



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-10437  
SSN: ----- )  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro Se*

November 24, 2008

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On February 29, 2008, 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 25, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on April 29, 2008. Applicant did not file a response to the FORM. The case was assigned to me on July 21, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

## Findings of Fact

Applicant is a 47 year old employee of a defense contractor.

**SOR Allegations 1a and 1b:** Applicant is alleged to be indebted to Unifund in the amounts of \$14,730.00 and \$14,618.00. Exhibit 7 indicates these are most likely the same debt. Applicant claims this debt was one of many his former wife secretly incurred while he was deployed overseas with the U.S. Navy, which he has disputed as not being his debt. The most recent Equifax report in the file (Exhibit 9) identifies applicant as an “extended fraud victim,” and unlike the previous Equifax report (Exhibit 8), does not list this alleged debt.

**SOR Allegation 1c:** There is conflicting evidence regarding this alleged \$2,255.00 debt. Some evidence indicates applicant owed two debts to Wells Fargo in the amounts of \$2,255.00 and \$3,017.00, and other evidence indicates the alleged \$2,255.00 debt may be the same as the \$3,017.00 debt.<sup>1</sup> In Exhibit 5 there is a letter from a collection agency acknowledging applicant settled a debt to Wells Fargo “in full” by paying \$2,500.00 to the collection agency in 2006. Adding to the confusion is the fact that on the most recent credit report in the file (Exhibit 9), there are two Wells Fargo debts listed, and neither of the two listings indicates there is any past-due amount owing. The credit report does indicate applicant has disputed the debts.

**SOR Allegations 1d, 1e and 1f:** Applicant is alleged to be indebted in the amounts of \$57.00, \$97.00, and \$82.00 “for medical services as reflected in a January 31, 2008, credit report.” Applicant denies the allegations, and there is no January 31, 2008 credit report in the record. These allegations are found for applicant.

## Policies

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

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<sup>1</sup>For example, the November 2004 credit report (Exhibit 7) lists two numbers for each account and one of the two numbers is the same for each account.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **Analysis**

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

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant did have a few debts go delinquent. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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.” Applicant has successfully disputed the alleged Unifund debt(s), either satisfied or disputed the Wells Fargo debt, and the Government failed to prove he is indebted on the three alleged medical bill debts totaling \$236.00. The little derogatory financial evidence the Government offered does not cast doubt on applicant’s current reliability, trustworthiness, or good judgment. Accordingly, this mitigation condition is applicable.

Under Paragraph 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.” Applicant’s financial problems were caused by conditions largely beyond his control; namely his wife opening up numerous credit accounts without his knowledge while he was deployed overseas. He acted responsibly by disputing some of the debts and paying off others. Accordingly, this mitigating condition is applicable.

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” is potentially mitigating under Paragraph 20.c. It is clear the problem is under control. This mitigating condition is applicable.

Paragraph d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has either satisfied or successfully disputed his debts. This mitigating condition is applicable.

### **“Whole Person” Analysis**

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant 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 is a mature man who, while honorably serving his country, had his finances destroyed by a dishonest spouse. As a result, some of his financial obligations went delinquent. During the years since their divorce, applicant has satisfied some of these debts and has successfully disputed the validity of the others. Based on the evidence presented, I conclude applicant mitigated the security concerns arising from Guideline F.

## **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

## **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.

JOSEPH TESTAN  
Administrative Judge