



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 07-16815
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

March 12, 2009

**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 Questionnaires for Investigations Processing (e-QIP), on March 13, 2006. On August 29, 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 September 22, 2008. Department Counsel was prepared to proceed on December 31, 2008. On January 6, 2009, the case was assigned to another administrative judge, and on January 26, 2009, the case was reassigned to me due to caseload considerations. DOHA issued a notice of hearing on January 27, 2009, scheduling the hearing for February 5, 2009. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 7, which were received without objection. The Government submitted a List of Government Exhibits, Exhibit (Ex.) I. The Applicant offered Applicant Exhibits (AE) A through D, which were received without objection, and testified on his own behalf. The Applicant submitted a List of Applicant Exhibits (Ex. II), and a matrix outlining his debts and their status (Ex. III).

I held the record open until February 27, 2009 to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE E through K, which were forwarded by Department Counsel by letter dated March 9, 2009 without objection (Ex. IV), and received. DOHA received the hearing transcript (Tr.) on February 13, 2009.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a. – 1.d., 1.f., 1.g., 1.i., 1.k., 1.l., 1.o. – 1.x., and denied 1.e., 1.h., 1.j., 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 47-year-old program manager, who has worked for his defense contractor employer since October 1986. Tr. 19-20, GE 1. Applicant has been employed in defense-related work for over 25 years and during those 25 years, he has successfully held a secret security clearance. His access to classified material was suspended as a result of these proceedings. Tr. 17-20, 67-68, GE 1, AE F.

Applicant graduated from college in December 2002 with a Bachelor of Science degree in mechanical engineering. GE 1. He was previously married from August 1984 to May 1986 (estimated). That marriage ended by divorce. GE 1. He has a 24-year-old son from his first marriage, who is independent and does not rely on Applicant for support. Tr. 16-17. Applicant remarried in July 1993, and has three daughters, ages 14, 11, and 10. GE 1, Tr. 16.

Applicant's background investigation addressed his financial situation and included the review of his March 2006 e-QIP, his August 2008, November 2007, and April 2006 credit bureau reports, his undated Response to DOHA Interrogatories, and his August 2006 and April 2007 Office of Personnel Management (OPM) interviews. GE 1 through 7.

Applicant's SOR identified 24 separate line items, which totaled approximately \$33,280. As noted, Applicant admitted to 19 debts, and denied five debts. The five denied debts total approximately \$4,000, leaving a total of admitted debts at approximately \$29,280. The debt in SOR ¶ 1.h. is a duplicate of the debt in SOR ¶ 1.p. leaving 23 debts totaling approximately \$32,000. Tr. 8-9, Ex. III.

Applicant attributes his financial problems to "poor financial judgment" that began in the "late 1990's and continued through the early 2000's." Tr. 52-54, 66-67. Since his SOR was issued and after evaluating his options to include bankruptcy, Applicant retained the services of a credit counseling service on January 29, 2009. Included in this service is debt consolidation and financial counseling. On March 8, 2009, Applicant began paying the credit counseling service by direct debit with an initial payment of \$1,097.00. Successive monthly payments will be \$1,052.00 and will continue for 38 months. The monthly fee Applicant pays to his credit counseling service is applied to the company's fee and/or debt principle. Documentation of same was provided. Tr. 54-56, 67, AE D.

In conjunction with the financial counseling Applicant received from his credit counseling service, he was able to develop a viable budget and a "Lead Action Plan." AE D. In addition to the action discussed *supra*, Applicant will be removing his children from private school to save tuition money, and is borrowing from his 401(k) retirement account to apply to his debts. Post-hearing Applicant provided updates on his progress in attaining financial stability to include documentation that he has satisfied the debts in SOR ¶¶ 1.j. and 1.u. Ex. IV, AE E – AE K.

Applicant provided a recent performance review, which documents above average work performance. He has enjoyed a career marked by regular promotions and documented achievements/accomplishments in support of the defense industry. AE B. Of note, he has been recognized in the development of numerous tank ammunition and artillery programs and holds a U.S. patent for developing a classified projectile. AE F. Applicant is active in his community and does volunteer work with Junior Achievement, local food kitchen, local organization dedicated to improving the lives of people with intellectual and other disabilities and their families, and serves as a youth minister. AE F.

## **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.x. through his admissions and evidence presented. At the time the SOR was issued in August 2008, Applicant owed a number of debts.

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.

Applicant’s indebtedness stems from his admitted financial mismanagement that began in the late 1990s and continued into the early 2000s. Once overextended, it became increasingly difficult for Applicant to remain current and he began a financial tailspin.

Having recognized the seriousness of his situation, Applicant reviewed his options to include bankruptcy and chose to retain the services of a credit counseling service. He recently entered into an agreement with that service to whom he pays a monthly fee by direct debit, and has sought financial counseling also offered by the same service. He submitted post-hearing updates on his financial progress. 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 responsibility.

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

(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.

AG ¶ 20(c) applies because Applicant sought financial counseling. While paying down his debts, he continues to explore strategies to improve his financial situation. AG ¶ 20(d) partially applies because Applicant initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. In short, Applicant has made substantial progress in turning his financial situation around. He has established a viable budget, which shows a net remainder after his monthly bills are paid.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met his ultimate

