



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-00361  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 11, 2008

**Decision**

HOWE, Philip S., Administrative Judge:

On March 3, 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 the 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 July 7, 2008. He answered the SOR in writing on July 24, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 13, 2008, and I received the case assignment on the same day. DOHA issued a Notice of Hearing on September 16, 2008, and I convened the hearing as scheduled on October 16, 2008. The Government offered Exhibits (Ex.) 1 through 4, which were received without

objection. Applicant testified and submitted Exhibits A through D, without objection. DOHA received the transcript of the hearing (Tr.) on October 23, 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, dated July 24, 2008, Applicant admitted the factual allegations in ¶¶ 1.b, 1.d, and 1.g of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, 1.c, 1.e, and 1.f of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 58 years old, divorced from his first wife by whom he had two now-adult children, and currently is remarried. He graduated from the U.S. Naval Academy in 1972, and served five years on active duty with the U.S. Marine Corps. He served in the Marine Reserves for another 12 years. He works for a defense contractor, and seeks a secret clearance. During his military career he had security clearances, and had no record of any violations of regulations during those periods. (Tr. 16, 17, 25, 26, 35; Exhibit 1)

The SOR alleges seven delinquent debts owed by Applicant. These debts total \$11,704. Appellant's Answer with attachments, and his testimony and exhibits at the hearing, show he has addressed each of the debts, paying them in full or regularly paying on an installment payment agreement.

Applicant's first delinquent debt listed in the SOR (Paragraph 1.a) was \$519 owed to an energy utility. He paid it in full in January 2007. (Tr. 27; Answer with Attachment 1; Exhibits 2-4, A)

The second debt (Paragraph 1.b) was owed to an apartment owner in the amount of \$1,585. The debt went to judgment. Applicant paid the judgment in full on September 18, 2008, in the amount of \$1,319.63. (Tr. 27; Exhibits 2-4, A, B)

The third debt (Paragraph 1.c) was owed on a telephone company bill in the amount of \$261. This debt was paid in full on July 18, 2008. (Tr. 28, 29; Answer and Attachment 3; Exhibits 2-4, A)

The fourth debt listed in the SOR (Paragraph 1.d) is \$2,385 owed to a bank on a credit card. There is an installment payment agreement in place. Applicant pays \$154 monthly. He will have this debt paid within 12 months. (Tr. 27, 29; Answer and Attachment 4; Exhibits 2-4, D)

The fifth debt listed in the SOR (Paragraph 1.e) is \$1,639 owed to a bank on a credit card. This debt was paid in full on August 25, 2008. (Tr. 29; Answer and Attachment 5; Exhibits 2-4, A)

The sixth debt listed in the SOR (Paragraph 1.f) is \$494 owed to a telephone company. It was paid in full on January 9, 2007. (Tr. 29; Answer with Attachment 6; Exhibits 2-4, A)

The seventh and last debt listed in the SOR (Paragraph 1.g) totals \$4,821 and is owed to a collector. The original debt was owed to a bank. Applicant has an installment payment agreement in place with this creditor to pay \$350 monthly. The balance owed is \$3,333.90. (Tr. 27, 29; Answer and Attachment 7; Exhibits 2-4, A, C)

These delinquent debts arose when Applicant was unemployed from January 2001 to April 2002. After his divorce in 1998, Applicant was ordered to pay \$1,600 monthly to his former wife. When unemployed, he was still obligated to pay this amount from his \$1,200 monthly unemployment compensation pay. Applicant was able to get the court to reduce his spousal support payments to \$1,000 monthly, and extend the payment term to eight years from six years. While paying this spousal support, Applicant was not able to pay his then-current debts. He has not incurred additional debt since he was re-employed in 2002. (Tr. 17, 18, 29, 30; Answer and Attachment 8)

Applicant lives in the home owned by his new wife, and helps her pay the mortgage. He owns two cars on which nothing is owed. He has two credit cards, one with a \$400 limit, and the other with a \$350 limit. He has never made a late payment on them, and his balances are below the limits. He owes additional income tax for 2002 in the amount of \$6,000, which he wants to repay in a lump sum settlement. He is consulting an attorney about resolving this debt. (Tr. 31-33)

Applicant presented a disciplined program of individual responsibility in paying his delinquent debts. Some debts were paid before the SOR was issued. Applicant disclosed his debts on his SF 86. He saves \$2,000 monthly now. He is a very persuasive and credible witness. (Tr. 34)

### **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 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 some delinquent debt and was unable to pay these obligations over the past five years. The evidence is sufficient to raise these potentially 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.” Applicant’s financial worries arose between 2001 and 2002. He accumulated some delinquent debt due to his 15 months of unemployment, and his court-ordered spousal support payments, which consumed most of his unemployment compensation. These circumstances are no longer extant. The behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially 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, some of the financial problems arose from his unemployment. In the following years, he did not incur additional obligations that became delinquent. He acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is a factor for consideration.

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 potentially mitigating under AG ¶ 20(c). This mitigating condition applies because there is clear evidence that the delinquent debts are resolved and his finances are under control.

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 resolved all the delinquent debts, either by payment in five of them or installment payment agreements in two situations. These actions demonstrate his good-faith effort to resolve his debts responsibly. He is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

### **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. When these problems first began, Applicant was a mature adult. He fell on hard financial times when he lost his job and had to continue to pay spousal support. He did not incur additional debt, and worked to repay his delinquent debts. His problems have not recurred. There is no potential for pressure, coercion, exploitation, or duress, and no likelihood of continuation or recurrence. He pays his current monthly bills, and saves \$2,000 monthly with his new wife. Applicant demonstrated great maturity and responsibility toward his financial obligations.

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.

### **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 to 1.g:	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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PHILIP S. HOWE  
Administrative Judge