



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-15697
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

November 26, 2008

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on November 11, 2006. On March 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on April 24, 2008. DOHA issued a notice of hearing on July 28, 2008 for a hearing on August 13, 2008. The hearing was held as scheduled. At the hearing, seven exhibits (GE 1 through 7) were admitted in evidence without objection to support the government's case. Applicant testified and submitted four exhibits. (AE A-AE D) In the time allowed for Applicant to furnish additional documentation, he submitted AE E through AE J. The additional

documentation provides updated information on most of the debts in the SOR. DOHA received a copy of the transcript of the proceedings on August 20, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The SOR has eight allegations under the financial considerations guideline, totaling approximately \$31,000.00. With the interest and penalties added to SOR 1.c, Applicant's total debt eclipses \$40,000.00. He admitted all allegations except for SOR 1.b., explaining that he paid the debt in full.

Applicant is 51 years old and employed by a defense contractor as a test engineer. He has been married for 32 years and has two children, 29 and 27 years old. He has held a security clearance since 1977 (GE 1) He seeks a secret clearance.

Applicant was trained in avionics and has held aerospace jobs over the years. In 1999, he was working for a contractor,<sup>1</sup> when he decided to run for state X's senate. He won the seat. From 1999 to December 2002, he served in the state senate in addition to his contractor job.

In January 2003, based on promises from two two ministers at his church (who became corporate officers in this venture with him), Applicant became an officer in a corporation. The objective of the enterprise was to improve business between country Y to the south, the U.S., and country Z to the north. It was determined that the best way was by upgrading the road way that started in country Y to the south, which continued through the United States (U.S.) and ended in country Z to the north. Applicant's corporate function was to oversee the engineering, planning and construction of the project. He was told the project would receive international funds from the United Nations and the World Bank (Tr. 28-29). As chief operating officer of the corporation, he was promised a lot of money, but only received about \$10,000.00 in the first two months of the project (Tr. 73). The project began in January 2003, and shut down in March 2005. Applicant lost everything, including his house and savings (Tr. 36). Applicant opined that the corporate project folded because the chief financial officer and chief executive officer had been misrepresenting their expertise and ability to get the project fully funded (*Id.*)

After the commercial project ceased business in March 2005. Applicant was underemployed until he was hired by his current employer in September 2006. Applicant is presently living in a recreational vehicle to keep expenses low.

GE 2 reflects that Applicant satisfied two unlisted creditors in 2005 and 2006. One creditor was a mortgage lender, and the amount owed was approximately \$29,000.00. Correspondence within GE 2 and in GE 5 reflect the account was paid in

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<sup>1</sup> Applicant worked for this contractor from 1986 to 2003 (GE 1).

September 2005. The second account was satisfied in November 2006, but the payment amount was not disclosed.

Applicant stated he paid enrollment fees for a debt consolidation plan in January 2008 (GE 2; Tr. 66), but the organization went bankrupt (GE 2). In April 2008, Applicant signed on with another debt plan organization, and has made three payments of between \$400.00 and \$450.00 under the plan. The plan will call for monthly payments of \$485.00 a month. See, AE I. The first three payments are meeting administrative fees (the costs of setting up the plan, including contacting and negotiating with creditors) before the actual payment of creditors under the plan. The accounts in the plan are those identified in SOR 1.a., 1.d., 1.e., 1.g., and 1.h. (*Id.*). The plan is scheduled to last five years (Tr. 55).

The eight listed debts fell delinquent in 2004 and 2005, when Applicant was working for the joint venture (Tr. 59-61). The overdue accounts are personal credit cards or loans.

- SOR 1.a. The \$544.00 account was placed for collection in April 2007; the last activity on the account was August 2005. The account is included in the payment plan (Tr. 41; GE 2, AE A).

- SOR 1.b. The last activity on this cable television account (\$49.00) was in December 2005. GE 5 confirms that the debt is paid.

- SOR 1.c. The charged off account posted at \$9,179.00 in the SOR is now \$18,586.00 due to interest and penalties (GE 4). In July 2008, Applicant signed a Consent Order which requires him to pay \$250.00 a month until the balance is paid; his checking account reflects he has made two payments under the order (AE G).

- SOR 1.d. The last activity on this account (\$4,356) was in August 2003. This account is also included in Applicant's debt plan (GE 4).

- SOR 1.e. The last activity on this account (\$745.00) was in November 2004 (Tr. 51-54; GE 4). The past due account is also a part of Applicant's debt plan (GE 2).

- SOR 1.f. Applicant was informed by the collection company on August 26, 2005 that they would stop all efforts to collect this account (\$463.00), and they would notify the credit bureau of their decision (AE F). Applicant indicated he paid this account, and was awaiting a proof of a payment letter from the creditor (Tr. 55; AE E).

- SOR 1.g. The last activity on this collection account (\$11,023.00) was August 2003. The account is a part of Applicant's debt consolidation plan (Tr. 46; GE 4).

- SOR 1.h. The account (\$5,255.00) is the fifth delinquent account in Applicant's debt plan.

Applicant's monthly budget shows that his salary is \$7,358.00, after expenses and debt payments of \$485.00 a month to his debt plan, \$150.00 a month to the Internal Revenue Service (IRS),<sup>2</sup> \$250.00 a month on the consent order, and a monthly car payment, Applicant has about \$157.00 remaining every month (AE I).<sup>3</sup>

### **Character Evidence**

In an April 2005 favorable character statement from a member of the U.S. Congress, Applicant's commendable work in the aerospace industry and on the rules committee of state x's senate was highlighted (AE J). A retired commercial jet pilot, with a background in the U.S. Air Force, stated that Applicant's knowledge about aerospace would make him a valuable employee in a company's flight department or in the sale of aircraft (*Id.*). A fellow church member has known Applicant for two years, and is happy with Applicant's committed involvement in the activities of the church. Applicant's first level supervisor since his hire in September 2006 believes Applicant warrants a position of trust based on his professionalism and team player attitude (*Id.*) Having weighed and balanced the entire record with Applicant's deportment and manner of testifying during the hearing, I find his testimony generally credible.

### **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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 sensible, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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<sup>2</sup> Applicant's check is no longer being garnished by the IRS (AE E).

<sup>3</sup> According to his budget, Applicant is again supporting one of his children who lost his job (AE I).

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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

## **Analysis**

### **Financial Considerations (FC)**

18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

The record indicates Applicant still owes about \$39,000.00 on six remaining debts, and has been unable to pay or settle the accounts. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history not meeting financial obligations*) apply.

Evidence of financial problems may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*); FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person’s control and individual acted responsibly under the circumstances*); FC MC 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*); and, FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). FC MC 20.a. provides Applicant some mitigation given the unusual circumstances under which he collected

the indebtedness. On hindsight, Applicant exercised seriously poor judgment in giving up the security of two jobs to work on a project that lacked a real plan and adequate capital. Applicant's devotion to the project is evidenced by the fact he worked for about 24 of the 26 months without pay, and lost his house and savings as a result.

FC MC 20.b., which mitigates when unforeseen events impede an applicant's efforts to honor his current or delinquent financial obligations, provides limited mitigation<sup>4</sup> that must be balanced against the unreasonable amount of time Applicant remained a part of the venture instead of looking for another job.

Applicant receives some mitigation under FC 20.c. Clearly, he still owes a large sum of money. However, his payoff of two delinquent debts in 2005 and 2006 even before he received the SOR, his persistence in successfully finding a debt consolidation program in April 2008, and his record of documented payments under the plan (even though creditor payments have not begun), persuade me that Applicant wants to pay these debts off. Furthermore, his payoff of two minor debts of the eight listed in the SOR entitles Applicant to limited mitigation under FC 20.d., and reinforces my belief he wants to eliminate his overdue accounts. Although no one mitigating condition is sufficient to overcome the negative evidence under FC DC 19.a. and 19.c., Applicant's mitigating evidence under three of the four mitigating conditions meets his ultimate burden of persuasion under the financial considerations guideline.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FI guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

- (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 the participation was 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. AG ¶ 2(a)

I have considered the disqualifying and mitigating conditions in light of the whole person concept. Applicant was about 46 years old when he left the security of two jobs in January 2003, and decided to take part in the commercial project based on the representations of two friends. These friends were also ministers from his church, but

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<sup>4</sup> Applicant could not have predicted his earnings would stop less than three months after he began work on the joint venture.

were clearly incapable of making the venture a success. Though Applicant should have left the failing enterprise much sooner than March 2005, he immediately found work in April 2005, and was able to pay off two creditors in 2005 and 2006. Recently, Applicant paid off two small debts listed in the SOR. After losing enrollment funds when the first debt consolidation organization went bankrupt in early 2008, Applicant successfully enrolled in the GE 4 organization, and has made three payments under the organization's debt plan that includes the six remaining creditors. He has a budget, and is living in a recreational vehicle to keep his expenditures under control. Applicant's favorable credibility and positive character evidence, including the evidence reflecting he has held a security clearance since 1977, convinces me he will complete the debt plan and consent decree. By all accounts, he sincerely wants to eliminate the past due debt. Applicant's case in mitigation prevails under the financial considerations guideline.

### **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 (Financial Considerations, 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.

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Paul J. Mason  
Administrative Judge