



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-01705
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

March 5, 2010

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's request for eligibility for access to classified information.

Applicant executed and signed his Security Clearance Application (SF 86) on June 23, 2004. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on April 21, 2009. DOHA acted 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 May 26, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed

on September 10, 2009, and I received the case assignment on October 8, 2009. Applicant specifically requested a hearing by video teleconference as he is working overseas. DOHA scheduled a video teleconference hearing on October 26, 2009. The hearing did not proceed due to connection problems. Applicant advised that he would be returning to the United States for a three-week period. DOHA issued a second notice of hearing on November 16, 2009 and I convened the hearing as scheduled on December 8, 2009. The government offered four exhibits, GE 1 through 4, which were admitted into evidence without objection. Applicant testified on his own behalf. He submitted six exhibits, AE A through F, which were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 15, 2009. I held the record open until January 8, 2010, for Applicant to submit additional documents. On January 4, 2010, he submitted some documents and requested additional time to submit the remaining documents. For good cause shown, I granted Applicant an additional 30 days to submit additional documents. Applicant timely submitted his remaining evidence. Applicant's new evidence has been admitted as AE G through AE K, without objection. The record closed on February 8, 2010.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b and 1.c of the SOR. He denied the factual allegations in ¶¶ 1.a and 1.d through 1.r of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 54 years old, works in technical control for a Department of Defense contractor. He began his current job in December 2008 and is working overseas. Applicant enlisted in the United States Air Force shortly after high school graduation. He retired in 1992 on medical disability - degenerative hip disease. While in the military, he held a security clearance without incident. Applicant received electronics and information technology training during his military career.<sup>2</sup>

Applicant married in 1981 and divorced in 1995. He has two sons, ages 27 and 24. His sons lived with him, at times, as they grew up. He did not receive any child support from their mother. They are no longer financially dependent on him.<sup>3</sup>

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<sup>1</sup>When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

<sup>2</sup>GE 1; Tr. 21.

<sup>3</sup>GE 1; Tr. 26, 30.

Following his retirement from the Air Force, Applicant began work in 1993 in the electronics and information technology industry. He worked at several companies, initially earning \$40,000. He accepted a position in 1997 for \$80,000, moving from the west coast to the east coast. A large communications company purchased his last employer in late 2002. At that time, the large company cut his salary by \$30,000 to \$35,000 a year. Because of this income loss, Applicant obtained a part-time job with a large retail chain store, earning minimum wage.<sup>4</sup>

The large company collapsed six months after the purchase, and laid-off all its employees, including Applicant. Applicant received a small severance and began working full-time at the retail store. He did not apply for unemployment benefits because he was working full-time. After losing his job, Applicant sold his home because he could not afford the mortgage payments. At settlement on the sale of his house, Applicant received \$16,000. He used this money, his salary, his 401K, and his military retirement benefits to pay living expenses. He still was unable to pay all his bills. His sons lived with him at this time.<sup>5</sup>

In 2004, Applicant obtained employment with a Department of Defense contractor, working in electronics and information technology. His employer deployed him to Afghanistan for three years. His sons lived with their mother when Applicant moved overseas. At this time, Applicant was engaged. He regularly sent money to his fiancée to pay two car payments and rent. He also sent money for her to place in a savings account to purchase a house. She paid the three bills, but she spent the house money on trips and gifts for friends. When he returned from Afghanistan in 2007, Applicant ended this relationship.<sup>6</sup>

In September 2007, Applicant scheduled his annual physical. During this routine medical examination, physicians diagnosed colon cancer. Applicant underwent extensive cancer treatment. He could not return to his job and did not return to work until December 2008. He received four months of short-term disability benefits from his employer, but he did not receive long-term disability benefits. He used his savings and his military retirement to pay basic expenses after his short-term disability benefits ended.<sup>7</sup>

Applicant currently earns between \$90,000 and \$95,000 a year. He receives \$700 a month in retirement disability benefits from the military. Because his job requires him to live and work overseas, he does not have housing costs in the United States or overseas. His monthly expenses include a car payment of \$400 a month, which he voluntarily increased to \$600 a month, and parent school loan debts of \$510 a month,

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<sup>4</sup>GE 1; Tr. 21-22.

<sup>5</sup>GE 1; Tr. 21-22, 24-26.

<sup>6</sup>GE 1; Tr. 22-23, 50-51.

<sup>7</sup>Tr. 28-30.

which he voluntarily increased to \$610 a month. His expenses for food, car insurance, and miscellaneous items, such as haircuts, clothing, gasoline, are estimated at \$700 a month. Applicant has sufficient income each month to pay his living expenses and to repay his debts.<sup>8</sup>

The SOR identifies numerous debts, most of which are listed at least once on each credit report and sometimes more than once because the debt is under other creditor names. After reviewing the credit reports dated November 11, 2007, March 19, 2009, October 6, 2009, and the SOR, I have compiled a list of the total debts owed, which are as follows:<sup>9</sup>

<b>SOR ¶</b>	<b>Type of Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	Cell phone	\$ 219.00	Paid	AE B; Tr. 31
1.b	Bank debt	\$12,518.00	Paid	AE E; Tr. 31-34
1.c	Credit card	\$ 3,558.00	Paid	AE D; AE I; Tr. 35
1.d	Education loan	\$12,330.00	Current, paying	AE F; Tr. 35-36
1.e	Education loan	\$ 7,441.00	Current, paying	AE F; Tr. 35-36
1.f	Bank debt	\$ 1,530.00	Unpaid, debt denied	Tr. 36-37
1.g	Credit	\$ 488.00	Paid	GE 3; AE J; Tr. 37-38
1. h	Bank debt	\$10,534.00	Paid; same as 1.b	Tr. 31-34
1.i	Business account	\$ 8,427.00	Paid	AE C; Tr. 38-39
1.j	Business account	\$ 7,628.00	Paid	Response to SOR, Credit report, dated May 21, 2009
1.k	Credit union	\$ 4,543.00	Unpaid; debt denied	Tr. 39
1.l	Cable	\$ 305.00	Paid	AE H; Tr. 41

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<sup>8</sup>AE F; Tr. 30, 35-36, 53, 59-60.

<sup>9</sup>GE 3 (Credit report, dated October 11, 2007); GE 4 (Credit report, dated March 19, 2009); AE B (Credit report, dated October 6, 2009). Applicant submitted four pages from two or three different credit reports with his response to the SOR. He did not submit the full reports. It appears that he obtained these reports in May 2009.

1.n	Credit account	\$ 5,741.00	Unpaid; debt denied	Tr. 43
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Applicant believed he opened two accounts when he tried to establish two online businesses. (SOR ¶¶ 1.i and 1.j) He paid the debt required by the creditor, who has not asked for additional money from him. The October 2007 credit report indicates two separate accounts with two different account numbers. Applicant's evidence shows that one account is paid. The May 2009 credit report shows the second account as not past due. The October 2007 and the October 2009 credit reports show a balance on this account as of November 2006 and December 31, 2006. The March 2009 credit report does not list either account. The credit reports contain conflicting information on the status of this debt. Given that the Applicant contacted this creditor and paid the requested monies, I find he has paid this debt.<sup>10</sup>

The SOR listed four debts, ¶¶ 1.o, 1.p, 1.q, and 1.r, which are not shown on the credit reports submitted as part of the government's case in chief. Applicant denied owing these debts. SOR ¶¶ 1.o through 1.q are for returned checks and SOR ¶ 1.r is for a \$78 local government account. Applicant pays his bills by debit card or credit card. He does not write checks. His son, who has the same name, acknowledged owing these four debts. Accordingly, ¶¶ 1.o through 1.r are found in favor of Applicant.<sup>11</sup>

The debt in SOR ¶ 1.m is not shown on any of the credit reports of record. Applicant denied owing this debt. He believes the debt is included in his military credit account and is resolved. The three credit reports show two military credit accounts which are paid. In his response to the SOR, Applicant submitted one page from a May 21, 2009 credit report which shows this account and reflects a zero balance. The account number matches the account number for one of the military credit accounts shown on the credit reports of record. I find that ¶ 1.m account and the military credit accounts are the same, and that Applicant does not owe any money on this debt.<sup>12</sup>

In October 2009, Applicant retained the services of a law firm to help identify and resolve those credit accounts he does not recognize. This firm has not yet resolved any credit issues for Applicant.<sup>13</sup>

The SOR alleges that Applicant had 18 unpaid debts totaling more than \$86,000. Applicant has resolved or is paying 15 of these debts. He has three unresolved debts, totaling \$11,814. His unpaid debts represent approximately 14% of the total debts alleged in the SOR.

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<sup>10</sup>AE B; AE C; Tr. 38-39.

<sup>11</sup>AE K; Tr.41-44.

<sup>12</sup>Response to SOR; GE 3; GE 4; AE B; Tr. 41-42.

<sup>13</sup>AE A; AE G; Tr. 44.

## **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 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, 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(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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to 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 significant delinquent debt and was unable to pay his obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. BD. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. BD. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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 began around 2003. His debts continue and remain current. This mitigating condition is not applicable.

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.” Applicant’s financial problems began when a large company purchased his employer and immediately reduced Applicant’s salary by 40%. Six months later, the large company collapsed and Applicant lost his job. For the next year, Applicant worked at a low paying job. Applicant obtained comparable employment after a year. Over the next three years, Applicant sent money to his fiancée, who spent the money to be save. In 2007, doctors diagnosed Applicant with colon cancer. Applicant did not work for 15 months. When he lost his job in 2003, Applicant sold his home because he could not pay the mortgage. He used the profits from the sale and his 401K money to pay his living expenses for himself and his sons. He could not work while undergoing cancer treatment and again lived on his savings after his disability benefits ended. When he returned to work, Applicant began to save money to resolve his debts. He acted responsibly under the circumstances in which he found himself. 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” 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.” Applicant recently contacted a law firm to help resolve the three unpaid debts listed in the SOR, as he does not believe these debts are his. As to the remaining debts, he either paid the debt or developed a payment plan for the debt. He showed that one debt was a duplicate and that one debt was fully paid. He is now financially sound. Mitigating condition AG ¶ 20(c) applies and AG 20(d) applies to SOR allegations 1.g and 1.i.<sup>14</sup>

### **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 an applicant’s conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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<sup>14</sup>AG ¶¶ 20(e) and 20(f) are not applicable in this case.



(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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant incurred significant unpaid debts caused by his unemployment, underemployment, and health issues. He paid his debts to the best of his ability during his times of unemployment and underemployment. When he returned to full-time work in 2008, he worked to resolve his debts and has resolved more than 85% of his debts listed in the SOR. He questions the validity of the three remaining debts. He has asked a law firm to investigate these debts to determine if the debts are his. Because he does not believe these debts are his, the debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

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 finances under Guideline F.

## **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-1.r: For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge