



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



In the matter of:	)	
	)	
XXXXXX, XXXX	)	ISCR Case No. 07-11908
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esq., Department Counsel  
For Applicant: *Pro se*

July 3, 2008

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing on (e-QIP), on February 22, 2006. On December 5, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 answered the SOR in writing on December 28, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 23, 2008, and I received the case assignment on January 28, 2008. DOHA issued a notice of hearing on February 5, 2008, scheduling the hearing for February 27, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 12, which were received without objection, except for GE 6. Applicant objected to GE 6 “due to the fact that [he] was actually not aware of the [hospital] bill.” After argument by counsel and Applicant, I overruled Applicant’s objection. Tr. 16-21. The government also offered a List of Government Exhibits, Exhibit (Ex.) I. The Applicant offered Applicant Exhibits (AE) A through Y, which were received without objection, and testified on his own behalf.

I held the record open until March 12, 2008 to afford the Applicant the opportunity to submit documents on his behalf. Applicant timely submitted AE Z through FF without objection, which were forwarded to me by Department Counsel by Memorandum dated March 11, 2008 (Ex. II). DOHA received the transcript of the hearing (Tr.) on March 7, 2008.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations except for SOR ¶¶ 1.l., 1.m., and 1.n. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 31-year-old logistics engineer, who has worked for a defense contractor since March 2006. Tr. 75-77, GE 1. He is a first-time applicant for a security clearance. Shortly after being hired by his current employer, he was granted an interim secret clearance, which was revoked as a result of these proceedings. His continued employment is dependent on his being granted a security clearance. Tr. 77-80.

Applicant completed the 9<sup>th</sup> grade, but did not complete the coursework for and was awarded a GED in July 2000. Tr. 74-75. He was married from February 2001 to December 2004. That marriage ended by divorce. Applicant has no dependents. GE 1, Tr. 82.

Applicant’s background investigation addressed his financial situation and included the review of his e-QIP, credit reports, financial interrogatories, and various documents submitted by the government. SOR. GE 1 – 12. The allegations are substantiated by Applicant’s admissions and documents submitted by the government.

Applicant’s SOR identified 14 separate line items, which included a chapter 7 bankruptcy, six collection accounts, two charged off accounts, one Internal Revenue (IRS) tax debt, one state tax debt, and three judgments for a total of \$23,111. SOR ¶¶ 1.a. – 1.n.

Applicant provided the following explanation regarding how his financial problems began:

[W]hen I was about 17 I was diagnosed as terminally ill and at that point due to the fact that I thought I was going to die within two, three years, I didn't care about anything financially. As time went on and I realized that I would be alive longer, I started caring about the financial stuff but I had already started getting myself into a financial black hole of sorts. The thing that actually pushed me to file bankruptcy . . . is the . . . County Hospital bill for \$2,600. They actually ended up taking legal action and locking my entire bank account. And when they locked my bank account I had direct deposit at the time, they at the same time locked up a direct deposit that had gone through so I couldn't pay my rent, car payment, anything like that. And the legal advice I got when I talked to a lawyer was that the only way for me to get that money back from my paycheck was to file bankruptcy before the court hearing that was to take place on I believe, November 1<sup>st</sup>. So, I filed the bankruptcy with a lawyer and it was actually filed by October 31<sup>st</sup> (2000) so that I could actually get that paycheck back. (SOR ¶ 1.a.) Tr. 29-30.

Applicant explained the reason he got into financial difficulties after filing bankruptcy in 2000 was due to "a combination of bad decision[s], [and] not making enough money." Tr. 84. He became aware his credit history was poor when interviewed in March 2007 in conjunction with his security clearance application. Since then, he has taken aggressive steps to correct his indebtedness. Tr. 82-86.

Since his SOR was issued, Applicant has paid off three debts (two collection accounts and one judgment) (SOR ¶¶ 1.b., 1.i., and 1.l.), has contacted six creditors (four collection accounts, the IRS, and state tax debt), set up payment plans, and is current on the payment plans. (SOR ¶¶ 1.c., 1.d., 1.f., 1.g., 1.j., and 1.k.) He made a good-faith effort to resolve two debts (one collection account and one judgment). (SOR ¶¶ 1.e., 1.n.) Response to SOR, Tr. 35-62, GE 2, AE A – Q, AE Z, AE FF. One of the debts listed (judgment) was discharged in his 2001 Chapter 7 bankruptcy. (SOR ¶ 1.m.) Tr. 56-59, GE 10, AE B. Applicant retained the services of a credit counseling service in September 2007 and several of the debts included in the payment plans *supra* are included in a debt consolidation repayment plan. Response to SOR. Applicant submitted a comprehensive budget that was prepared by a credit counseling service reflecting a net monthly remainder of \$531 after all his debts were paid. AE DD, AE EE.

Applicant provided three employer-related reference letters, i.e. from his Task Supervisor, his Provisioning Support Services Division Manager, and his Task Supervisor III. These individuals were uniform in their praise of Applicant and described him as "an excellent worker," "dependable, reliable, and trustworthy," "top five in efficiency (out of 28 peers), on-time delivery and customer support," and

“trustworthy, and independent.” All three individuals recommended Applicant for a security clearance. AE AA – CC.

## **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 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**

Under Guideline F (Financial Considerations),<sup>1</sup> the government’s concern is that an Applicant’s

“[f]ailure 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.”

Applicant acknowledged he made poor financial decisions, before and after his 2000 Chapter 7 bankruptcy. His pre-bankruptcy problems occurred at a young age after being diagnosed with what he thought at the time was a terminal illness. He embarked on an irresponsible spending pattern, which led to Chapter 7 bankruptcy. After being awarded a Chapter 7 discharge, his health took a turn for the better and he fell into a pattern of spending beyond his means. His financial situation has substantially improved as a result of earning more income, maturity, and the realization that his failure to handle his finances responsibly may jeopardize his ability to obtain and maintain a security clearance. Since being interviewed in 2007, he has taken this process quite seriously and taken what appears to be all reasonable steps to correct his financial situation. He is current on his payments and provided credible documentation of good faith attempts to contact two creditors yet to be paid.

He participated in two separate types of financial counseling. The first financial counseling he participated in was mandatory and in conjunction with his chapter 7 bankruptcy. The second financial counseling he participated in was voluntary and occurred more recently. Applicant’s financial picture has taken a sharp turnaround from where he was several years ago. His budget reflects a net remainder of \$531 per month after his monthly bills are paid. What is different now as opposed to before is he has the means, tools and resolve to achieve financial stability.

His reference letters are noteworthy. He has proven to be a conscientious, trusted and valued employee, and a contributing member of society.

¶ 19. Conditions that could raise a security concern and may be disqualifying include:

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<sup>1</sup> Guideline ¶ 18.

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Of the nine Financial Considerations Disqualifying Conditions (FC DC) listed *supra*, three are applicable: ¶ 19(a): inability or unwillingness to satisfy debts; FC DC ¶ 19(c): a history of not meeting financial obligations; ¶ (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

¶ 20. Conditions that could mitigate security concerns include:

- (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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and

(f) the affluence resulted from a legal source of income.

Considering the record evidence as a whole,<sup>2</sup> I conclude three of the six Financial Considerations Mitigating Conditions (FC MC) are applicable or partially applicable: ¶ 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; ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts, and ¶ 20(e) 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.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”<sup>3</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant

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<sup>2</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

<sup>3</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

