



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



In the matter of: )  
)  
) ISCR Case No. 08-00448  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esq., Department Counsel  
For Applicant: *Pro Se*

November 13, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the Financial Considerations and Personal Conduct security concerns. Eligibility for access to classified information is granted.

On June 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. 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 July 14, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on September 8, 2008. Applicant works and lives overseas. After coordination with Applicant and Department Counsel, DOHA issued a notice of hearing on October 2, 2008, scheduling

the hearing for October 23, 2008, by video teleconference (VTC). I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 3, which were received without objections. Applicant testified on his own behalf and submitted Exhibits (AE) A through C, which were received without objections. I granted Applicant's request to keep the record open to submit additional information. Applicant submitted 15 pages of documents, marked collectively as AE D, and admitted without objections. Department Counsel's memo is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on October 31, 2008.

## **Procedural and Evidentiary Rulings**

### **Notice**

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

### **Findings of Fact**

Applicant is a 66-year-old employee of a defense contractor. He has worked on a U.S. military installation overseas since 2005. His home, when he is not working on the military installation, is in another foreign country. Applicant retired from the United States Army as a Sergeant First Class in 1985, after 24 years of active duty. He was in the Special Forces and served four years in Vietnam and other foreign countries. He was awarded numerous medals and commendations, including the Vietnam Cross of Gallantry with Palm, Combat Infantry Badge, and Purple Heart. He was married and divorced, and is currently married with two children, ages 16 and 15.<sup>1</sup>

The SOR lists two delinquent debts. SOR ¶ 1.a alleges a debt of \$13,581 to a collection company on behalf of a credit card company. The debt is listed on the credit report of June 5, 2008. Applicant admitted to having an account with the credit card company with a balance of about \$3,500. He stated that he purchased an insurance protection policy from the credit card company that would pay his balance if he were unemployed for 90 days or longer. He was unemployed for about six months in 2002 to 2003. He honestly thought that the balance was paid by his insurance policy. When Applicant learned that the policy placed his payments on hold, but did not cancel the debt, he indicated that he would settle the debt. In his post-hearing submission, Applicant stated that he reached a settlement agreement with the collection company. The company attempted to send the agreement to him by facsimile, but was unable to make the connection with his overseas location. The company is mailing it to him, but it was not received by the close of the record.<sup>2</sup>

SOR ¶ 1.b alleges a debt of \$3,099 to a credit union. Applicant was unaware of this debt until he received Interrogatories from DOHA in March 2008. At that time,

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<sup>1</sup> Tr. at 53-59; GE 1, 2; AE A.

<sup>2</sup> Tr. at 27-52; Applicant's response to SOR; GE 2, 3; AE C, D.

Applicant owed the credit union \$3,599 plus an additional \$875 on a separate account. The debts were incurred by Applicant's former spouse without his knowledge while they were married but separated. He decided to pay the debts. He paid \$875 on March 24, 2008, and made arrangements to pay the \$3,599 debt in monthly installments. He provided documentation showing \$500 payments on March 2, 2008, April 1, 2008, April 26, 2008, May 31, 2008, and June 30, 2008; a \$232 payment on July 28, 2008; and \$550 payments on August 18, 2008 and September 9, 2008. The debt has been paid in full.<sup>3</sup>

Applicant's finances are in very good shape. His credit report is clean except for the debts discussed above. He has no other outstanding debts. The mortgage on the house he owns with his ex-wife in the United States was completely paid off in March 2008.<sup>4</sup>

On November 17, 2005, Applicant submitted a Questionnaire for National Security Positions (SF 86) and certified that his answers were true. Question 28a asked, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" Question 28b asked, "Are you currently over 90 days delinquent on any debt(s)?" He answered "No" to both questions. Applicant honestly believed he was answering the SF 86 truthfully because he was unaware of the debt to the credit union and he thought the debt to the credit card was paid by the insurance protection policy.<sup>5</sup> I find his explanations credible.

### **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 to be used 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, Administrative Judges apply the guidelines 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.

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<sup>3</sup> Tr. at 24-26, 60-62; Applicant's response to SOR; GE 2, 3; AE B, D

<sup>4</sup> Tr. at 59-60; GE 2, 3; AE D.

<sup>5</sup> Tr. at 24-27, 62-63; Applicant's response to SOR; GE 1.

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.” 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 adverse 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 *a/so* 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had two delinquent debts. He was unaware of one and thought the other was paid by his insurance protection policy. The evidence is not sufficient to raise AG ¶ 19(a) because there was never an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is minimally raised because of the two debts.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) 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.

The two delinquent debts occurred under very unusual circumstances. The debt to the credit union was incurred by Applicant’s former spouse without his knowledge while they were married but separated. He was unaware of this debt until he received Interrogatories from DOHA in March 2008. Applicant started repaying the debt as soon as he became aware of it and made the last payment on September 9, 2008. He honestly thought the debt to the credit card was paid by his insurance protection policy. Applicant was mistaken in his belief, but it was an honest mistake. Now that he is aware of the mistake, he has taken steps to resolve the issue. I find the behavior was so infrequent and occurred under such circumstances that it is unlikely to recur and does not cast doubt on Applicant’s current reliability, trustworthiness, and good judgment, warranting the application of AG ¶¶ 20(a). He initiated a good-faith effort to repay overdue creditors or otherwise resolve debts and there are clear indications that the

problem is being resolved and is under control. AG ¶¶ 20(c) and (d) are applicable to both debts. AG ¶ 20(b) is also applicable to the debt in SOR ¶ 1.b.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying, including AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities." Applicant omitted information from his Questionnaire for National Security Positions; however, it was not an unintentional error and not a deliberate omission. No Personal Conduct disqualifying condition is raised by the evidence.

### **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 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. Applicant served this country for 24

years and retired as a Sergeant First Class. He was in the Special Forces, served four years in Vietnam, and earned numerous medals and commendations, including the Purple Heart. The two debts in the SOR are aberrations. As soon as he found out about the debt to the credit union, he began repaying it. He only arrived at the conclusion that he is liable for the debt to the credit card company at the hearing. He then made arrangements to resolve the debt. His finances are otherwise in great shape. He recently paid off a mortgage and has no other debts.

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 has mitigated the Financial Considerations and Personal Conduct security concerns.

### **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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraph 1.a:         | For Applicant |
| Subparagraph 1.b:         | For Applicant |
| Paragraph 1, Guideline E: | FOR APPLICANT |
| Subparagraph 1.a:         | 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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Edward W. Loughran  
Administrative Judge