



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-01156  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

December 15, 2008

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on March 16, 2007 (Government Exhibit 1). On April 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 filed Answers to the SOR on May 1 and May 22, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on June 4, 2008. I received the case assignment on June 4, 2008. DOHA issued a notice of hearing on June 11, 2008, setting the hearing for June 27, 2008. The Applicant requested a continuance and, after showing good cause, it was granted. An

amended notice of hearing was issued on June 27, 2008. The hearing was convened on July 10, 2008.

The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant's Exhibits A through H, without objection. The Applicant requested that the record remain open for the submission of additional documents. The record was left open until July 31, 2008, for the receipt of additional matters. The Applicant submitted Applicant's Exhibit I in a timely fashion, and it was received without objection. DOHA received the transcript of the hearing on July 22, 2008. The record closed on July 31, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The Applicant is 53 and separated. He is employed by a defense contractor and seeks to retain a security clearance previously granted in connection with his employment.

### **Guideline F, Financial Considerations**

The Government alleges in this paragraph that the Applicant is financially overextended and therefore at risk of engaging in illegal acts to generate funds. The Applicant denied all of the allegations under this guideline.

The Applicant and his wife were married for 20 years at the time of their separation in July 2001. A formal separation agreement has not been entered into between the parties since that date. (Transcript at 68-81.) The Applicant filed for divorce in June 2006 and no decree of divorce had been entered into as of the date of the hearing. (Applicant's Exhibit E.) When the Applicant and his wife separated, they took out a second mortgage, which allowed them to pay off all the debts that were owing at that time. Since 2001, the Applicant's wife has run up debts that were joint debts because the Applicant's name was still on the account, even though he had no knowledge of the debt. The Applicant did not discover the extent of his wife's conduct until 2006. (Transcript at 50.)

About a year after he separated from his wife, the Applicant moved in with his girlfriend. In 2003 one of her grandchildren was diagnosed with a serious and potentially fatal illness. The Applicant financially assisted his girlfriend's family with expenses during this time. This situation exacerbated his own financial condition, as these expenses forced him to make choices concerning what bills to pay. (Transcript at 50-51.)

Subparagraph 1.a. The Applicant admits that he owed approximately \$2,793.00 for a credit card. The Applicant successfully paid this debt for a negotiated amount

(\$1,397.00) on February 27, 2008. (Government Exhibit 6 at 2; Applicant's Exhibit C; Transcript at 50.)

Subparagraph 1.b. The Applicant admits that he owed approximately \$14,000.00 to a creditor. This debt is related to a spa that was purchased to help his girlfriend's grandson. The Applicant has been making payments on this account since May 2004. (Applicant's Exhibit I at 2-30.) As of the date of the hearing he had paid at least \$9,303.00 on this account. The Applicant testified that he contacted this creditor by telephone and they indicated he would be current on his payments once he made the \$700.00 payment shown in Applicant's Exhibit I at 3. (Transcript at 51-55.)

Subparagraph 1.c. The Applicant denies that he owes \$9,700.00 on a credit card debt. He has consistently stated that this debt was run up by his wife after the date of the separation, and is therefore her separate debt. (Transcript at 55-59.) In a letter to DOHA dated May 2, 2008, Applicant's attorney confirms this account. (Applicant's Exhibit E at 1.) The Applicant submitted a copy of the proposed stipulated judgment in his divorce case, in which his wife takes responsibility for this debt. (Applicant's Exhibit I at 37-38.)

Subparagraph 1.d. The Applicant denies that he owes \$17,067.00 on a credit card debt. He has consistently stated that this debt was run up by his wife after the date of the separation, and is therefore her separate debt. (Transcript at 55-59.) In a letter to DOHA dated May 2, 2008, Applicant's attorney confirms this account. (Applicant's Exhibit E at 1.) The Applicant submitted a copy of the proposed stipulated judgment in his divorce case, in which his wife takes responsibility for this debt. (Applicant's Exhibit I at 37-38.)

Subparagraph 1.e. The Applicant testified, and the record confirms, that this debt and the one set forth in Subparagraph 1.g., below, are the same. (Transcript at 59.)

Subparagraph 1.f. The Applicant denies that he owes \$13,239.00 on a credit card debt. He has consistently stated that this debt was run up by his wife after the date of the separation, and is therefore her separate debt. (Transcript at 62.) In a letter to DOHA dated May 2, 2008, Applicant's attorney confirms this account. (Applicant's Exhibit E at 2.) The Applicant submitted a copy of the proposed stipulated judgment in his divorce case, in which his wife takes responsibility for this debt. (Applicant's Exhibit I at 37-38.)

Subparagraph 1.g. The Applicant admits that he owed \$8,778.00 on a credit card debt. The Applicant has been making payments on this account since January 2005, consistently since October 2007. (Applicant's Exhibit I at 2-30.) As of the date of the hearing he had paid at least \$5,548.00 on this account. On July 11, 2008, the Applicant paid this debt in full by making a \$7,475.14 payment. (Applicant's Exhibit I at 31.)

Subparagraph 1.h. The Applicant admits that he owed approximately \$570.00 for a credit card. The Applicant successfully paid this debt for a negotiated amount (\$418.78) on April 21, 2008. (Government Exhibit 6 at 2; Applicant's Exhibit G; Transcript at 62.)

Subparagraph 1.i. The Applicant denies that he owes \$3,900.00 on a credit card debt. He has consistently stated that this debt was run up by his wife after the date of the separation, and is therefore her separate debt. (Transcript at 63.) In a letter to DOHA dated May 2, 2008, Applicant's attorney confirms this account. (Applicant's Exhibit E at 2.) The Applicant submitted a copy of the proposed stipulated judgment in his divorce case, in which his wife takes responsibility for this debt. (Applicant's Exhibit I at 37-38.)

As of the date the record closed, the Applicant had paid approximately \$24,141.78 towards the four debts in the SOR that he admits are his. The Applicant testified that he will pay all of his financial obligations. (Transcript at 82-84.) He understands that he still has a legal responsibility for those debts which he maintains are his wife's, even if they were incurred without his knowledge. (Transcript at 76-78.)

## **Mitigation**

The Applicant has worked in the Defense industry for over 30 years. The entire time he has had a security clearance.

A co-worker, and the Applicant's girlfriend, both testified on the Applicant's behalf. The co-worker once was an employee the Applicant supervised, but who is now a supervisor on his own account, has known the Applicant since 2001. He describes the Applicant as a person of "integrity," "very fair," and "trustworthy." (Transcript at 30-37.)

The Applicant also submitted his evaluations for the past several years, as well as work related awards and commendations. The documents show that he is a highly respected and successful employee, consistently rated as an "Exceptional" or "High" contributor. (Applicant's Exhibits A and B.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant admits that he owed the debts set forth in SOR subparagraphs 1.a., 1.b., 1.g. and 1.h. The other subparagraphs he denied either as a duplicate debt, or that they were his wife's debts, incurred after their separation, and her responsibility. The evidence is sufficient to raise this potentially disqualifying condition, requiring a closer examination.

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." In addition, AG ¶ 20(b) states that it may be mitigating if "the conditions that resulted in the financial problems were largely beyond the person's control (e.g. . . . unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Finally, ¶ 20(e) applies where, "the individual has a reasonable basis to dispute the legitimacy of the past-due debts 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 Applicant separated from his wife in 2001. At that time his debt situation was fine. She subsequently incurred debts without his knowledge, but which are currently his legal responsibility. They are in the midst of a protracted divorce and the Applicant and his counsel represent that they will make sure that these debts are paid as part of the divorce. As described at length above, the Applicant has been paying his own indebtedness, albeit slowly, for years. That was because of his girlfriend's grandson's illness and the financial impacts of it. I find 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.

AG ¶20(c) applies if “there are clear indications that the problem is being resolved or is under control.” Evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is also mitigating under ¶20(d). The Applicant has been able to pay his current bills for several years, and has paid a substantial amount of money towards the arrearage. Three of the four debts he admits to in the SOR have been completely paid off. 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) 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. The Applicant got into financial difficulty because of his separation from his wife, and because of the health problems of his girlfriend’s family. He has a plan to pay all of his debts and is fulfilling it. He has behaved reasonably and appropriately in trying to resolve his debts, thereby AG ¶2(a)(6) applies. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

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. Paragraph 1 is found for the Applicant. He is currently eligible for a security clearance.

