



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 07-14465
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco Mendez, Esq., Department Counsel  
For Applicant: Faisal M. Gill, Esq.

September 19, 2008

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**Decision**

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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 (e-QIP), on March 13, 2007. On March 6, 2008, 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 April 3, 2008, and requested a hearing before an Administrative Judge. DOHA received his response on April 4, 2008. Department Counsel was prepared to proceed on May 14, 2008, and I received the case assignment on May 21, 2008. DOHA issued a notice of hearing on June 13, 2008, scheduling the hearing for July 16, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received without objection. The government submitted a List of Government Exhibits, Exhibit (Ex.) I. The Applicant offered Applicant Exhibits (AE) A through I, which were received without objection, and testified on his own behalf.

I held the record open until July 25, 2008 to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE J through N, without objection. DOHA received the hearing transcript (Tr.) on July 24, 2008.

### **Procedural Rulings**

#### **Withdrawal of SOR allegation and Stipulation**

Department Counsel submitted a Notice, dated May 19, 2008, stating the Government:

1. Withdraws Guideline E allegations; and
2. Stipulates that Applicant has paid the debts alleged in 1.a., 1.c., 1.e., 1.i., 1.o., and 1.p.

### **Findings of Fact**

Applicant denied all of the SOR allegations with explanations. His denials with explanations 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 41-year-old senior field engineer, who has worked for his defense contractor employer since November 2007. GE 1, Tr. 56-57. He seeks a security clearance to enhance his position. Tr. 40, 57-58.

Applicant graduated from college in June 1997 with a bachelor of science in computer information science. GE 1, Tr. 56. He has never married and has no dependents. GE 1.

Applicant's background investigation addressed his financial situation and included the review of his March 2007 e-QIP, his January 2008 Response to DOHA Financial Interrogatory, and his April 2007 and February 2008 credit reports. GE 1 – 4.

Applicant's SOR identified 19 separate line items, which included one judgment, 12 collection accounts, two charged off accounts, and four past due accounts approximating \$48,000. Two of the debts are duplicates, i.e. SOR ¶¶ 1.h. and 1.j., thus reducing the number of valid debts from 19 to 18.

Applicant attributes his financial problems to an extensive period of unemployment/underemployment from December 2002 to March 2007. Applicant lost his job as a senior systems analyst in December 2002. At that time, he was making \$75k per year. Tr. 70. For the next five years, he held a number of jobs to include grocery store cashier, driver for an auto parts store, salesman for a kitchen and cabinet shop, grocery store bakery clerk, technical systems support, and office manager/kitchen salesman/bookkeeper for a kitchen and cabinet shop. From 2002 to 2007, he went "on over a hundred interviews." Tr. 26. During this time, he was also plagued with medical problems such as hypertension, kidney and urological issues requiring frequent medical treatment, which compounded Applicant's financial problems. Tr. 63-65.

Since his SOR was issued, Applicant has paid, settled and/or resolved all debts alleged. As noted, before the hearing convened, the Government stipulated that Applicant had paid debts alleged in SOR ¶¶ 1.a., 1.c., 1.e., 1.i., 1.o., and 1.p. Additionally, Applicant has paid debts alleged in SOR ¶¶ 1.b., 1.g., 1.q., 1.r., and 1.s. He is engaged in good-faith disputes for debts alleged in SOR ¶¶ 1.d., and 1.f. As noted, debts alleged in SOR ¶¶ 1.h., and 1.j. are duplicates or the same debt. Applicant has written numerous letters to these creditors in an attempt to resolve this debt. The remaining debts alleged in SOR ¶¶ 1.k., 1.l., 1.m., and 1.n. are outstanding. SOR ¶¶ 1.k. and 1.l. are student loans and have been consolidated. Applicant is currently paying a collection agency \$275 for one year and after that his student loan(s) will be rehabilitated. Applicant is actively engaged in seeking a resolution with the creditors listed in SOR ¶¶ 1.m. and 1.n., a student loan and an automobile loan, respectively. AE M. Applicant provided sufficient and voluminous documentation addressing each and every debt in the SOR. GE 2, Answer to SOR, AE F – H, AE N. Applicant reported his current annual salary is \$70k per year.

Applicant also sought the assistance of a professional financial counselor. The counselor provided him with a comprehensive debt management strategy. After Applicant has paid all expenses, he has approximately \$118 remaining in discretionary income per month. AE L. Applicant also submitted a budget that breaks down every debt with corresponding monthly payments to each creditor. AE K.

Applicant provided six favorable reference letters. i.e. a letter from his landlord, four work-related references, and one personal reference. All references support the notion that Applicant is trustworthy and honorable. AE A – E, AE I.

## 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 AG 18, the Government's concern is:

"[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."

The Government established that Applicant owed substantial debt as reflected in SOR ¶¶1.a. – 1.s. Applicant's indebtedness stems from a five year period of underemployment and unemployment. During this time, he fell behind with his creditors. In March 2007, his life took a turnaround when he was fortunate to secure a job in his career field that paid \$70k per year.

His financial situation has substantially improved as a result of earning more income. He sought financial counseling that provided him with a comprehensive strategy to regain financial stability. He has established a credible budget. All indicators point to an individual who has taken this process quite seriously and taken what appears to be all reasonable steps to correct his financial situation. What is different now as opposed to before is he has the means, tools and resolve to achieve financial stability.

Under AG ¶ 19, two disqualifying conditions raise a security concern:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The Government established its case under Guideline F by showing Applicant owed the debts as alleged, except as noted, by the evidence presented. At the time the SOR was issued in April 2008, Applicant owed 18 debts approximating \$48,000.

Under AG ¶ 20, there are three potentially mitigating conditions:

- (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; and

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

I am able to apply full credit under AG ¶ 20(b) because at the time Applicant incurred the debts, he was either underemployed or unemployed for a five-year period. I am able to apply full credit under AG ¶ 20(c) because Applicant has sought financial counseling and has a viable strategy to achieve financial stability and a credible budget. I am able to apply full credit under AG ¶ 20(d) because Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. In short, Applicant has turned his financial situation around. He has established a viable budget, which shows a net remainder after he has paid his bills, and is able to save money.

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>1</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

### **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. – 1.s.:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a. – 2.c.:	Withdrawn

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<sup>1</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

## **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. Clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge