



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



In the matter of: )  
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----- ) ISCR Case No. 07-08291  
SSN: -----1 )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: Pro Se

April 22, 2008  
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**Decision**  
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LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 19, 2006. On December 19, 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 requested a hearing before an Administrative Judge. I received the case assignment on February 27, 2008. DOHA issued a notice of hearing on March 3, 2008, and I convened the hearing as scheduled on April 3, 2008. The government offered Exhibits (GE) 1 through 4 which were received without objection. Applicant testified, submitted Exhibits (AE) A through G, without objection, and presented the testimony of eleven witnesses. DOHA received the transcript of the hearing (Tr.) On

April 11, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, dated February 11, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-1.l of the SOR, with explanations. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 43-year-old employee of a defense contractor. He served on active duty in the U.S. Air Force from 1983 until 1989. He held a security clearance while he served at a nuclear weapons storage facility in the military and has maintained a security clearance in his civilian career (GE 1).

Applicant's first marriage ended in divorce in 1999 after a long separation. He has one son from that marriage. Applicant and his wife had joint custody of their son. Initially, Applicant was not court ordered to pay child support. However, he voluntarily paid support for his son directly to his ex-wife (Tr. 77). When his son was three years old, he came to live with him for about nine months. The son returned to live with his mother because she decided she could raise her child at that time. Applicant's ex-wife decided that she wanted their son to live with his father when he was five years old. Applicant had his son for five years until he was 10 years old (joint custody with primary residence) (Tr. 78). When his ex-wife remarried, she wanted her son back. She went to court to obtain full custody of the child. Applicant obtained a lawyer and spent a large sum of money on legal fees in a custody battle. During that time period, Applicant sought the advice of a credit counseling service (Tr.150).

After Applicant left the Air Force, he worked in various jobs. He was also supporting his son and his estranged wife. In 1996, he obtained a position with the AmeriCorps program and became interested in technology. He enjoyed the work but made a small salary. He took courses at night to become certified and obtain better employment (Tr. 80).

Applicant began working full time in the field of computers and technology as a junior engineer in 1999. In 2000, Applicant remarried and was earning a high salary (\$100,000). His second wife also worked. They purchased a house and they decided to have children. Due to health reasons, his wife stopped working during the pregnancy. Their first child was born in 2002. Applicant's medical insurance did not cover all the medical bills for his son's medical needs. Applicant became suddenly unemployed in January 2003. This created grave financial difficulties. Applicant started a consulting company in 2003 with two other partners. Unfortunately, the business failed in April 2003. This left him with more delinquent debts (Tr. 85).

Thus, Applicant's financial difficulties worsened in 2003. He was unemployed in 2003 and because his wife's second pregnancy was very difficult and she was on bed rest for the last six months of the pregnancy, he took extra time from work (Tr. 86). In

2004, his second son was born premature with a multitude of medical issues. He was working and had health insurance but the deductible was \$10,000. His wife could not work due to the health problems of their one son. Therefore, Applicant was reduced to one income.

In 2005, Applicant and his wife sold their home. At that time the housing market was booming and he had an opportunity to purchase a larger home for the family. They refinanced the house and had a mortgage rate of 8.5%. Applicant believed he could refinance again in two years at a lower rate. However, his plan to refinance did not occur because he suddenly was unemployed again from January 2007 until March 2007. The bank would not refinance his home at that time. As a result, Applicant fell behind in his home equity line of credit.

In May 2007, Applicant began his current employment as a senior engineer with a contractor. It was a good opportunity and Applicant believes it will be a steady project.

The SOR alleges delinquent debts in the amount of approximately \$14,000. Allegation ¶ 1.a is an account that went into collection in October 2006 in the amount of \$126 for a medical provider. Applicant researched the debt but has not discovered the source. This remains unpaid. Applicant plans to dispute this debt with the credit bureau. His credit report confirms that he has paid other medical providers (GE 2).

Allegation ¶ 1.b is an account that is past due in the amount of \$1,202.<sup>1</sup> This is an amount past due on a home equity line of credit (Portion of the mortgage). Applicant's scheduled monthly payment on this loan is approximately \$670. Applicant made a payment of \$800 in December and January and \$700 in February and March 2008. The bank is working with Applicant. Applicant is paying off two more months at the end of April 2008. At the end of April 2008, he will be two months behind instead of three months behind. The bank has agreed that Applicant will pay a small sum each month toward the later payment. They will divide that over the next 12-month period (Tr. 132).

Allegation ¶ 1.c in the amount of \$2,453 is an account for a computer charged off. Applicant was making monthly payments on the computer. He fell behind in the payments and tried to arrange a settlement with them. He spoke to them in February 2007. He was unemployed at the time. He had agreed to settle the account. He sent them a postdated check for \$1,358. Applicant called the company after he mailed the check and told them not to cash the check because something had come up and he did not have the funds. They cashed the check and then Applicant went to the bank for stop payment. So, he still owes the \$2,453. He does not have any extra money at this time to make a payment (Tr. 136).

Allegation ¶ 1.d in the amount of \$2,842 was in collection for child support arrearage. Applicant explained that his oldest son is 19 years old. This six-month

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<sup>1</sup>This is the amount alleged at the time of the SOR. The amount has increased.

arrearage occurred in January 2007 when he was unemployed. He had never been in arrears prior to that time. This amount is paid (AE A).

Allegation ¶ 1.e on a real estate mortgage is past due \$5,405. This is no longer delinquent. The amount is now refinanced with the new mortgage rate he just received in 2008 (AE E).

Allegation 1.f is an account that is past due in the amount of \$688. Applicant had dead trees removed from the area near his house. He has been paying on the account but making partial payments of \$50 or \$100 in the past few months. The scheduled monthly payment is \$375. He made a \$400 payment in March. He will continue making his scheduled monthly payments. His plan for later is to agree on a different monthly payment plan (Tr. 146).

Allegation 1.g to the state for debt in the amount of \$1,397 resulted from his failed business which dissolved in 2006. Applicant has not pursued this matter yet. He is, however, trying to take care of this on his own without the other two partners in the consulting firm. (GE 3 at 11).

When Applicant was first investigated, other debts were listed. He paid them. When he completed his latest personal financial statement in September 2007, he listed a negative \$47 monthly remainder after expenses (GE 3). Applicant has personal loan with a friend in the amount of approximately \$99,000. His friend loaned him money beginning in 2002 until 2007. Applicant has used that money for various things. He was repaying him \$746 monthly until November 2007. His friend agreed that Applicant could start repaying again when Applicant's wife finished school in June 2008.

Applicant's current monthly net income is \$10,084.31. This includes an additional 15 hours of part time work and his Veteran's Benefit of \$117. His remainder is \$879. Applicant's wife is graduating in June. She will be marketable and hopes to have a job in the medical coding field (Tr. 94). Applicant has calculated a projected income for his wife based on average salary figures for people hired in medical coding. He has detailed his projected net remainder when his wife is employed and how the money will be applied to his accounts (AE G).

Applicant has not received any financial counseling recently. However, he met with a bank manager after researching options to have his house refinanced after the initial offer was declined in 2007 when he lost his job. He received a new rate of 5.12%. This will enable Applicant to save \$900 a month on his mortgage. He also plans to use a credit counseling service again as he did the 1990's.

In the past few months Applicant called his creditors to make arrangements for payments or settlements. He has not officially agreed with each creditor because he wants to make certain that he has the income to commit to the plan. He explained at the hearing, that he felt as though he "broke a contract" in the past when he could not pay the agreed upon amount to a creditor, such as the computer debt.

Applicant presented a detailed financial statement and plan at the hearing (AE F). He listed his expenses and the direction that he needs to go in. His plan is to use the income from his salary and his wife's projected income and prioritize the delinquent bills. He will use the services of a consumer credit counseling company because he cannot afford to hire a financial advisor. He wants to keep current accounts out of collection and money that he has left each month will be applied to the delinquent accounts. He no longer has child support to pay. He also will work at home one day a week and has calculated how much he will save in gas and tolls. Applicant acknowledges that it will take him more than 15 years to repay the personal loan. His goal is to pay the delinquent debts within a short period of time. He has reduced his daily expenses by not going out to eat and socializing.

Applicant's current manager is aware of Applicant's financial difficulties. He recommends him highly and states he is a key player in a critical project for the company. His colleagues describe him as loyal, extremely reliable and with unquestionable personal character. A colleague described Applicant as a mission oriented and capable under stress. He is described as a role model for younger engineers.

### **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, 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<sup>6</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>6</sup> may raise security concerns. Applicant accumulated delinquent debt in the amount of approximately \$14,000. He admits the debts and his inability to pay them. His credit reports confirm the debts. 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.<sup>6</sup> Applicant's

financial worries arose in 2002. He accumulated some delinquent debt due to unemployment, his wife's pregnancy, her unemployment and the medical bills for his son. The Applicant's problems have been ongoing and he has not resolved all his delinquent debt. He volunteered the information about his personal loan. He had been paying on that and since his friend is allowing him to not make payments until his wife returns to work, he is not delinquent on that personal loan. I believe the circumstances that occurred do not raise concerns about his current reliability, trustworthiness, or good judgment. This potentially mitigating condition applies in part.

Under AG & 20(b), it may be mitigating where 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.<sup>6</sup> As noted above, the financial problems arose from his 2003 and 2007 unemployment, his son's medical issues and his wife's inability to work after their two children were born. His youngest child has multiple medical issues. He acted responsibly by finding employment each time he was unemployed. He also tried to refinance his house but the poor economy and his sudden unemployment in 2007 prohibited his plan from working. His consulting venture failed. Now that he has full time employment, he has asked his company for permission to work 15 additional part time hours. I find this potentially mitigating condition is a factor for consideration in this case.

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<sup>6</sup> is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>6</sup> Applicant has not received financial counseling recently. He pursued his plan to refinance his house so that he could lower his mortgage and pay other debts. His wife is finishing a course that will make her marketable for a job. He paid his child support arrearage and took care of the past due mortgage by refinancing it with the new one. He consistently makes small payments on his accounts and has tried to settle one or two. I conclude these potentially mitigating conditions apply in part.

## **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 served in the U.S. Air Force and held a clearance. He has maintained a clearance in his civilian employment. Applicant took responsibility for his oldest son after he and his first wife separated. He did not shirk his duties. He was forced to pay large sums on legal fees in a battle for custody. Applicant worked hard in various positions after he left the military. He developed a career and expertise in the field of technology. He is praised for his professional work and his integrity. Applicant remarried in 2000 and decided to have a family. He could not have predicted the difficulties that his wife would have with her pregnancies. He also had no way of knowing that he would be unemployed after the birth of their first son. Nor that his youngest son would have severe medical problems. The poor economy was also out of his control. Applicant tried to refinance his house to improve his financial condition but could not do so until April 2008. His wife will return to the workplace and Applicant has a plan to pay creditors. His income has risen since last year. He works an additional 15 hours a week to have more money to pay his bills. Applicant acknowledges that some of his business decisions were poor, but he worked with the information that he had at hand. He has met his burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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
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Subparagraph 1.a: - 1.l:	For Applicant
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## **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.

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NOREEN A. LYNCH  
Administrative Judge