



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-13909
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Pro Se

July 30, 2009

**Decision**

---

HOGAN, Erin C., Administrative Judge:

Applicant submitted a questionnaire for sensitive positions, Standard Form 86, on April 10, 2007. On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, 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.

On March 19, 2009, Applicant answered the SOR and requested a determination be made on the administrative record. Department Counsel timely converted the case to a hearing before an administrative judge in accordance with ¶ E3.1.7 of the Directive. Department Counsel's request to convert Applicant's case to a hearing is marked as Hearing Exhibit I. Department Counsel was ready to proceed on May 1, 2009. The case was assigned to me on May 15, 2009. On June 1, 2009, a Notice of Hearing was issued, scheduling the hearing for June 15, 2009. The case was heard on that date. The

Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered 10 exhibits which were admitted as Applicant Exhibits (AE) A - J. The record was held open until June 30, 2009, to allow Applicant to submit additional documents. Applicant timely submitted a one-page document which was admitted as AE K. Department Counsel's response to AE K is marked as Hearing Exhibit II. The transcript (Tr) was received on July 13, 2009.

After the hearing, it was discovered a portion of the beginning of the hearing was not properly transcribed. On July 9, 2009, I held a telephone conference with Applicant and Department Counsel. I explained the situation to both parties. I gave Applicant two options. First, the hearing could be re-opened to cover the portion of the hearing that was not properly transcribed. Second, the parties could enter into a Stipulation of Testimony which covered what transpired during the portion of the hearing that was not transcribed based on the parties' handwritten notes. Applicant chose to enter into a Stipulation of Testimony. I prepared a draft Stipulation of Testimony regarding what occurred during the first part of the hearing based on my notes. I provided Applicant and Department Counsel a copy of the draft Stipulation of Testimony on July 9, 2009. The parties were given until 16 July 2009 to provide comments pertaining to the Stipulation of Testimony. Based on the comments submitted, a final Stipulation of Testimony (4 pages) was completed and signed by the parties on July 22, 2009. I received Applicant's signature page on July 28, 2009. The Stipulation of Testimony is marked as Hearing Exhibit III.

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant admits the allegation in SOR ¶ 1.e and denies all of the remaining allegations in the SOR.

Applicant is a 53-year-old chief electronic technician employed with a Department of Defense contractor seeking to maintain his security clearance. He has worked for the same company for over 33 years. He has held a security clearance since 1975. In 1977, he married for the first time. He and his first wife separated in September 1996. They divorced in 2002. He remarried on May 16, 2002. He and his second wife separated in December 2008. He has three adult children and an adult step-daughter. (Tr at 7-8; Gov 1; Stipulation of Testimony)

On April 10, 2007, Applicant completed a questionnaire for sensitive positions (SF 86) as part of his periodic update of his security clearance. (Gov 1) A subsequent background investigation revealed that Applicant had eight delinquent accounts. The delinquent accounts included: a \$4,570 account placed for collection in August 2003 (SOR ¶ 1.a: Gov 4 at 4, 9; Gov 5 at 3); a \$2,297 account that was charged off in May 2005 (SOR ¶ 1.b: Gov 4 at 4, 8; Gov 5 at 2); an \$868 delinquent account that was placed for collection in April 2007 (SOR ¶ 1.c: Gov 4 at 5; Gov 5 at 2); a \$3,047

judgment entered against Applicant in April 2005 (SOR ¶ 1.d: Gov 4 at 5; Gov 5 at 1); a \$4,405 department store account that was placed for collection in June 2004 (SOR ¶ 1.e: Gov 4 at 7, 8; Gov 5 at 2); a \$2,933 credit card account that was placed for collection in May 2006 (SOR ¶ 1.f: Gov 4 at 8); a \$2,632 account that was placed for collection in March 2005 (SOR ¶ 1.g: Gov 4 at 6; Gov 5 at 2); and a \$50 medical account that was placed for collection in April 2005. (SOR ¶ 1.h: Gov 5 at 1)

In his answer to the SOR, Applicant states he has been employed for over 33 years. He claims the only debts he has is a car that he purchased in March 2005, and his home which he has owned for over 28 years. He owes \$10,000 on his mortgage and has over \$100,000 in equity. He disputes most of the debts in the SOR. He and his first wife separated in 1996. The divorce was final in 2002. His first wife died on June 30, 2006. After her death, he began to get bills for accounts that he claims were not his. He disputed these debts with the credit reporting agencies. If they are proven to be his debts, he has no problems paying the accounts. He believes his first wife opened these accounts in his name without his knowledge. (Answer to SOR; Stipulation of Testimony; AE D – AE H)

Applicant admits that he owes the debt alleged in SOR ¶ 1.e which is a \$4,405 department store account that was placed for collection. Applicant had entered into an agreement to settle the account for \$2,100. He paid \$100 a month towards this account for seven months. He stopped the payments because he could never get anything in writing from the company regarding the settlement agreement. He doesn't believe he was receiving credit for the money that he paid to the company. He intends to pay the account once the company explains what happened to the \$700 that he already paid. (Tr at 4, 17; Gov 3 at 6, 12)

Applicant also admits that he owes the \$50 medical account alleged in SOR ¶ 1.h. He has not paid the bill because he does not know who to contact to pay the bill. (Tr at 5, 11) The SOR alleges a generic medical bill. No specific creditor is mentioned. SOR ¶ 1.h is found for Applicant due to the lack of specificity in the pleading.

Applicant claims that he has no open credit card accounts. He is not sure whether his current wife opened credit card accounts with his name on the account as a joint creditor. (Tr at 6)

Applicant sent in formal disputes to the credit reporting agencies for the debts alleged in SOR ¶¶ 1.a – 1.d, 1.f, and 1.g. (AE A; AE B; AE D; AE E; AE F; AE G; AE H) If the debts are discovered to be his responsibility he intends to pay them. He is capable of paying the debts. (Tr at 16)

Applicant owes a federal income tax debt from tax year 2007. The tax debt was the result of a misunderstanding between he and his wife. He thought they were going to file joint tax returns but his wife filed in the status of married, filing separately. Applicant owed more taxes as a result. The balance on the tax debt is \$1,332.11. He

has been paying \$100 a month to the Internal Revenue Service since January 2008. (Tr at 10, 12-15, AE J)

Applicant's net monthly income is approximately \$3,000. He has approximately \$1,000 left over after expenses. His expenses include: mortgage \$679; truck payment \$470; \$200 utilities; cell phone \$50; payment to IRS \$100. (Tr at 9-11)

Applicant's most recent performance appraisal covering the period from October 2007 to September 2008 indicates that he met or exceeded expectations. It was noted that Applicant "Consistently meets the requirements of the job in all respects." His appraiser commented that Applicant's performance was "great" over the past year. (AE C)

### **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.

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant's credit reports listed eight delinquent accounts, a total approximate balance of \$20,829, which implies Applicant has a history of not meeting financial obligations.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) applies. Applicant disputes the majority of these accounts. He claims that his first wife opened these accounts without his knowledge. Applicant has held a security clearance for over 33 years and these financial issues appear to contradict his track record of financial responsibility. He does not live beyond his means and has \$100,000 in equity in his home. He has taken steps to formally dispute the debts and intends to pay the debts if they are proven to be his accounts. Considering the circumstances, the delinquent accounts do not cast doubt on Applicant's current reliability, trustworthiness, and judgment.

FC MC ¶ 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) partially applies. Applicant disputes most of the debts, claiming his ex-wife opened these accounts without his knowledge. Applicant is separated from his current wife. Although he is not sure his current wife opened any credit card accounts, it is a possibility. Applicant has acted responsibly under the circumstances by disputing the delinquent accounts with the credit reporting agencies. However, this mitigating condition is given less weight because although Applicant paid \$700 towards the debt alleged in SOR ¶ 1.e which he admits is his debt, he stopped payment on the account in August 2008 and the status of the account is unresolved. However, the majority of the delinquent debt appears to have occurred as a result of circumstances beyond Applicant's control and Applicant has taken responsible steps towards resolving the accounts.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant credibly testified that he did not open the majority of the delinquent accounts. He has taken steps to resolve the situation by disputing the accounts with the credit reporting agencies. If it is determined that the debts are his, he has the money to pay the debts.

FC MC ¶ 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) applies. Applicant believes that his first wife opened credit card accounts in his name which he did not discover until after her death in 2006. He began to receive delinquency notices after her death. He disputed the debts with the credit reporting agencies but is still waiting for the result. His financial situation is stable and if the debts are proven to be his responsibility, he has the means to resolve the accounts.

Applicant mitigated the concerns raised under Guideline F.

### **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) 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 commonsense 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. I considered Applicant's 33-year employment history as well as his 33 years of holding a security clearance. Applicant formally disputed the accounts and will pay the accounts if it is determined they are his responsibility. He lives within his means and is capable of paying any of the debts if it is determined they are his responsibility. Applicant met his burden to mitigate the concerns raised under financial considerations. However, he should remain proactive in resolving these accounts in order to avoid financial concerns in the future with regard to his 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

### **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.

---

ERIN C. HOGAN  
Administrative Judge