



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-18766  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

April 30, 2010

**Decision**

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LYNCH, Noreen A., Administrative Judge:

On December 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department on September 1, 2006.

On January 6, 2010, Applicant answered the SOR, and requested a hearing. He admitted the factual allegations in SOR ¶ 1.a through 1.h. DOHA assigned the case to me on February 2, 2010. DOHA issued a Notice of Hearing on February 22, 2010, and I convened the hearing as scheduled on March 30, 2010. Department Counsel offered six exhibits, which were admitted as Government Exhibits (GE) 1-6, without objection. Applicant testified on his own behalf and presented the testimony of four witnesses. He offered 16 exhibits, which were admitted as Applicant Exhibits (AE) A-P. At Applicant's request I kept the record open until April 16, 2010. Applicant submitted an additional 16

documents, received into the record without objection. DOHA received the transcript (Tr.) on April 6, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is a 35-year-old employee of a defense contractor. After graduating from high school in 1992, he attended some college classes. Applicant has been employed with various contractors. He is engaged and has two children. He has been with his current employer since April 2006. (GE 1.) Applicant has held an interim security clearance since approximately 2006. (Tr.91.)

Applicant and his fiancée bought a home in October 2004. The mortgage rate was variable. They had a son in April 2005. (Tr. 40.) In July 2005, Applicant's fiancée lost her job. She was unemployed for almost one year. Applicant could not maintain his monthly expenses, including his car payment or mortgage. The vehicle was repossessed and his wages were garnished. His reduced income was the only income for his family. He accumulated more delinquent debt. This was the beginning of his financial difficulties.

Applicant's fiancée had some delinquent debt. She was making payments on her debts which did not leave any money for other debt. They share joint accounts. Applicant acknowledged that he was somewhat overextended when he bought the home. (Tr. 105.) In the past several years, Applicant made partial payments on his mortgage account. (Tr. 159) He used a tax refund to pay the initial amount (\$4,500) needed to complete a loan modification in January 2010. (AE F)

The SOR alleges eight delinquent debts totaling approximately \$28,000. (GE 6). The current status of Applicant's delinquent debts is described below.

The debt alleged in SOR ¶¶ 1.a (\$4,907) is charged off credit card account. The original account was sold to a law firm. Applicant was paying \$150 a month on the account since the summer of 2009. The current balance is approximately \$1,437. In January 2010, the firm filed for bankruptcy and Applicant was unable to send his regular monthly payment. (Tr. 19; AE A) He researched the account and is now making payments to a new firm in the amount of \$160. (AE 15, 16.)

1.b (\$2,339) is a duplicate of the debt in SOR ¶ 1.a. (Tr. 23.)

1.c (\$2,937) is a credit card collection account. Applicant has made monthly \$50 payments on the account since June 2009. He made payments of \$100 a month for the past two months due to checks being returned for the debt in 1.a. (Tr. 26; AE B.)

1.d (\$495) is a collection account that was paid in full. (AE C.)

The debt alleged in SOR ¶1.e (\$746) was settled for \$112. (AE D.)

The debt alleged in SOR ¶ f \$501 is a charged-off credit card account. The account is paid. (AE E.)

The debt alleged in SOR ¶ 1.g was 120 days past due for \$24,944 on his second mortgage. Applicant contacted the company and modified the loan. (AE F.)

The debt alleged in SOR ¶ 1.h \$14,182 on his past due mortgage. This has been consolidated with the mortgage. (Tr. 111.) He is now current on the payment. (AE G.)

Applicant's net monthly income is approximately \$6,168, which includes his fiance's income. He received a raise in March 2010. After expenses, his net monthly remainder is \$739. This amount will increase to \$1,468 in August due to a lower second mortgage payment that will begin in August. Applicant has no credit cards. He has no car payment. (Tr.47.) He has a household budget. His recent credit reports confirm that he pays as agrees on his accounts. Applicant's fiancee will receive more income after her graduation from nursing school. They do not take extravagant vacations.

Applicant's supervisor described Applicant as a dependable employee who takes on additional tasks whenever possible. (Tr. 130.) Applicant performs his job in an outstanding manner. He works overtime whenever possible. He has had no problems at work.

Applicant's father-in-law, a retired Air Force Colonel, testified that he has known Applicant for about 19 years. Applicant was a friend of his son's and he visited his family frequently. (Tr. 139.) He recommends Applicant for a security clearance. He is fully aware of the financial issues at hand. He also emphasized that the mortgage problem was in part due to the general economic downturn.

Applicant's father, who has held a security clearance for almost 45 years, described his son as a person who does not gamble or have difficulty with alcohol. Applicant has received financial advice from his father in the past. Applicant is a responsible individual and has learned from his circumstances. (Tr. 152.) Applicant's father has not given his son any financial assistance in the past year.

Applicant submitted three letters of recommendation. He is praised as a trustworthy, dependable, and honest person. Applicant is a dedicated family man. He works hard to provide for his family. (AE O.) Applicant is recommended for a security clearance based on his loyalty to his company and to his family. (AE P.)

Applicant received an award in May 2008 for his work with the Army. (AE N.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which must be considered 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2, 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on various accounts. He admitted that he had delinquent debt in the amount of \$28,000. His credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions.

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.<sup>o</sup> Applicant-s financial difficulties began in 2005 and continue to the present. This mitigating condition does not apply.

Under AG & 20(b), the disqualifying condition may be mitigated 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.<sup>o</sup> Applicant and his fiancée bought a home in 2004. The mortgage had a variable rate. In April 2005, they had a child. Later in 2005, Applicant-s fiancée lost her job. Applicant could not maintain the monthly expenses on his income. The mortgage rate increased and they fell behind in their mortgage. They made partial payments on the mortgage each month. Applicant managed a loan modification in 2010. He paid on several other accounts. He acted responsibly under the circumstances. This mitigating condition applies.

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<sup>o</sup> is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.<sup>o</sup> Applicant has not received formal financial counseling. He

attempted to pay on his accounts whenever he could. He has made payments since 2009. He is now on a sound path with his mortgage. His efforts are sufficient to carry his burden on those debts. I conclude these mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows “the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” Applicant produced documentation to substantiate the duplication of an account. This mitigating condition applies.

### **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.

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 and conclude they are sufficient to overcome the government’s case.

Applicant is an honest, hard-working individual. He has been employed with his current employer for six years and has held an interim security clearance with no problems. He has favorable recommendations from his employer. He has received raises during his employment. His fiancée will be increasing her salary when she finishes nursing school. He is current on his monthly expenses. He now has the skills to keep abreast of his finances. He is not required, as a matter of law, to establish that he paid off each and every debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and has taken significant action to implement the plan. He has a loan consolidation for the home mortgage and the second mortgage. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his plan to reduce his outstanding indebtedness is

credible and realistic. Available, reliable information about a person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination.

Applicant presented sufficient information to show that he has paid most of his debts, and has a plan to resolve the remaining delinquent debt. He established that he is financially more aware. He is taking consistent, reasonable, and responsible action to resolve his financial issues and become a better financial manager. He has consistent pay. He has the means and the ability to resolve his delinquent debts. His monthly net remainder will increase in August 2010. He now has a mortgage with a fixed rate.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising 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

Subparagraphs 1.a: through 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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NOREEN A. LYNCH  
Administrative Judge