



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-18520
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco Mendez, Esq., Department Counsel  
 For Applicant: Mark S. Zaid, Esq.  
 Bradley P. Moss, Esq.

September 17, 2008

**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 Questionnaire for Investigations Processing on (e-QIP), on March 12, 2007. On April 8, 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 May 8, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 20, 2008, and I received the case assignment on May 28, 2008. DOHA issued a notice of hearing on June 5, 2008, scheduling the hearing for July 15, 2008 at 9 A.M. On June 10, 2008, DOHA issued an amended notice of hearing modifying the start time on July 15, 2008 from 9 A.M. to 1:30 P.M. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 5, which were received without objection. The government submitted a List of Government Exhibits, Exhibit (Ex.) III. The Applicant offered Applicant Exhibits (AE) A through G, 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 K and L without objection. DOHA received the hearing transcript (Tr.) on July 23, 2008.

### **Procedural Rulings**

#### **Amendment of SOR**

Department Counsel submitted a Motion to Amend the Statement of Reasons (Ex. I) dated July 14, 2008, adding the following allegation under Guideline F:

1.h. On or about March 20, 2008, a federal tax lien was filed against you in the [County Court House], in the approximate amount of \$17,636.00. As of July 17, 2008, this debt has not been paid.

Counsel for Applicant submitted a Response to Motion to Amend the Statement of Reasons and Answer to Amended Statement of Reasons (Ex. II) dated July 14, 2008. Counsel for Applicant did not object to the Government's Motion to Amend. Through Counsel for Applicant, Applicant admitted the first sentence, and denied the second sentence in that the debt has been partially paid. During the hearing, I granted the Government's Motion to Amend. Tr. 9-11.

### **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 33-year-old engineer, who has worked for his defense contractor employer since October 2006. GE 1, Tr. 30. He is a first-time applicant for a security clearance. Tr. 56.

Applicant graduated from high school in June 1994. Tr. 99. He did not pursue higher education. He has never married and has no dependents. GE1.

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, his April 2007 and July 2008 credit reports, and March 2008 federal tax lien record. GE 1 – 5.

Applicant's SOR identified eight separate line items, which included two judgments, four collection accounts, one charged off account, and one federal tax lien for a total of \$27,931 (excluding SOR ¶¶ 1.c., 1.g.). Two of the debts are duplicates, i.e. SOR ¶¶ 1.a. and 1.g.; 1.b. and 1.c., thus reducing the number of valid debts from eight to six. (SOR ¶¶ 1.a. – 1.h.)

Applicant provided the following explanation regarding the genesis of his financial problems and his solution for solving those problems:

The debts in this SOR were largely accumulated between 2000 and 2003 when I was young, single and lacking steady, good-paying work. Between 2003 and early 2006, I stabilized my professional career but my annual salary did not exceed \$30,000 and I was unable to pay off the debts.

Since I joined my current company, [defense contractor], in October 2006, I have further stabilized my professional, financial, and social life. I have made steady progress at [defense contractor] and continue to play a more integral role within the company. My annual salary has grown consistent with the rise in my responsibilities, amounting to \$57,000 in 2007 and expected to rise considerably beyond that in 2008. Equally important, I currently live with my girlfriend of five (5) years, resulting in additional savings by dividing up our living expenses.

While I recognize that youthful ignorance is no excuse for my earlier financial miscues, I believe I have demonstrated that I left behind any vestiges of a financially-unsustainable lifestyle long ago. I have taken control of all aspects of my life and have put myself on a steady footing to advance. In light of that, I believe any concerns surrounding my past financial issues have been more than sufficiently mitigated and that it is clearly consistent with the national security interests of the United States that I be granted a security clearance. Response to SOR

In response to a question from his counsel about what he had learned with respect to his finances, Applicant said:

Well, I've learned that it has a lot to do with my relationship. I never had a situation where I saw I was interested in having things and I needed a

future, thinking house, family, that sort of portion of life I'd like to possibly be able to live.

And so, I've learned that, you know, it was just being immature and not taking responsibility for a lot of my actions. I, I don't know how to, how to explain any better, but just the want to have a different side of life that I couldn't create living that style of life, and it – that's been the biggest motivating factor has been the sight of a future and understanding what I'm working for.

I'm not a money-motivated individual, but I understand that if that's what it takes, then you structure your life in that way so that you can have some of the things that you want, then so be it. And I understand that, and that's the biggest thing I've learned. Tr. 67-68.

Since his SOR was issued, Applicant has paid off and/or settled debts identified in SOR ¶¶ 1.a. through 1.g., excluding 1.d. and 1.g., which are duplicates as noted *supra*. He paid/settled those debts in April 2008, three full months before his hearing date. He contacted the Internal Revenue Service (IRS) to address his federal tax liability identified in SOR ¶ 1.h., and established a payment plan of \$259 per month. He is current on his payments to the IRS. Response to SOR, containing Exs. A – F. , Tr. 86-99.

Applicant submitted a comprehensive budget reflecting a net monthly remainder of \$1,683 after all his debts were paid. He has a 401k account which he opened in January 2008, and a savings account reflecting a balance of \$1,932. AE K.

Applicant provided five favorable reference-related documents. i.e. three e-mails from clients/customers, and two personal references. AE G – J, AE L. Applicant's girlfriend testified on his behalf and provided favorable information about his character. Tr. 40-50. The President and Owner of Applicant's company testified on his behalf and also provided favorable information about him. He stated Applicant was the "best engineer" he has ever had when comparing him to 200 to 300 engineers over the last 20 years. Tr. 23-39.

## **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 the debts alleged in SOR ¶¶1.a. – 1.b., 1.d. – 1.f., and 1.h. Applicant acknowledged he made poor financial decisions earlier in his life, especially at a time when he was underemployed. Not earning enough money to meet his day-to-day bills, he fell into a trap many individuals have and that is he lived off of or supplemented his income with credit cards. His lack of income also precluded him from paying his income taxes when due.

His financial situation has substantially improved as a result of earning more income, maturity, and the realization that his failure to handle his finances responsibly may jeopardize his ability to obtain and maintain a security clearance. Since receiving his SOR in April 2008, he has taken this process quite seriously and taken what appears to be all reasonable steps to correct his financial situation. He has settled and/or paid all debts alleged in the SOR except his federal tax debt. For that debt, he has contacted the IRS, set up a monthly payment plan, and is current. His monthly budget reflects a net remainder of \$1,683 after his bills are paid. 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 six debts totaling \$27,931.

Under AG ¶ 20, there are two 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

I am able to apply partial credit under ¶ 20(b) because at the time Applicant incurred the debts, he was underemployed and experienced a business downturn, but question the level of responsibility Applicant exercised at the time. I am able to apply full credit under ¶ 20(d) because Applicant initiated a good-faith effort to repay

