



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



In the matter of: )  
)  
) ISCR Case No. 08-09565  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro Se*

April 1, 2009

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On December 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines 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 answered the SOR in writing on February 2, 2009, and requested a hearing before an administrative judge. The case was assigned to me on February 12, 2009. DOHA issued a notice of hearing on February 17, 2009, and I convened the hearing as scheduled on March 11, 2009. The government offered Exhibits (GE) 1

through 5. Applicant did not object and they were admitted. Applicant and one witness testified. He offered Exhibits (AE) A through E. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on March 20, 2009.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR with explanations and they are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 54 years old and worked for a federal contractor from 1976 until November 2001, when he was laid off from work. He has held different levels of security clearances over his career and presently holds a top secret clearance.<sup>1</sup> Applicant was married from 1976 to 1991. He remarried in 1999. He has one adult child and two adult stepchildren.

When Applicant's employer downsized in November 2001 he lost his job and was unemployed until approximately December 2002. He and his wife were struggling to make ends meet. He had some debts when he lost his job, but he incurred additional credit card debts while he was juggling his finances during the 13 month period of unemployment.<sup>2</sup> He contacted the credit card companies and explained to them he had lost his job and there were extenuating circumstances. He understood that they would freeze the minimum payments required, along with their fees and lower the interest rates. His main focus was on finding another job, which he did. He was not focused on his credit card debts.<sup>3</sup> He admitted he was late on some of his other bills when he was unemployed, but once he got a job, he was not late. He believed he continued to make the minimum payments on his credit card bills while he was unemployed. He resumed working in December 2002.<sup>4</sup>

In April 2005, Applicant's job moved to a different state. He was given the opportunity to relocate to the new site. His wife did not relocate and the two maintained separate residences, which impacted their finances. When Applicant moved he reviewed his credit card debts and realized that the companies did not freeze his debts or the interest rates. He was unaware that if he was late paying one bill it impacted the interest rate he paid on another. He researched his options to find the best way to dispute the excessive fees and interest.<sup>5</sup>

---

<sup>1</sup> Tr. 10, 24.

<sup>2</sup> GE 3, 4 and 5.

<sup>3</sup> AE B.

<sup>4</sup> Tr. 26-28, 77-80.

<sup>5</sup> Tr. 28-30.

In May and June 2005, Applicant learned of an education company that provided information on how credit card companies do business. He did not deny he owed the different creditors money, but disputed their increased interest rates and escalating payments. The education company provided the legal documents necessary to pursue legal action. It did not provide legal representation. In July 2005, based on what he learned Applicant sent certified billing dispute letters to each of his creditors. Applicant did not dispute that he owed each creditor, but did dispute the amount. He requested they provide a detailed accounting of payments he had made and he disputed the debt amounts.<sup>6</sup> On the advice of the educational company he stopped making payments to the credit card companies because they would not respond. This action was taken to force the creditor to take legal action. He was advised it could take more than three years to resolve. The premise for the legal action was to force the creditor to come up with a fair amount for Applicant to repay. He explained that once he disputed the debt with the creditor they are prohibited from imposing additional fees and interest. The creditors continued to impose additional fees and interest. Applicant stated that the credit card companies do not expect people to fight them.<sup>7</sup>

After July 2005, only one credit card company responded (SOR 1.e, \$18,000). Applicant challenged the legitimacy of the credit card company's additional charges. The creditor filed a lawsuit and Applicant pursued his legal rights, acting pro se throughout the proceedings. Applicant provided copies of his responses to motions and filings.<sup>8</sup> It is clear that the creditor through their attorney was attempting to intimidate Applicant. Applicant was not intimidated and eventually the creditor agreed to settle the case for a reasonable amount based on Applicant's original debt with reasonable interest. The debt was finally settled in February 2009 for \$9,000. Applicant set up a payment plan with an automatic bank transfer, so he would not be late with his payments. He intended to use the lessons he learned from resolving this debt to resolve the others. He asked the attorney why it took so long to settle and he was told that the state where they were wants the parties to settle so much that they do not make an effort to set the case, until one of the two parties formally requests the case be docketed. When his security clearance became an issue Applicant realized he needed to immediately change his plan to expedite resolving the remaining debts. Although he believed in the validity of how he was addressing his debts, he was aware it would take way too long to continue his plan and would jeopardize his security clearance.<sup>9</sup>

Applicant contacted a "debt solution" company. He researched their legitimacy through the Better Business Bureau and set up a payment plan to resolve the remaining four debts on the SOR. He learned that the state where he lives allows debts to "stay around forever." Applicant set up a debt repayment/savings plan to pay the rest of his

---

<sup>6</sup> AE C.

<sup>7</sup> Tr. 30-34, 60-62.

<sup>8</sup> Tr. C.

<sup>9</sup> Tr. 36-41, 62-63.

debts. The company charges a fee that is included in the payment schedule up front. As the fee is paid down, more of the payments go toward paying off the delinquent debts. Applicant also takes whatever extra expendable income he has and puts it in the savings plan. The amount going toward his debts will increase once he completes paying the fees he owes the debt solution company. When he has accumulated enough money in the savings plan, the company will then negotiate reasonable settlements. Based on his plan he projects he will pay off all of his delinquent debts by January 2013. Applicant provided documentary evidence that he has started the plan and is making payments into the plan and the payment schedule. He intends to accelerate his payments to pay off the debts before the proposed date.<sup>10</sup>

Applicant has a very detailed budget that reflects his repayment/savings plan. He and wife began an intense financial education workshop through their church. Applicant explained the reason he expects to repay his debt early is because of the lessons he is learning through the financial course. Although they do not live in the same location, Applicant and his wife both participate in the workshop. He has compact disks with lesson plans that he listens to. The complete program is 13 weeks and at the time of hearing they completed seven weeks. He and his wife discuss their finances daily and plan each month's budget in detail. He believes their budgeting has improved and they are saving more money. They have an emergency fund and a fund to repay their delinquent debts. They are paying their monthly expenses on time. They do not use credit cards. He and his wife have a good grip on their finances now and are changing their ways. They have not accumulated any new debts.<sup>11</sup>

Applicant provided documents showing his career highlights. He is consistently an outstanding employee.<sup>12</sup> Applicant's direct supervisor testified on his behalf. He evaluated his performance and he is always at or above what is expected of him and he is committed to the company's core values of family, integrity, loyalty and passion. He is respectful to coworkers, management and others. He is considered an expert in the area where he works and has a unique capability that others do not possess. His institutional knowledge is difficult to replace. He is committed to the war fighter and Applicant goes above and beyond what is expected to ensure he provides the proper service. He is considered honest and trustworthy and is highly recommended for a security clearance.<sup>13</sup>

---

<sup>10</sup> Tr. 41-42, 63-64-68; AE C. Applicant pays \$403 a month into the debt savings plan for five months that goes toward the company's fees. In the sixth month, \$103 goes toward the fees and the remainder goes towards his debts. After eight to twelve months the entire amount goes toward the balance of the debts.

<sup>11</sup> Tr. 43-44; 48-59, 68-77; AE E.

<sup>12</sup> Tr. 44-45; AE D.

<sup>13</sup> Tr. 82-94.

## 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. . . ." 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 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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant has five credit card debts totaling more than \$47,765.<sup>14</sup> He had difficulty paying these debts on time from 2001 to 2002, while he was unemployed. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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;

---

<sup>14</sup> This amount is based on the settlement agreement amount for the debt in SOR 1.e.

(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.

Applicant was employed for many years and paid his bills on time. He lost his job in 2001 and thought because he was out of a job the interest and penalties on his debts would be frozen. Although this position may be somewhat naive, I found him credible in being unaware of the exorbitant rates that were being charged. Applicant is currently addressing his delinquent debts through a settlement payment and a payment plan. However at this juncture, his debts are still current and not infrequent. The reason the debts escalated were because Applicant lost his job and was unemployed for 13 months. I find that his actions occurred under circumstances that are unlikely to recur. Even if Applicant were to again find himself unemployed, he is actively learning how to manage his finances and protect his financial future. I also find that his past actions do not cast doubt on his reliability, trustworthiness and good judgment. Therefore, I find (a) partially applies.

Applicant did not dispute he owed the creditors, nor did he dispute that they had a right to charge him interest. He was unaware that a late payment on one debt escalated an interest charge on another. He decided to fight back and took the advice of a financial education company and disputed what he viewed as an unfair practice. He did so in writing and received only one creditor's response. It took a long time to resolve that debt, but he has since agreed with the creditor to a settlement offer and has started to repay the debt. Because his security clearance was an issue, he could not wait to resolve the other debts in the same way. Instead he set up a payment plan to repay all of the remaining debts. I find Applicant's unemployment was a condition beyond his control. He also accepted the advice of the financial education company that advised him to stop paying the remaining debts and dispute them in writing. It is clear it was always Applicant's intent to repay his debts. I find (b) applies because Applicant acted responsibly under the circumstances by forcing the creditors to justify their fees.

Applicant has a very detailed budget that he and his wife adhere to. He started to dispute his debts in 2005. He should have started earlier. He did dispute the excess interest on his debts. He and his wife are taking a 13 week financial course to learn how to manage their money. They are saving their expendable income and putting it in accounts that are set aside to negotiate settlements on their debts. I find under the circumstances there are clear indications the problems are being resolved and Applicant is making a good faith effort to resolve his debts. I find mitigating conditions (c) and (d) apply. I also find that Applicant had a reasonable dispute on certain fees that were charged by the creditor. His disputes were addressed in writing and he resolved one of his debts through a settlement, which he is paying. The other creditors did not respond. Applicant has a right to dispute those things he does not believe are fair. It is

clear by the one debt he settled that the goal of the creditor was to wear him down and make it difficult for him. I find under the circumstances mitigating condition (e) also 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 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 responsibly paid his bills on time for years while he was employed. During a period of unemployment he accumulated delinquent debts. He disputed the tactics used by the credit card companies to extract exorbitant fees from creditors. It was a long and laborious process, but he was able to resolve one of his debts for a reasonable settlement. However, due to the potential impact the process was having on his security clearance, Applicant set up a payment plan to resolve the remaining debts. He has a detailed budget and is saving money with a debt solution company to negotiate settlements on the remaining debts. Overall, the record evidence does not leave me with 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 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-1.e:	For Applicant



## **Conclusion**

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

---

Carol G. Ricciardello  
Administrative Judge