



ISCR Case No. 07-08306

November 09, 2009

## Decision

1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense as of September 1, 2006.

Applicant answered the SOR on December 17, 2007, and requested a decision without a hearing. On May 13, 2008, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). On May 14, 2008, DOHA forwarded a copy of the FORM to Applicant through his employer of record at the time. Applicant was instructed to respond within 30 days of receipt. Applicant did not file a response, but there is no indication that he received the FORM. On June 10, 2009, DOHA re-mailed the FORM to Applicant through his present employer without any input from Department Counsel or any effort to update the financial information. Applicant received the FORM on June 17, 2009. No response to the FORM was received by the July 17, 2009, due date. On September 3, 2009, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Given the dated nature of the financial information before me for review and evidence indicating that the debts in the SOR may well have been discharged in bankruptcy, I reopened the record on October 8, 2009, for further submissions by both parties. On October 22, 2009, Applicant timely submitted two documents, which were marked and admitted without objections as exhibits A and B. On October 27, 2009, Department Counsel submitted bankruptcy records that were added to the May 13, 2008, FORM as Items 9 and 10. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 2), eligibility for access to classified information is granted.

### **Findings of Fact**

DOHA alleged under Guideline F, financial considerations, that Applicant owed 16 delinquent debts totaling \$20,863 (SOR 1.a through 1.p)<sup>1</sup> as of November 2007 (Item 1). On December 17, 2007, Applicant admitted the debts, but offered in mitigation that they would be discharged in a "no asset" Chapter 7 bankruptcy (Item 2). After considering the evidence of record, I make the following findings of fact.

Applicant is a 45-year-old employee of a defense contractor. Applicant applied for his security clearance while he was working for a previous employer as a telecom technician (Item 4). His employer has changed at least twice since he initially applied for a security clearance. It is unclear whether his duty station has remained the same, although he has maintained the same residence since April 1990. His current employer is requesting that he be granted a security clearance.

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<sup>1</sup>Department Counsel indicated in the FORM that the 16 debts totaled approximately \$20,780. The debts alleged add up to \$20,863.

Applicant held a succession of blue-collar positions (electrician helper, production worker, forklift operator, CNC operator, telecom technician) from at least January 1996. He was married to his first wife from May 1986 to January 1999, and has a 13-year-old son, who lives with him (Ex. 4).

Applicant's income was insufficient to meet his and his son's expenses from 2001 to 2006 (Ex. A). Medical debts totaling \$209 from 2001 (SOR 1.h-1.j), \$180 from 2002 (SOR 1.a and 1.g), \$671 from 2003 (SOR 1.e and 1.f), \$2,940 from 2004 (SOR 1.c and 1.d), and \$341 from 2005 (SOR 1.b) were charged off and in collection as of May 2006 (Item 8). Debts of \$258 for radiology services incurred before September 2006 (SOR 1.n) and of \$531 for emergency room physicians' services (SOR 1.o) also went unpaid and were referred for collection (Item 10). Applicant lacked medical insurance at the time and could not afford to make payments on the debts, which continued to mount due to collection fees (Ex. A).

He fell behind on some consumer credit accounts as well. A credit card with a credit limit of \$250 was charged off in the amount of \$742 in June 2004 (SOR 1.m). That same month, he opened a credit card account with the lender in SOR 1.p. A delinquent balance of \$4,995 was referred for collection to the assignee in SOR 1.k in June 2005.<sup>2</sup> As of September 2007, the balance had risen to \$7,112. An unsecured debt of \$2,929 was charged off in March 2004 (SOR 1.l).<sup>3</sup>

Applicant contacted his creditors to arrange repayment plans, but the total of the requested monthly payments exceeded his income (Ex. A). He had earned income from employment of \$20,473 in 2005 and \$25,019.02 in 2006 (Item 10). Applicant applied unsuccessfully for a debt consolidation loan of \$10,000 from three different lenders, and family members were unable or willing to lend him the funds needed to address his debts (Ex. A).

One year into his job as a telecom technician with a defense contractor, Applicant executed an e-QIP on August 1, 2006. He indicated that he had been employed by a succession of commercial companies from January 1996 to July 2005, when he started with the defense contractor that was sponsoring his current application for a security clearance. He responded affirmatively to the financial delinquency inquiries concerning whether he had been over 180 days delinquent on any debts in the last 7 years, and whether he was currently over 90 days delinquent on any debts. He listed one debt, a delinquent credit card debt of \$3,500 incurred in June 2004 (SOR 1.k and 1.p duplicate debt).

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<sup>2</sup>Available information indicates that the debt in SOR 1.k is an updated balance of the debt in SOR 1.p and does not represent a separate delinquency. Applicant listed only one account with the original lender on his bankruptcy petition, which was being collected by the assignee in 1.k (Item 10). Applicant's credit report (Item 8) also indicates that the assignee in SOR 1.k was collecting for the lender in SOR 1.p. The collection agency was reporting a delinquent balance of \$7,112 as of September 2007. The original lender was reporting a zero balance on its account, presumably because the debt had been transferred.

<sup>3</sup>DOHA alleged the high credit on the account rather than the past due balance (Item 8).

On August 3, 2007, DOHA asked Applicant to verify payments of his medical debts and of the consumer credit accounts in SOR 1.l and 1.m, and to complete a personal financial statement. In response Applicant submitted an undated Personal Financial Statement on which he estimated that his monthly expenses exceeded his income by about \$70. In lieu of listing his debts, he indicated, "Bankrupt Chapter 7." (Item 5).

On August 29, 2007, the law firm retained to handle a Chapter 7 bankruptcy filing for Applicant notified DOHA of an anticipated filing date within the next 60 days (Item 6). In conjunction with his bankruptcy filing, Applicant completed in-person credit counseling on September 10, 2007. On October 24, 2007, Applicant filed an individual bankruptcy petition under Chapter 7, listing assets of \$5,235 and liabilities of \$23,150, including \$20,055 in unsecured debt and \$1,814 owed his bankruptcy lawyer. Applicant listed as unsecured debt the delinquent accounts alleged in the SOR and three other consumer credit card debts that had been current before he elected to pursue bankruptcy in August 2007 (Items 8, 10). Applicant remarried in 2007, and he listed joint income of \$4,088.60 and expenses of \$4,083 per month. His spouse, who was not a co-debtor in the bankruptcy, had \$15,287.81 in employment income from January to mid-October 2007. Applicant had earned \$25,430.63 over that time frame. Applicant elected to retain his motor vehicle (a 1995 minivan with 175,777 miles) on which he was making \$200 monthly payments. The balance remaining on his car loan was \$1,281 as of October 2007 (Item 10). Applicant was granted a "no asset" Chapter 7 bankruptcy discharge on February 25, 2008 (Items 7, 9), releasing him of any liability for the dischargeable debts listed on his bankruptcy petition, which includes the debts in the SOR.

As of September 18, 2009, Applicant's hourly wage was about \$21.06. His take-home pay for 74 hours was \$1,175. His gross earnings to date for 2009 were \$37,934.64 (Ex. B).

### **Policies**

The U.S. Supreme Court has recognized that the Executive Branch has substantial discretion in regulating access to information pertaining to national security, emphasizing "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 considered 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 overarching adjudicative goal is a fair, impartial and commonsense 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. 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 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. 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 about finances 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.

As of November 2007, Applicant owed about \$5,130 in medical debt in collection and another \$10,783 in delinquent consumer credit balances from 2004/05. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and ¶ 19(c), “a history of not meeting financial obligations,” are implicated.

Concerning potential factors in mitigation, AG ¶ 20(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,” cannot reasonably be applied. Applicant had 15 outstanding delinquent accounts that were incurred in or before 2005 that he had not resolved as of November 2007. Some medical debts were for as little as \$33 and \$50.

AG ¶ 20(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,” applies. Applicant incurred sizeable medical costs when he did not have insurance, including an unexpected hospital bill (SOR 1.c) and emergency room physician services (SOR 1.o). Low wage earnings were also a contributing factor. His gross income for 2005 was \$20,473, barely enough to support himself and his son. He earned \$25,019.02 in 2006, but even with the increase, he clearly did not have the means to address his debt in a reasonably timely manner.

Whether due to poor credit because of collection accounts, his low income, or a combination of these and other factors not evident in the file, Applicant was three times denied in his efforts to obtain a debt consolidation loan. Family members also were not willing to lend him money or to cosign on a loan for him. Before the SOR was issued, Applicant reluctantly filed for Chapter 7 bankruptcy. Given his limited income, it is considered a good faith effort to resolve his debts under AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” even though his creditors were not satisfied in his “no asset” discharge.

Since his creditors are legally barred from pursuing collection of the discharged debts, much of Applicant’s financial pressure has been eliminated. But a discharge does not guarantee financial solvency or the sound judgment that must be demanded of those persons granted access to classified information. In Applicant’s favor, there is no evidence of lavish expenditure. As of his bankruptcy, he was making timely payments on a 1995 model-year minivan with 175,000 miles on it. His credit report of November 2007 (Item 8) shows he had been making his payments on three credit cards with a total balance of \$4,424 until he decided to file for bankruptcy and he included those accounts on his petition. As of mid-September 2009, his gross earnings for the year were \$37,934.64, which is considerably more than he earned in 2007. There is no evidence of any delinquency since his bankruptcy. Resolution of his delinquent debts through a Chapter 7 discharge, when coupled with his improved income situation, satisfies AG ¶ 20(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.”

## **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 conduct

and all the circumstances in light of 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.

The DOHA Appeal Board has addressed a key element in the whole person analysis in financial cases stating, in part, "an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.'" ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). While a bankruptcy discharge is not entitled to the same weight in mitigation as a track record of repayment, Applicant filed reluctantly and only after he had tried to obtain loans needed to make payments. There is no evidence that he has abused the fresh start afforded him through the bankruptcy. The government had an opportunity to update the record in October 2009, and did not raise any new concerns. Based on the information before me, I conclude that it is clearly consistent with the national interest to grant Applicant a security clearance.

### **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
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant

Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant (Duplicate of 1.k)

### **Conclusion**

In light of 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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ELIZABETH M. MATCHINSKI  
Administrative Judge