



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



In the matter of: ) ) ----- ) SSN: ----- ) ) Applicant for Security Clearance )	ISCR Case No. 07-17913
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**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 30, 2009

**Decision**

HOWE, Philip S., Administrative Judge:

On January 28, 2005, Applicant submitted his Security Clearance Application (SF 86). On June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 acknowledged receipt of the SOR on September 3, 2008. He answered the SOR in writing on September 4, 2008, and requested a hearing before an administrative judge. I received the case assignment on October 9, 2008. DOHA issued a Notice of Hearing on October 20, 2008, setting the hearing for November 7, 2008. I granted Applicant's request for a delay because his truck broke down and he could not get to the hearing. On November 18, 2008, I entered an order setting the continued

hearing no later than January 21, 2009. Another Notice of Hearing was issued on January 12, 2009, setting the rescheduled hearing for January 27, 2009. I convened the hearing as scheduled on that day. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibits A through N, without objection. DOHA received the transcript of the hearing (Tr.) on February 9, 2009. I granted Applicant's request to keep the record open until February 10, 2009, to submit additional matters. On that day, he submitted Exhibits O to S, without objection. The record closed on February 10, 2009. 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, dated September 4, 2008, Applicant admitted the factual allegations in ¶¶ 1.b, 1.c, 1.d, 1.e, 1.g, 1.i, 1.j, and 1.k of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, 1.f, 1.h, and 1.l of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 57 years old, has a high school degree, is married to his third wife, and has two children from his prior marriages. His children are all adults. Applicant has been a truck driver for the past 18 years. Some of the cargo he hauled until his stroke was for the Defense Department (DoD). In July 2008, he had a mild stroke, and now has high blood pressure. Under U.S. Department of Transportation (DOT) rules, he cannot drive a truck again until at least July 2009. His employer removed his DoD qualifications at the same time. He had no adverse situations while hauling DoD cargo. When he was driving with his wife, who is also a truck driver and has a security clearance, they could earn about \$5,000 monthly. Now, with just his wife driving the truck because he cannot drive under the DOT rules, they earn about \$2,000 monthly. He and his wife support a daughter who has five minor children and is unable to work because of medical conditions. Applicant spends about \$1,200 monthly to rent an apartment and pay for a truck for the daughter. Applicant and his wife have no permanent home, but live in their truck's living compartment, because they are constantly on the highway to earn money from their truck. His prior truck was destroyed in an accident in 2000, which started Applicant's financial difficulties, and the stroke compounded them. (Tr. 14, 24, 25, 26, 28-37, 61; Exhibits 1, D)

Applicant submitted pictures of his truck, decorated to show his support for the U.S. Armed Forces. He also submitted letters from his trucking company supervisors and a person who knows him because both their children are in the military together. All state Applicant is an honest, hardworking man of integrity who provides excellent trucking services to his customers. (Tr. 27; Exhibits A-C)

The SOR lists 12 delinquent debts, totaling about \$87,000. Five of the debts have been paid, while the remainder are unpaid. The two largest groups of debts are medical expenses for himself and his wife, and credit card debts. Applicant also was

paying some debts, but when he had his stroke and could not drive, his income dropped by over 50% and he could not maintain the payment programs. (Tr. 38-56; Exhibits 2-6, E to S)

Applicant paid the following debts: a telephone debt of \$956 on December 8, 2006 (¶ 1.a); \$254 to a bank on a gasoline credit card on or before May 21, 2008 (¶ 1.f); \$73,883 on a mobile home debt by a warranty deed in lieu of foreclosure on April 28, 2003; and \$1,477 on a credit card debt on March 30, 2007 (¶ 1.l). While those debts remain on Applicant's credit record, his documents show they have been resolved. Applicant has not been diligent in having his credit record reflect the payments or resolution of these debts. (Tr. 38, 43, 44-46; Exhibits 2-6, F, H, K, and S)

Applicant owes the following medical debts: \$287 (¶ 1.b); \$99 (¶ 1.c); \$69 (¶ 1.d); \$192 (¶ 1.i); and \$75 for a medical debt for his wife (¶ 1.j). These debts have not been paid because they were small and Applicant overlooked them as he drove around the United States in his truck. (Tr. 39-41, 50, 51, 56; Exhibits 2-6)

The two credit card debts Applicant owes are: \$550 as listed in the SOR, but now the balance is \$300 after Applicant made some payments which he had to cease because his income decreased last year (¶ 1.e); and \$396 after making payments until about eight months ago (¶ 1.h). Applicant's exhibit shows he entered an installment payment agreement on February 4, 2009, for \$50 each month on a new balance of \$487.60 on this debt. (Tr. 41-43, 48; Exhibits 2-6, O)

The delinquent debt in ¶ 1.k of the SOR is for \$8,767, owed on a car for which Applicant co-signed the note. The car was for his daughter with the five children. He was making payments on the debt until July 2008 when he had his stroke, and could not drive and earn as much as he was while driving. The car was repossessed by the lender, sold at auction, and the \$8,767 balance owed remains. The original amount was \$16,289.54. He was paying \$100 to \$200 monthly on the debt. (Tr. 51, 52; Exhibits 2-6, I)

Applicant's repayment plan for his debts is to pay the medical debts first, then the smaller debts, and working up to the car loan debt. Applicant also owes Federal income taxes for the years 2004 to 2006. He filed his returns, but did not have the money to pay the taxes. As an independent contractor, he did not withhold sufficient money to pay his taxes. His employer did not have to withhold any tax payments because of the contractual arrangement between them. Applicant was paying the taxes pursuant to an installment agreement until his stroke. He currently owes \$38,348.65, according to his exhibit, but thinks he owes about \$13,000 because of lower income they earned in later years which may earn them a refund, and the mistakes made by his tax preparer for the relevant tax years. These tax debts do not appear on the Government exhibits which are credit reports, dated for 2005, 2008, and 2009. (Tr. 56; Exhibits 2, 3, 5, 6, R)

Applicant submitted two exhibits to show he has paid four other debts not listed in the SOR. He paid a mortgage on another property, a credit card debt of \$45, a

medical bill for about \$226 in 2006, and a telephone bill on July 31, 2006. He has payment agreements on two other debts not listed in the SOR. He owes a hospital bill of \$500 and had paid down the debt starting in 2007. He will resume payments in February 2009 of \$100 monthly. He owes \$305.57 on a credit card and made a \$50 payment on January 31, 2009, and every month thereafter. He has not incurred new debt in the past year. (Exhibits G, L, M, N, P and Q)

### **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(a), 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 the applicant or proven by Department Counsel, and 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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debt and was unable to pay some obligations since 2000 after his truck accident. He owes seven delinquent debts listed in the SOR. The first six smallest of these debts total \$1,022. The seventh debt is for the unpaid balance on a car purchased for his daughter, being \$8,767. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

After analyzing Applicant’s delinquent debts and his actions to date to resolve them, they are actually less than would appear on the SOR. For example, Applicant owes only \$1,022 on the smallest six debts, an amount which he could pay without any difficulty, and to which he committed to paying. Then he would have the next largest debt to pay, which would be the car loan balance of \$8,767.

Applicant admitted two groups of debts not listed on the SOR which he is paying to show his good-faith efforts at paying his overall debt obligations. Applicant is paying the \$1,200 in small debts. Finally, Applicant has only the Federal tax debt to pay when he resumes his installment payment agreement. That amount seems to be in dispute between Applicant and the Internal Revenue Service. That agreement and other installment payment agreements were interrupted when he lost income after his July 2008 stroke.

His financial support of his daughter and her five children in the amount of \$1,200 monthly from his current \$2,000 monthly income also has adversely affected his ability to pay his debts. When he resumes driving after July 2009, he can earn more money, which should make it easier for him to repay his debts. He should have the paid debts removed from his credit reports so his credit report will not reflect resolved debts and look worse than it actually is.

Specifically, the guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial worries arose sometime after 2000. They became aggravated when he could not drive and earn the income he formerly earned. He accumulated delinquent debt due to support for his daughter and grandchildren and his unemployment under Federal rules as a long haul truck driver. These circumstances continue, and will for the foreseeable future regarding his daughter and her family. I find the behavior occurred under some unusual circumstances, but it is likely to recur. However, because of the unique combination of events, it does not raise concerns about his current reliability, trustworthiness, or good judgment based on his performance record and the character statements. The evidence raises this potentially partially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where “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.” As noted above, the financial problems arose from his 2000 truck accident, and then his medical problems of the stroke and high blood pressure compounded them by causing the lengthy current period of unemployment as a truck driver under DOT rules. He acted responsibly in resolving five of these debts before the SOR was issued. He is trying to pay the remaining delinquent debts within his financial capacity. I find this potentially mitigating condition is a factor for consideration in this case.

Evidence that “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” is not present; hence the potentially mitigating condition under AG ¶ 20(c) is not applicable.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has been resolving delinquent debts, either by payment or settlement, while supporting himself, his wife, and six other people. If he were earning the income he earned up to July 2008, he would now be financially sound and prepared for future contingencies. Because of his continuing efforts to pay his debts, even while traveling as a truck driver,

and not incurring any new substantial debt, I conclude this potentially mitigating condition applies.

The two remaining mitigating conditions, legitimate reasons to contest a debt, and affluence resulting from a legal source of income, do not apply to this case.

### **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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant has a health problem which prevents him from earning his former income, with which he could easily resolve these debts. All but one of the SOR listed debts currently unpaid total only \$1,022, a miniscule amount of debt. The remaining large debt is \$8,767 for the car loan. Of the SOR listed debt total of about \$87,000, Applicant has resolved nearly \$77,000 worth of delinquent debt. He is paying other unlisted debts on the installment basis, which debts total about \$1,200. These payment efforts show his good-faith and continued commitment to repaying his delinquent debts. The debts are manageable if his former income were to be restored. Applicant has applied himself to paying his debts, but is limited by his health, which is not his fault. His stroke limits his ability to earn sufficient income to pay all the debts more rapidly than he is doing so. He has not incurred new delinquent debt during this period. He did not voluntarily spend himself into the current situation. There is no potential for pressure or coercion, because it was not wanton spending which placed Applicant in this situation. Once he resumes his driving career, and keeps his truck moving and earning income, he can resolve his remaining debts. When hauling the DoD cargoes in the past, Applicant had no adverse situations or reports.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations. I conclude the "whole person" concept for Applicant.

### **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

Subparagraphs 1.a to 1.i: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge