



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-08072

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

April 22, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant's former wife incurred substantial delinquent joint debt during their separation preceding their 2003 divorce. Applicant has been unable to repay all of these debts. He has not incurred any additional delinquent debt. He and his current wife paid off as much as they could, and have filed for Chapter 7 bankruptcy relief to discharge the balance. Based upon thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his Questionnaire for Sensitive Positions (SF 86), on October 30, 2006, while he was on active duty in the Navy. He transferred to the Fleet Reserve and began drawing retirement pay on May 1, 2007. While on terminal leave, he began working for his current employer on a defense contract. On September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F. 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 9, 2007. He answered the SOR in writing on October 23, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on October 25, 2007. Department Counsel was prepared to proceed on January 18, 2008, and the case was assigned to me on January 25, 2008.

DOHA issued a notice of hearing on February 4, 2008, and I convened the hearing as scheduled on February 21, 2008. The government offered exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibit (AE) A (a bound volume with multiple tabs and exhibits), which was admitted without objection. I granted Applicant's request to keep the record open until March 10, 2008, to submit additional matters. DOHA received the transcript of the hearing (Tr.) on February 29, 2008. While the record remained open, Applicant submitted seven documents via Department Counsel, who forwarded them to me without objection on March 10, 2008. These documents were collectively marked AE B, and the record was closed. On April 15, 2008, I requested Department Counsel to access the JPAS database to determine the accuracy of Applicant's understanding that the Navy had granted him a final Secret clearance in early 2007. Department Counsel provided Applicant and me a copy of Applicant's Navy and contractor "Person Summary" pages on April 16, 2007. I reopened the record and included these documents as Hearing Exhibit (HE) I.

Procedural Issue

As noted above, Applicant believed that the Navy had approved a final Secret clearance for him sometime in early 2007, based on the investigation resulting from his October 2006 SF 86. (See AE A, *Security Clearance History* section at 2; Tr. at 34-37.) If this were true, that determination could be binding on DOHA under Sections 2.4 and 3.3(d) of Executive Order 12968, *Access to Classified Information* (August 2, 1995), especially since all the potentially negative information alleged in the present SOR was derived from that SF 86 and investigation. These sections require reciprocal acceptance of access eligibility determinations, and reapproval of eligible recently retired or otherwise separated U.S. Government employees under most circumstances.

Applicant did not produce documentary evidence that he was granted a final security clearance in 2007, but testified that the security manager at his last command informed him that his final clearance had been approved. He also had no access to Government records on the matter. Department Counsel provided HE I to clarify the situation. These documents show that the Office of Personnel Management (OPM) investigation resulting from Applicant's October 2006 SF 86 was opened on November 27, 2006, and closed, pending adjudication, on May 16, 2007. They also show, consistent with his DD 214 discharge certificate (GE 3 at 11.), that he was separated

from active duty on April 30, 2007. His most recent clearance eligibility determination was made on June 15, 1992, based on an investigation completed on March 3, 1989. (HE I at 2.) Accordingly, Applicant is not eligible for access to classified information based on the aforementioned reciprocity provisions of the Executive Order.

Findings of Fact

In his Answer to the SOR, dated October 23, 2007, Applicant denied being indebted to the four creditors listed in SOR ¶¶ 1.a through 1.d, with explanations. During the hearing, however, he admitted that he was jointly liable for each of the debts, and had not paid any of them. (Tr. at 66 to 74.) In the Answer, he admitted owing his mother \$1,000 from an informal loan in the original amount of \$2,000, and that his retirement pay is being garnished for child support payments to his ex-wife, as alleged in SOR ¶¶ 1.e and 1.f. Applicant's admissions and explanations are incorporated in the following findings of fact.

Applicant is a 42-year-old ordnance mechanic who performed similar work on active duty in the Navy for 22 years. He and his wife have a 3-year-old child. He has three older children who live with his former wife. He is a high school graduate. He successfully held a Secret security clearance throughout most of his naval service, most recently based on an investigation completed on March 3, 1989.

Applicant and his former wife underwent a bitter separation from August 2001 until their divorce was final in May 2003. During that period of time, Applicant incurred the expense of living separately, while also providing his wife and children \$1,500 per month in support while they occupied Government housing. Also during that period, his wife incurred over \$17,000 in credit card debt on two accounts (SOR ¶¶ 1.c and 1.d) for which she was the primary card holder and Applicant was jointly liable as an authorized user. Applicant's 21 monthly support payments during that time were \$300 more than otherwise required with the understanding that his wife would keep their bill payments current using those funds. Despite his contributions, and her substantial income as a nurse, she did not do so. These accounts became delinquent in November 2001 and February 2002, respectively, with the total amount due having grown to the SOR-alleged \$21,154, by the time they were charged-off. (GE 2 at 10, 8.)

The delinquent debt alleged in SOR ¶ 1.a resulted from his wife's purchase of a computer on credit in March 2001. She kept the computer, but stopped making payments on the loan in March 2002, with an outstanding balance of \$1,053. All record credit bureau reports (CBRs) reflect a zero balance due on this as a charged off account. Under their divorce decree, she retained possession of the computer and agreed to pay the remaining loan balance, together with half of their other joint debt, but she never did. Instead, she declared bankruptcy and was discharged under Chapter 7, leaving Applicant solely responsible for all their joint debt. The \$844 debt alleged in SOR ¶ 1.b was for medical laboratory work that she requested be done in December 2002 on one of their children's blood, without Applicant's knowledge, despite the fact that the procedure was not covered by his military medical insurance. This debt was

disputed by Applicant, and does not appear on his recent CBRs (GE 4 at 33; GE 5; GE 6.) Applicant did resolve one other joint \$7,985 credit card debt in October 2004. (AE A at Exhibit D.) No other delinquent accounts are reflected on Applicant's CBRs.

Applicant and his wife incurred significant expenses in connection with moving overseas on military orders in April 2005, and moving back to the United States as a result of medical problems in August 2006. They incurred further expenses moving from their last Navy duty station to their present location, and to attend several family funerals. Despite these expenses, they have remained current on all their bills. However, they have not been able to pay down the old delinquent debt. Due to the moving and medical expenses for which they were not reimbursed, they borrowed \$2,000 from Applicant's mother and \$1,500 from his wife's step-mother. They repaid the latter loan in full on June 1, 2007. They also repaid half of the loan from his mother on that date. They are repaying the balance, in spite of her willingness to extend the loan, at a rate of \$50 per month. (GE 4 at 6, 45; AE A at Exhibit G; Tr. at 46-47, 74.)

Applicant's former wife filed a petition with DFAS for child support garnishment of his retired pay despite the fact that he was making regular payments to her by direct deposit. Because this resulted in substantial overpayment, the court reduced his monthly obligation to restore the balance. Applicant was advised to, and did, keep the garnishment in effect to provide documentation of the payments. Limitations on garnishment actions result in monthly garnishments in the \$800 range, and he sends a monthly check to her for the difference between the garnished amount and the \$1,000 total that he provides. He was never delinquent in his child support payments.

Applicant and his wife have attended several financial counseling and budget planning sessions, through the Navy Fleet and Family Service Center, the Navy-Marine Corps Relief Society, and in connection with their bankruptcy filing. They have retained an attorney, and filed for Chapter 7 bankruptcy relief on March 3, 2008. (AE A at "Debt Relief Plan of Action" tab; AE B.) They are closely monitoring their expenses to avoid incurring further debt. Applicant's wife has also applied for two cashier positions, and is likely to be hired soon to further supplement their income.

Applicant was advised by Navy officials during his final years in the service that declaring bankruptcy to resolve the delinquent debts arising from his divorce would cause him to lose his security clearance. Accordingly, he did not do so. When he received his SOR, putting his clearance at risk, and could not repay the major debts in question, he again sought legal advice. A Navy legal assistance attorney, after consulting with base security officials, advised Applicant that a bankruptcy would not necessarily preclude eligibility for a clearance. Accordingly, they chose to file the present bankruptcy action to finally resolve those debts in a legal manner.

Applicant provided a substantial number of character references from former military supervisors and colleagues, and family members, all attesting to his responsibility, trustworthiness, and dedication to a lifetime in service of the national defense. He also presented an extensive character reference from a Ph.D. Psychologist

and ethicist, for whom he did substantial work after hours between 2001 and 2007. She concluded her three-page letter explaining her very high opinion of him as follows:

In summary, [Applicant] has shown himself to be one of the most honorable, trustworthy, dedicated men I have had the privilege of knowing. He has consistently demonstrated a strong sense of personal duty and responsibility, of doing what is right and being fair. He shows maturity in how seriously he takes his obligations to himself, those he loves and to his country.

(AE A, "Character References" tab, at 13.) His Navy performance evaluations also reflect steady and strong performance with no disciplinary problems.

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 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Of these nine different disqualifying conditions, the Government asserted that two were raised by Applicant's financial circumstances (Tr. at 123.): "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." I concur that the evidence does not establish any of the other disqualifying conditions.

The evidence shows that Applicant has paid all of his financial obligations in a timely manner except the four debts listed in SOR ¶¶ 1.a through 1.d, and the other formerly delinquent credit card account he resolved in 2004. He and his wife have been and are unable to pay the roughly \$23,000 outstanding on those debts. Security concerns are raised under both AG ¶¶ 19(a) and 19(c), but the concerns are not as significant as would be the case if these debts arose from irresponsible behavior or unwillingness to abide by rules and regulations. Neither the garnishment of his pay nor the loan from his mother create any security concerns, since the former merely replaced part of his otherwise up-to-date support payments, and the latter is being repaid ahead of schedule. Applicant's delinquent debt is not indicative of poor self-control or lack of judgment on his part under the circumstances, in that it was both generated and defaulted on by his former wife, then attributed to him by the creditors.

AG ¶ 20 provides conditions that could mitigate security concerns. Four pertinent conditions are:

- (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's delinquent debts all arose as a result of his joint liability for debts incurred and not paid by his former wife during their marital problems and separation leading to their 2003 divorce. She subsequently filed for bankruptcy, discharging her joint liability for them. He and his current wife were able to resolve one delinquency in 2004, but due to frequent moves and medical problems, have been unable to pay the others.

Applicant's current marriage is strong, and his wife will soon be returning to work after a period of staying home to raise their three-year-old. They have managed to avoid any further delinquent debt, and have carefully budgeted their income with the assistance of several financial counselors to maintain solvency. After being advised, contrary to earlier guidance, that bankruptcy is a lawful method of resolving debt and not *per se* disqualifying for ongoing security clearance purposes, they have filed for Chapter 7 relief of unsecured debt, including the four SOR-listed delinquencies.

This evidence establishes substantial mitigation under AG ¶¶ 20(a), (b), (c) and (d) for the relatively minor security concerns raised by the continuing existence of these debts at the time of the hearing. Combined with his demonstrated integrity and good character, discharging this debt in bankruptcy will eliminate any risk of having to engage in illegal acts to generate funds to meet them. The absence of any such conduct during the six-year existence of the delinquencies is further evidence that Applicant would not succumb to such temptation in any event. Family members and others who know him well uniformly described his good character, responsible conduct, and dedication to honorably serving in the defense and security of the United States, even while doing what he could to address the financial issues listed in the SOR.

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 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. Applicant's conduct of potential concern involves delinquent debts that were incurred largely due to circumstances beyond his control as his former marriage broke apart. He has incurred no new delinquent debt, and lives frugally. The amount of delinquent debt is more than he can repay, but ongoing bankruptcy proceedings will discharge those debts. Applicant is a mature, experienced technician in a good paying job, and his wife is returning to work as well. There is no ongoing potential for pressure, coercion, exploitation or duress since his financial situation is known to his family, his employer, and the Government, and is on track for full resolution. His substantial and responsible steps to resolve the debts and maintain present solvency make continuation or recurrence quite unlikely.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from his failure to satisfy debts and history of not meeting financial obligations. He established his integrity, good character, and ability to protect classified information. "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Overall, the record evidence leaves neither questions nor doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has fully 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 APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge