



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-18581
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Pro Se

October 23, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on July 4, 2007. On June 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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.

On July 26, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 6, 2008. On August 15, 2008, a Notice of Hearing was issued, scheduling the hearing for September 11, 2008. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4 without objection. Applicant testified and offered 25 exhibits which were admitted as Applicant Exhibits (AE) A – Y without objection. The transcript was received on September 22, 2008. 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, Applicant admits all of the SOR allegations.

Applicant is a 39-year-old electrical engineer employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since 2002. First as a contract employee, then he became a permanent employee in March 2003. He has a Masters Degree in Electrical Engineering. He is also a Lieutenant in the United States Navy Reserves. He previously served on active duty in the United States Navy as an enlisted man. He received an Honorable Discharge on February 22, 2001. He received his commission later in 2001. He has held a security clearance since 1997. He is married and has three children, two daughters, ages 8 and 5, and a son, age 3. (Tr at 6-7, 25-26; Gov 1; AE Y at 3.)

On July 4, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1.) He disclosed several delinquent debts in response to section 27 on his questionnaire. A subsequent background investigation confirmed that Applicant had the following delinquent accounts: an \$8,873 credit card account that was charged off in August 2002 (SOR ¶ 1.a: Gov 1, section 27; Gov 2 at 5; Gov 3 at 2; Gov 4 at 11); a \$776 credit account that was charged off in August 2002 (SOR ¶ 1.b: Gov 1, section 27; Gov 2 at 5; Gov 3 at 2; Gov 4 at 10); a \$3,223 credit card account that was charged off in July 2005 (SOR ¶ 1.c: Gov 1, section 27; Gov 2 at 5; Gov 3 at 2; Gov 4 at 6); a credit card account that was past due in the approximate amount of \$428 (SOR ¶ 1.d: Gov 1, section 27; Gov 2 at 5; Gov 3 at 2; Gov 4 at 9); and a \$19,139 credit card account that was placed for collection in October 2004 (SOR ¶ 1.e; Gov 1, section 27; Gov 2 at 16; Gov 3 at 2; Gov 4 at 5).

Additional delinquent accounts include: a \$1,437 credit card account that was charged off as a bad debt in July 2006 (SOR ¶ 1.f: Gov 1, section 27; Gov 2 at 5; Gov 3 at 2; Gov 4 at 8); a \$2,660 credit card account placed for collection in July 2003 (SOR ¶ 1.g: Gov 1, section 27; Gov 2 at 5; Gov 3 at 3; Gov 4 at 7, 10); a \$282 phone account that was placed for collection in December 2005 (SOR ¶ 1.h: Gov 2 at 5; Gov 4 at 10-11); a \$168 phone account that was past due in July 2006 (SOR ¶ 1.i: Gov 1, section 27); and a \$29 medical account that was placed for collection in July 2007 (SOR ¶ 1.j: Gov 1, section 27; Gov 3 at 1).

In 2001, Applicant was out of work for three months. He found contract work out of state in 2002 and worked several months. The contract would terminate and he would be out of work for several weeks. Applicant estimates that he was unemployed for three months in 2002 until he was hired by his current company. During 2001 and 2002, he and his wife relied on credit cards for living expenses. He was unable to catch up with late payments and interest fees. (Tr at 23-24.)

In late 2003, Applicant entered into an agreement with a debt repayment firm. He paid into the debt repayment plan from December 2003 to April 2006. (AE A) In 2006, his oldest daughter developed medical problems. She eventually had surgery in late 2006. His younger daughter had a medical issue which required weekly therapy sessions. His son had a surgical procedure in December 2006. Applicant's extra medical bills made him unable to keep up with payments on his debt repayment plan. He had paid down approximately \$20,000 of his debt balance prior to that time. (Tr at 26-29; AE I; AE J.)

After he stopped making payments towards his debt repayment plan, Applicant's debt balances began to grow as a result of penalties and late fees. He still attempted to resolve his debts with individual creditors but the creditors demanded payments that he could not afford. (Tr at 29.)

In 2007, Applicant's financial situation became more stable and he began to set up payment agreements with some of his creditors. In May 2008, he entered into a new repayment agreement with the debt repayment firm. Payments began in July 2008. Applicant pays \$283 monthly into the plan. The debts in SOR ¶¶ 1.d, 1.f, 1.g, and 1.h, are included in the repayment plan. (Tr at 43, 60; AE H; AE I at 1; AE P.)

The current status of the debts alleged in the SOR are as follows:

SOR ¶ 1.a, \$8,873 charged off credit card account: Applicant paid on this debt from 2003 to April 2006 during his initial debt repayment plan. He sent a total of \$5,087 to this account during this time. (AE A at 1-3.) He was unable to reach an agreement between May 2006 to March 2008. In April 2008, Applicant contacted the creditor and entered into an agreement to pay \$370 per month over a period of 24 months. Payments started in June 2008. (Tr at 41, 44-45; AE A at 4-5; AE M; AE Q.)

SOR ¶ 1.b, \$776 charged off credit card account: Applicant paid on this debt from December 2003 to April 2006 through his initial debt repayment plan. He paid a total amount of \$1,386. He attempted to include the creditor on his current debt repayment plan in April 2008. He was not successful so he contacted the creditor and set up payment arrangements from May 2008 to November 2008. He made a \$115 payment in May 2008 and a \$35 payment in June 2008. (Tr at 41; AE B; AE L.)

SOR ¶ 1.c, \$3,223 charged off credit card account: Applicant paid \$1,589 in payments on this account during his debt repayment plan from 2003 to 2006. Since January 2008, he has been paying \$57.57 a month to the agency collecting on behalf of this creditor. (Tr at 32; AE C.)

SOR ¶ 1.d, \$428 credit card account that is past due: Applicant paid \$1,597 during his initial repayment plan from December 2003 to April 2006. Applicant made various payments on this account in February 2007, April 2007, August 2007, November 2007, January 2008, February 2008, March 2008, and April 2008. In May 2008, this debt was included in his new repayment plan. Applicant admits this account

remained past due even though payments were made but claims it will soon be changed to current based on the consistent payments that are being made on his debt repayment plan. (Tr at 30; AE D.)

SOR ¶ 1.e, \$19,139 account placed for collection: Applicant and his wife charged \$7,000 of their wedding expenses on this account. He paid \$9,946 towards this account in his previous debt repayment plan from December 2003 to April 2006. In November 2007 and December 2007, he made a \$50 payment towards this debt. He has been sending in \$200 monthly since January 2008. (Tr at 33, 42; 58; AE E; AE N.)

SOR ¶ 1.f, \$1,437 charged off credit card account: Applicant paid this creditor \$477 under the debt repayment plan from December 2003 to April 2006. This account is included in Applicant's recent debt repayment plan which began in May 2008. (AE F; AE P.)

SOR ¶ 1.g, \$2,660 charged off credit card account: Applicant paid this creditor \$519 under the debt repayment plan from December 2003 to April 2006. This account is included in Applicant's recent debt repayment plan which began in May 2008. (AE G; AE P.)

SOR ¶ 1.h, \$282 phone account placed for collection: This account is included in Applicant's recent debt repayment plan which began in May 2008. (AE H; AE P.)

SOR ¶ 1.i, \$168 past due phone account: Applicant became aware of this debt in June 2008. He set up a payment arrangement to pay this debt off in three months. He will pay \$50 for August and September 2008 and the remaining \$68 in October 2008. (Tr at 42, 45; AE H; AE O; AE R.)

SOR ¶ 1.j, \$29 pediatric medical account placed for collection. Applicant planned to resolve this debt at the end of July 2008. He did not become aware of this debt until he reviewed his credit report in June 2008. (Tr at 38; AE I.)

Applicant's net monthly income is \$5,635 which includes his reserve income. His wife does not work. Monthly expenses include rent: \$1,400, groceries: \$300, utilities: \$454, clothing: \$100, car expenses: \$492, medical: \$150, alimony/child support/daycare: \$400, miscellaneous expenses: \$740. His car payments are \$308.61 and \$358.21. His total monthly expenses are \$4,702.82. Assuming Applicant paid off the debts alleged in SOR ¶¶ 1.i and 1.j, his monthly debt payments total \$931. This leaves \$1.18 left over after expenses. (Tr at 57-58; Gov 2 at 10-11.)

It is likely that Applicant may have more money left over each month after expenses. He listed \$740 in miscellaneous expenses, a rather high figure. In parentheses next to this figure he indicated "explanation included" but no explanation was included in Gov 2. In addition, he listed \$400 for alimony/child support/daycare. However, it does not appear that Applicant was previously married and/or had a child

from a previous relationship. Considering that his wife does not work, a \$400 monthly daycare expense seems unlikely. (Gov 2 at 10.)

Applicant never tried to hide his financial situation. He is current on his federal taxes. He follows a budget. His children's medical problems have improved. When he entered into the debt management program, he was provided a compact disk which contained a program on how to manage one's finances. Applicant also reads books on financial management. He is committed to resolving his debts. (Tr at 52, 56; 61-62.)

Applicant's Pastor wrote a letter on his behalf. Applicant is a member in good standing at the church who serves as a role model for youth and adults. He is devoted to his family, job and country. He was recommended to become a Deacon based on his character. He has held numerous offices in the church. (AE S.)

Applicant's supervisor has supervised Applicant over the past six years. He is pleased with his work and dedication. He spent many hours above and beyond the call of duty to ensure timely completion of critical tasks on the projects he has worked on. He can work well with other team members and can be relied on to "get things done." He recommends him for a security clearance. (AE T.)

Applicant's commanding officer in the United States Navy Reserves states Applicant has done an outstanding job as executive officer over the past 17 months. He takes a personal interest in the professional and private lives of all unit members. He has high ethics, morals and ideals. His commander recommends that his security clearance be continued. (AE U.) His commanding officer from October 2004 to October 2007, recommends reinstatement of his security clearance. He notes Applicant has always been rated as one of the unit's top performers. He is a trustworthy and outstanding officer. (AE V.) Another former commander indicates Applicant served as his assistant training officer. He was very organized and kept track of the unit members' travel and training. He claims Applicant is one of the best junior officers that he has worked with in over 29 years of active and reserve navy service. (AE W.)

Applicant's fitness reports both enlisted and officer state Applicant meets or is above standards. (AE X.) His awards and decorations include the Navy and Marine Corps Achievement Medal. In February 1999, he was awarded the Division Outstanding Team Builder Award. (AE Y.)

## **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.

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**

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); FC DC ¶19(c) (a history of not meeting financial obligations); and FC DC ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis) apply to Applicant's case. Applicant has accumulated a significant amount of delinquent debt since 2001. The SOR alleges ten debts, an approximate total balance of \$37,015. While some mitigating factors apply to Applicant's case, most of the delinquent debts are credit card accounts. His excessive indebtedness indicates that he and his wife have consistently spent beyond their means.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following Financial Considerations Mitigating Conditions (FC MC) potentially apply to Applicant's case: FC 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 current reliability, trustworthiness, or good judgment) does not apply. While Applicant initially enrolled in a debt repayment program in 2003. He was unable to complete the program and stopped paying some of his accounts in December 2006. He recently entered into another debt repayment plan and has entered into repayment agreements with other creditors who are not included in the plan. However, he recently entered into these repayment agreements. Given his history of financial irresponsibility, it is too soon to conclude Applicant developed a track record of financial stability. FC MC ¶ 20(b) does not apply.

FC MC ¶ 20(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) applies. Applicant's periods of unemployment in 2001 and 2002 contributed to his financial problems. To his credit, he entered a debt repayment plan in 2003 and consistently made payments until April 2006 when he was unable to continue the plan because of his three children's medical

issues. His periods of unemployment and his children's health issues are certainly factors that were beyond his control. In 2008, Applicant started to deal with his debt again and has entered into repayment agreements with each of his creditors. He has 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) applies. Applicant received financial counseling when he entered his debt repayment agreement. He established a budget and entered into repayment plans with each of his creditors. Admittedly, Applicant's budget is rather tight and he has a long way to go to complete his repayment plans, but his financial situation is beginning to stabilize. Applicant is given credit for having a plan to resolve his debts. However, considering the extent of the debt it will take some time for the delinquent debts to be resolved.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. From December 2003 to April 2006, Applicant consistently made payments towards his first debt repayment plan. His children's health issues prevented him from continuing the plan. His financial situation has stabilized and he re-enrolled in a debt repayment plan which includes four of the debts alleged in the SOR. He entered into repayment agreements with the six remaining debts. He has initiated a good-faith effort to resolve his overdue accounts.

### **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) 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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. I considered the favorable comments of Applicant's supervisor, commanders, and Pastor. I considered Applicant's record in the United States Navy both as an officer and as an enlisted man. I considered Applicant's difficulty in finding a stable and well paying job in 2001/2002. I considered that he was faithfully making payments towards a debt management plan from April 2003 to December 2006 until the financial burdens of his children's medical issues



made him unable to make payments. As soon as his financial situation stabilized, he established a plan to pay his delinquent accounts. While it may take some time for Applicant to resolve his delinquent accounts, he has taken adequate measures to control his financial situation in the future. The recommendations of Applicant's Pastor, supervisor, and past and present commanders indicate Applicant is reliable, trustworthy, and able to protect classified information. For these reasons, Applicant has mitigated the security concerns raised under financial considerations.

### **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:	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
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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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ERIN C. HOGAN  
Administrative Judge