



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-10092  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 31, 2008

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 16, 2005. On March 6, 2008, 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 May 27, 2008. DOHA issued a notice of hearing on June 12, 2008, and I convened the hearing as scheduled on June 30, 2008. The Government offered Exhibits (GE 1-10), which were received without objection. Applicant testified in his own behalf, and submitted Exhibits (AE A-B), without objection. I left the record open until July 7, 2008 for Applicant to submit additional documentation. He did not submit any

documents. The record closed on July 7, 2008. DOHA received the transcript on July 9, 2008. Based upon a review of the record, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, dated April 7, 2008, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.i, of the SOR. He denied the other allegations in the SOR because the debts were paid or he had no knowledge of them. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 55-year-old. He graduated from high school in 1971. He married in 1984 and has two children from that marriage. His youngest daughter, who is 18 years old, lives with him. He is currently separated. Applicant served in the Navy on active duty for almost 31 years until his retirement in May 2002 (GE1). He had a top secret clearance for his entire career. He also had access granted to sensitive compartmented information (SCI) due to the nature of his work.

After Applicant left the Navy, he worked for six years with a government contractor (Tr. 18). He worked out of the country for the majority of that time. His wife had responsibility for the finances during their marriage. He was last deployed in February 2007 for a period of four months.

In May 2007, Applicant received a phone call from his daughter. She reported that her mother (Applicant's wife) had not been home for two months (Tr. 21). Applicant left his overseas employment and returned home due to the emergency situation. When he returned home, he found unpaid bills and past due notices in plastic bags all over the house. His wife did not use the money that Applicant sent her to pay the bills (GE 2).

When Applicant returned home, he learned that his wife had not paid the mortgage for approximately ten months. He paid the total amount of \$11,172 that was owed. He also paid many smaller bills that he learned about that were not listed on the SOR (Tr. 53).

In June 2007, Applicant found employment as an assistant property administrator. He immediately contacted his creditors and made arrangement to pay his bills. However, on March 4, 2008, he was laid off from that position. He could not continue to pay the delinquent bills. Applicant is limited to local employment because he provides for his daughter and his wife never returned to the home. Thus, Applicant cannot find more lucrative employment deployed overseas as he once did. He is still unemployed (Tr. 26).

Applicant contacted a credit company to help with his financial difficulties. However, he was not pleased with their customer service. He now has a person who is a financial manager to help him discuss an equity loan (Tr. 55). He realizes that without employment, he will most likely be denied a loan.

Applicant responded to DOHA interrogatories in September 2007. He addressed the items listed on the interrogatories. He had not received any bills or letters for some of them. He contacted creditors with the intention of paying them. He paid several medical bills for his wife. He included another list of bills that he paid that were not identified on the SOR. He paid a total of approximately \$3,795 for those medical bills. His plan to pay the smaller bills first and then the larger ones have been disrupted due to his unemployment since March 2008.

Applicant has no knowledge of some of the accounts because his wife opened them without his approval. He intends to pay them even if he is not legally responsible for them.

In April 2008, Applicant and his wife attended divorce mediation. His wife decided upon advice of counsel to pursue the matter in court. The judge ordered Applicant to pay his wife \$1,500 a month for support. Applicant is trying to have the amount modified (AE B).

The SOR alleges eight delinquent debts/ collection accounts, four judgments, and approximately two unpaid medical debts. The total amount of the delinquent debt is approximately \$27,000.

SOR ¶ 1.a is for a collection account in the amount of \$513. He denied this debt because he has no knowledge of this account.

SOR ¶ 1.b is an unpaid medical account for \$211. It is his wife's medical bill (Tr. 36). This is an unpaid portion that Applicant owes after his insurance paid.

SOR ¶ 1.c is another unpaid medical bill for \$166. He believes this is his wife's balance after insurance payment.

SOR ¶ 1.d is for an unpaid pizza in the amount of \$25. He denies this is his.

SOR ¶ 1.e is for a collection account in the amount of \$1,290. Applicant does not have any knowledge about this account.

SOR ¶ 1.f is for a charged off account in the amount of \$12,158. Applicant denies this bill. He believes that his wife took out a loan or charged the amount on a credit card. He has no knowledge of the account.

SOR ¶ 1.g is for a charged off account in the amount of \$1,381. He has no knowledge of this bill.

SOR ¶ 1.h. is another charged off account in the amount of \$1,120 for which Applicant has no knowledge.

SOR ¶ 1.i is a judgment in the amount of \$615 for a dental bill that his wife did not pay. This judgment was satisfied in 2007. Applicant's pay was garnished (GE 4).

SOR ¶1.j is a judgment in the amount of \$1,161 for a credit account. Applicant has no knowledge of the origin of this judgment.

SOR ¶1.k is a judgment in the amount of \$1,165 for late condominium fees that his wife did not pay in 2004. When Applicant learned that this matter was handled by a law firm, he contacted them. This judgment was satisfied by Applicant in 2007 (GE 7).

SOR ¶1.l is a judgment in the amount of \$8,045. Applicant has no knowledge of this account.

The accounts that are listed above for which Applicant had no knowledge remain unpaid at this time due to his unemployment.

Applicant's current monthly net income is \$3,400. This is his retirement and disability income. After monthly expenses and civil support of \$1,500 to his wife monthly, he has a negative net remainder. He has approximately \$5,000 in savings. He has a prospect for a permanent position. He could gain more work overseas but that is not feasible at this time due to his daughter at home (Tr. 50).

Applicant recently applied for a permanent position. He passed the academic entrance exam and physical fitness exam. He is scheduled to take a polygraph test. He hopes to be offered the position (Tr.49).

Applicant's military career for more than 31 years and his six years with a defense contractor involved work of a highly sensitive nature. He has had no security issues or incidents during those 37 years. He received many medals and commendations during his career service with the Department of the Navy (AE A).

### **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 has delinquent debts and four judgments and could not meet his financial obligations from 2004-2007. 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 conditions 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 are the result of his wife's inability to handle the household finances while he was deployed. His wife left the home and her daughter while Applicant was out of the country. He found the unpaid bills in the house. He immediately paid delinquent bills, including a mortgage and medical bills. He became unemployed through no fault of his own in March 2008. He does not have sufficient income to continue paying on all the delinquent debts. Because of his dedicated recent efforts to establish financial responsibility, it is unlikely that the magnitude of financial difficulties will recur or that there is any doubt about his current reliability or good judgment. This potentially mitigating condition applies.

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, his financial problems arose from his wife's irresponsibility and his unemployment. When Applicant learned about the situation, he returned home and immediately started paying creditors. He acted responsibly in identifying and resolving these debts. He had to stop paying his delinquent debts because he pays \$1,500 a month for civil support to his wife. I find this potentially mitigating condition fully applies.

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). This partially applies. Applicant's plan to pay all the delinquent bills was disrupted because he became unemployed in March 2008. He is being considered for a position and will continue to search for employment so that he can resume paying the delinquent debts. 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 contacted a credit company to help with the financial crisis. He did not like their manner. He also sought help from a business manager. While unemployed, he will not be a candidate for a home equity loan. He plans to continue paying all debts despite the fact that his wife incurred them without his knowledge. He is not shirking from his responsibility. The financial problems were caused by his wife and his current unemployment and not frivolous spending. I conclude this potentially mitigating condition partially applies.

AG ¶ 20(e) applies where the evidence shows “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.” In this case, Applicant stated that the alleged debts were his wife’s but he understands that legally he is responsible for them through the marriage. He did not have knowledge of many of them. I conclude this potentially mitigating condition does not apply.

### **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 and conclude that under the whole person, there is sufficient mitigation to overcome the government’s case.

Applicant retired from the Navy after 31 years of service. He was deployed and out of the country for the majority of that time. He did not have any financial concerns or issues. He held a top secret clearance. After his retirement, he worked for a defense contractor and maintained his security clearance without incident.

Applicant had no knowledge that any financial problems existed until he received a phone call from his daughter alerting him that his wife left the home and his daughter had no idea where she was. Applicant immediately left the assignment abroad and returned home. He found bags of unpaid bills in the home. Due to Applicant’s wife’s financial irresponsibility, Applicant had many delinquent accounts. He immediately began paying the creditors. He found that his mortgage payment was not made for approximately ten months and he paid the \$11,000. Applicant paid many medical bills that had not been addressed, including a \$1,000 bill for his daughter’s orthodontist.

Applicant had to leave his job requiring him to travel abroad so that he could be home and take care of his daughter who is finishing high school. Thus, his income was not as lucrative as prior. In March 2008, he lost his current job through no fault of his own.

He is court ordered to pay his wife who left the home a monthly sum of \$1,500. He has appealed that amount. His plan to pay all the remaining debts is derailed due to his current unemployment. He will resume payments when he is employed. Also, Applicant will have more income if his appeal is successful to modify the civil court order of \$1,500 a month to his wife.

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 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
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

### **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