



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



In the matter of: )  
)  
) ISCR Case No. 07-10945  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine, Esquire, Department Counsel  
For Applicant: Pro se

August 20, 2008

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be granted.

Applicant submitted his Electronic Questionnaire for Investigative Processing (e-QIP), on December 21, 2005. On April 3, 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 acknowledged receipt of the SOR on April 8, 2008. He answered the SOR in writing on April 18, 2008, and requested a hearing before an administrative

judge. DOHA received the request on April 21, 2008. Department Counsel was prepared to proceed on April 29, 2008. DOHA assigned the case to another administrative judge on May 2, 2008. Because of workload considerations, the case was reassigned to me on May 20, 2008. DOHA issued a notice of hearing on June 9, 2008, and I convened the hearing as scheduled on July 1, 2008. The government offered six exhibits (GE) 1 through 6, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted one exhibit (AE) A, which was received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 15, 2008. I held the record open until July 31, 2008, for Applicant to submit additional matters. On July 31, 2008, he submitted six exhibits, marked AE B through G. The government objected to the admission of AE B only on the grounds of hearsay. AE C through G are admitted without objection. The record closed on July 31, 2008.

### **Procedural and Evidentiary Rulings**

#### **Notice**

The administrative file reflects that Applicant received the hearing notice on June 18, 2008, less than 15 days prior to the hearing. At the hearing, I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive the hearing notice 15 days before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. at 10)

#### **Motion to Amend SOR**

Near the end of the hearing, Department Counsel moved to amend the SOR by adding ¶ 1.e, alleging Applicant is indebted to the Veteran's Administration (VA) in the amount of \$14,000. (Tr. at 73) Applicant objected to the motion, arguing that he does not owe the VA any money. Rather, if he wishes to again be eligible for a future VA backed mortgage, he must repay the VA the money it paid to his mortgagor. I denied the motion to amend the SOR because there is no existing debt with the VA based on the credit reports and Applicant's testimony. (Tr. at 77)

#### **Evidentiary Rulings**

Department Counsel challenges the admission of AE B, an undated letter from Applicant on the grounds of hearsay. Since the hearsay rules are not strictly applied in these proceedings, the objection is overruled. AE B is admitted into evidence. I will accord this document whatever weight to which it is entitled.

## Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.<sup>1</sup>

Applicant, who is 47-years-old, works for a Department of Defense contractor as a senior mechanical technician. He began this job in 2005. From 2001 until 2005, he drove a truck, owning and operating his own business for the last three years. He retired from the U.S. Army as a staff sergeant (E-6) in 2001. He is a disabled veteran. He held a clearance while in the Army and acted as a courier of classified information. He married 19 years ago. He has a grown stepson, two teenage children and one grandchild.<sup>2</sup>

Prior to his retirement from the military, he and a military colleague decided to start a business, which they never incorporated. In their business, they purchased trucks in need of some repairs. They would repair a truck then resell it. Applicant used personal credit cards and a personal line of credit with a bank (the creditor in SOR ¶ 1.b) in the form of 90-day short-term loans to finance his business. He would purchase used trucks for \$2,500 to \$3,500, using the bank loan. The bank held title to the truck. Applicant and his partner would repair the trucks for about \$500 then resell the trucks for about \$4500. Each time he sold a truck, he repaid the loan on this truck and the bank returned the title it held on the truck. If the loan was not repaid, the bank listed it as an automobile repossession on the credit report.<sup>3</sup>

By December 1999, Applicant had developed serious financial problems with his business. His sales of repaired trucks had slowed and he could not pay his loans. In March 2000, he filed for Chapter 7 Bankruptcy. His creditors included the bank listed in SOR ¶ 1.b. The bankruptcy court discharged his debts in an Order dated June 29, 2000.<sup>4</sup>

He and his wife purchased a small house in 1994, which they outgrew quickly. Instead of selling this house, they decided to rent it. They purchased and moved to a larger house in 1996. In 2002, Applicant allowed his stepson and his girlfriend to move into the smaller house with the agreement they would pay all expenses. However, Applicant either paid the electric bill or the mortgage each month for his stepson. Eventually, he stopped paying both and directed his stepson to pay both. His stepson failed to make the mortgage payments as required. When Applicant and his wife learned that the bank had started foreclosure, they mailed the overdue payments to the

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<sup>1</sup>Applicant's response to the SOR, dated April 18, 2008, at 1.

<sup>2</sup>GE 1 (Applicant's e-QIP) at 1, 5-8; Tr. 13, 16-18, 72.

<sup>3</sup>Tr. 32-39.

<sup>4</sup>AE A (Bankruptcy documents) at 1-2,10; Tr. 18-24.

bank. The bank declined their payments and foreclosed. Since the VA guaranteed their loan, it paid the mortgage balance to the bank. As a result, Applicant lost his eligibility for a VA loan. He can regain his eligibility for a VA guaranteed mortgage loan if he repays the VA. He is not required by the VA to repay the loan and no debt to the VA is listed on his credit reports in the record.<sup>5</sup>

Prior to filing bankruptcy, Applicant and his wife purchased a time share sometime in 1998 and 1999. The purchase contract guaranteed them two full weeks a year access to one of the time share properties anywhere and regular weekend access to local properties. The agreement also included certain amenities and services. During the two years they were involved with the time share, they used it four weekends locally. Whenever they sought to exercise their right to use their two weeks, no facilities were available, except at a higher grade. The time share company regularly offered to upgrade their purchase, which they did once. The availability of the two weeks did not improve with the upgrade nor did the services available. They spoke with company representative several times and received promises for improvements, which never occurred. During this time, other purchasers had filed a class action law suit against the time share company. Applicant chose not to participate in the law suit, in part because of the promises. Finally, after many broken promises and the lack of availability of their time share property, Applicant told the company to sell his interest in the time share because he believed that the company had not honored their contractual agreement. Although Applicant threatened to sue the time share company, he did not. He believes his share was sold, but is not sure. He never received a notice that he owed the time share company money. This time share company is now out of business. Applicant has challenged this debt, which is listed on only two of the five credit reports of record. The July 22, 2008 credit report indicates that this account is being investigated, which reflects that Applicant challenged the validity of the debt, which he does not intend to pay.<sup>6</sup>

The three 2008 credit reports indicate that Applicant timely pays his current bills and has no outstanding balances on his present debts. The July 28, 2008 and April 29, 2008 credit reports reflect that the mortgage debt set forth SOR ¶ 1.c is a VA real estate mortgage with a zero balance. Concerning the \$3,686 bank loan in SOR ¶ 1.b, the 2007 and 2006 credit reports show several loans with this creditor, all of which are paid except one. The credit reports show that the unpaid account, which is listed in the SOR, was opened in December 1999 and that Applicant disputed the account in 2006. The dispute resolution is not shown; however, the debt is not listed on any of the 2008 credit

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<sup>5</sup>GE 4 (Credit Report, dated April 29, 2008); GE 5 (Credit Report, dated September 20, 2007); GE 6 (Credit report, dated January 28, 2006); AE F (Credit report, dated July 28, 2008); AE G (Credit report, dated July 22, 2008); Tr. 45-50, 77.

<sup>6</sup>GE 4, *supra* note 5; GE 5, *supra* note 5; GE 6, *supra* note 5; AE F, *supra* note 5; AE G, *supra* note 5, at 2; Tr. 27-31, 52-59.

reports. I find that Applicant successfully challenged the listing of this debt, which was included in his 2000 bankruptcy.<sup>7</sup>

Applicant and his wife have a net monthly income of \$8,563 from their earnings, his military retirement, and his VA disability benefit. Their monthly expenses total \$3,377, leaving \$5,186 of available income each month. One daughter is in college.<sup>8</sup>

### **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(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

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<sup>7</sup>GE 4, *supra* note 5; GE 5, *supra* note 5; GE 6, *supra* note 5; AE F, *supra* note 5; AE G, *supra* note 5, at 2; AE D.

<sup>8</sup>AE C (Applicant's monthly budget); Tr. 16-17.

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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debt in 1999 when he was operating his truck repair business. He discharged his debts in bankruptcy in 2000. Since then, he has been involved in two foreclosure proceedings and has one unpaid debt. 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.” Applicant’s financial worries arose from his truck repair business in 1999. He resolved these debts issues through bankruptcy, a process which included the debts to the bank listed in SOR ¶ 1.b. Since his bankruptcy discharge, he has paid all his credit card bills, his car loans, his usual household expenses and current mortgage. I find his bankruptcy occurred because of his now defunct truck repair business and the costs related to operating this business, which is unlikely to recur. It does not raise concerns about his

current reliability, trustworthiness, or good judgment. This potentially mitigating condition applies only to the issue of bankruptcy and the one discharged bank debt.

Under AG ¶ 20(b), Applicant may mitigate 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.” As noted above, Applicant’s financial problems arose from his 1999 business problems, when sales declined, thus, severely limiting his ability to pay his loans and credit cards. He has closed his business and eliminated it as a source of financial problems. The foreclosure on his little house occurred when his stepson failed to pay his rent, which was the mortgage. The bank refused to accept the back payments from Applicant. Because the VA guaranteed this loan, the VA paid the debt. Applicant is not indebted to the VA, but if he wishes to regain his eligibility for a future VA loan, he must repay the VA the amount it paid on his foreclosure loan. 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” is potentially mitigating under AG ¶ 20(c). Applicant has not received any counseling about his debt issues and does not need it since his debts are resolved. He is current in all his bills and now has a good credit record. Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” This mitigating condition does not apply in this case.

Finally, Appellant may mitigate the government’s security concern under AG ¶ 20(e), which states that [if] an 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. Appellant successfully disputed the bank debt listed on his 2006 and 2007. This unpaid debt has been removed from his credit reports. This mitigating condition has some applicability.<sup>9</sup>

### **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

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<sup>9</sup>AG ¶ 20(f) does not apply in this case.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Appellant's problems first began, while he was still in the military. He and a friend decided to develop a business which would provide them with work and an income when they retired, even though they had little business experience. Because of their lack of business experience, they not only did not incorporate the business, they did not understand the financial liability for not incorporating the business. As a result, they financed the business with Applicant's good credit history, and when the business absorbed his personal income, Applicant financed his living expenses with his credit cards. These financial decisions led Applicant to file for bankruptcy when business sales slowed and he could not pay his bills. His business ended when he filed bankruptcy. Since 2000, he has managed his personal finances and his second trucking business prudently.

As a parent and in an effort to help his stepson, Applicant allowed his stepson and his girl friend to live in the small house with the understanding that they would pay all the bills related to this property. They did not, and as a result, the mortgagor foreclosed on the property, despite Applicant's efforts to pay the delinquent payments. Because it was a VA guaranteed loan, the VA paid the mortgage balance and denied Applicant access to future VA loans. Applicant's efforts to catch up the mortgage payments was reasonable and the rejection of his offer by the mortgage company is not within his control. Applicant has always paid his other house mortgage in a timely fashion. Applicant's decision not to pay the money owed on the time share is reasonable in light of his belief that the time share company breached its contract with him. While he had the option to sue the time share company in court, such actions are time consuming, expensive and stressful. His decision not to pursue legal action in light of these factors is reasonable.

In considering the totality of the evidence in this record, all the debts listed in the SOR, except the time share debt, are resolved. Applicant held a security clearance for many years as an active duty soldier, and never violated his responsibilities. Except for his decision to run a business in the late 1990s with a friend, Applicant has always managed his finances prudently and wisely. He lives well within his financial means. His continued problem with the time share company is not sufficient to raise security concerns. (See AG ¶ 2(a)(1).)



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 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

### **Conclusion**

In light of all of the circumstances presented by 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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MARY E. HENRY  
Administrative Judge