June 18, 2007. None of these credit reports shows the debt to Citi or any of its successors. (Applicant's Exhibits J, K and L.)

### **Mitigation**

The Applicant's credit history shows that, in the last few years, he has been timely in his payments to the vast majority of his creditors. His most recent credit report, Government Exhibit 6, shows over 30 accounts and, with the exception of the two accounts in the SOR, all are timely or have been paid and closed. The Applicant testified that he has refinanced his house twice in the past several years and used the money to pay off most of his debts. Many of these debts were accrued during a time when he had employment difficulties. (Transcript at 32-35, 38-40.) He usually pays more than the minimum payment due to his creditors on a monthly basis. The Applicant further stated that he has more than sufficient funds to pay the creditor in Subparagraph 1.b., but he does not believe the debt to be his. (Transcript at 72-94.)

## 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. Despite his denials, there is some documentary evidence showing that he may owe the debts in subparagraphs 1.a. and 1.b. 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(b), 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 was laid off several times between 2000 and 2003. He refinanced his house in order to pay his credit card debt. The evidence raises this potentially mitigating condition.

Evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is also mitigating under ¶ 20(d). The Applicant successfully showed that he does not owe Bank of America any money. With regards to Citi and its collection agencies, he has consistently denied owing them money, and thoroughly documented his disputes about that debt. I conclude this potentially mitigating condition applies.

Finally, ¶ 20(e) states that it may be mitigating where “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.” As set forth at length above, the Applicant has a legitimate dispute with both creditors. He has thoroughly documented his efforts to resolve these debts, and has successfully resolved one of them. This mitigating condition clearly applies to the facts of this 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) 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 has a good credit history, with the exception of the debts of concern here. He has legitimate disputes with these creditors, and has behaved reasonably and appropriately in trying to resolve them. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

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 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:	FOR THE APPLICANT
Subparagraphs 1.a:	For the Applicant
Subparagraphs 1.b:	For the Applicant

## **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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WILFORD H. ROSS  
Administrative Judge