



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-03532

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Pro Se

March 9, 2009

**Decision**

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his Security Clearance Application (SF 86), on September 13, 2007. On July 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines F (Financial Considerations). 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 September 3, 2008 and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed and I received the case assignment on October 20, 2008. DOHA issued a notice of hearing on November 5, 2008, for a hearing on November 20, 2008. I convened the hearing as scheduled.

At the hearing, the government offered eight exhibits (Exhs 1-8) that were admitted in evidence without objection. Applicant submitted two exhibits (Exhs. A and B) containing multiple documents that were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 1, 2008. I granted Applicant's request to keep the record open until December 20, 2008, to submit additional evidence. One post-hearing submission was received within the specified time after the conclusion of the hearing. It contained three separate documents marked as A-C) and a faxed supplement (Post Hearing 1). The second post hearing document was submitted after the deadline and consisted of one document (Post Hearing 2). The government had no objection to either submission and the documents were admitted in evidence without objection.

### **Procedural Rulings**

The hearing notice was dated less than 15 days before the hearing date. 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 the 15 days notice and indicated he was ready to proceed (Tr. 7).

### **Findings of Fact**

Applicant is a 53-year-old employee of a government contractor working as a systems engineer designing satellite communications systems. He hold both Bachelor's of Science and Master's degrees in electrical engineering and a Master's degree in Business Administration.

In his answer, Applicant admitted the three of the four allegations in the SOR concerning two federal tax delinquencies that resulted in liens amounting to approximately \$37,000 and \$25,000 respectively and one defaulted mortgage of approximately \$28,000. He denied a state tax lien of approximately \$1,000.

The sequence of events that led to these debts and the actions Applicant is taking to resolve them follows.

Applicant completed his education in 1994. During his school years, and before, he worked in industry for 13 years. He then started his own business which he operated for ten years until 2004. The first five years were building the business with relatively low income. He became more successful with some government contracts for small business innovation research for the second five years but had nine total months of no income in 2002 and 2004 (Exh. A at p. 7). He concluded in 2004 that the company was

under-capitalized and that he should return to steady employment. It was during this ten year period that he incurred debts and fell behind in payments that gave rise to the issues in this matter.

The last two years of self employment, 2003 and 2004, Applicant filed his federal tax returns but did not pay the taxes but instead paid credit card and other expenses of cost of living. This failure to pay taxes resulted in the tax liens filed in 2006 and 2007 that are at issue in this matter (SOR ¶ 1. a. and b.).

Applicant's first employment after he returned to salaried employment was a two year personal services contract with a sub-contractor for his present employer. The contract could not be extended so he then obtained employment at a higher salary with the prime contractor in another city. He has continued to be employed there for the past 18 months with an annual salary ranging from \$125,000 to \$130,000.

Applicant purchased a home in 2001 while self employed for \$423,000. He lived there until April, 2007, when he moved to his present state of residence. His employer had a relocation program including efforts to sell property of transferred staff but the house was not sold. His payments became delinquent in July, 2007, since he was renting a home in his new location and had increased living expenses (SOR ¶ 1.d.). He had a variable rate mortgage with a leading mortgage company at the center of the current housing crisis. The payments had been increased to over \$3,300 a month but were decreased by \$400 per month in March, 2008. He made three offers of settlement of the debt that were rejected by the mortgagor who insisted on a full one-time payment (Exh. B item 6). Foreclosure was initiated. When a sale date was set for the property, he filed Chapter 13 bankruptcy in May, 2008, to protect from loss of the property. He still owns the property and is paying \$1,130 per month under the bankruptcy plan to resolve the delinquent debts. At the time of the hearing he had not rented the property but was attempting to do so (Tr. 55). Since the hearing the property has been rented and he has income from the rental of \$2,200 per month (Post-hearing submission 2). The debts now can be extinguished more rapidly with the increased income. The current balance of the delinquent mortgage payments is \$11,700.

The IRS debts are also included in a Chapter 13 bankruptcy. He has paid the bankruptcy trustee since June 2008. At the time of the bankruptcy filing some of these debts had been paid with his income tax refund for 2007, and the balance is now reduced to \$49,000 (Tr. 18). The original plan indicated that it could be paid off in 60 months with monthly payments. However, the increased income from rental of his former home indicates that it will be paid off in 40 months.

Applicant's fourth alleged debt is a state tax lien from Mississippi of approximately \$1,000 that he is disputing (SOR ¶ 1.c.) (Tr. 19). Although he was born in Mississippi where his parents still live, he has never been employed there and believes the debt relates to his parents. During the period covered by the assessment, he was living in two other states in which he paid taxes (Exh. B, Item 7). So far he has been

unsuccessful in having the debt removed from his credit report but he continues the effort (Exh. B of first post-hearing submission).

Applicant was divorced a number of years ago and had no children. He provides some voluntary financial support to his parents and other relatives. He owns two automobiles that are fully paid. He does not now hold a security clearance and has never held one. His employer desires that he have one since his work is limited without one.

Applicant's annual salary from his employment is approximately \$130,000 after a \$5,000 increase he received in 2008. He is highly regarded by his supervisor who speaks for the company. He has known Applicant since 2001 when he made a presentation on behalf of his own company to his present employer. He knows proprietary and security requirements (Post-hearing submission Attachment A).

### **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 overarching 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. 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 did incur substantial delinquent debts and was the subject of two federal tax liens and a home foreclosure. Thus, the conditions required were established by the government sufficient to raise a security concern.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(b), the security concern may be mitigated 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 had endeavored to create a viable business of his own. He struggled to do so with some success but while doing so incurred debts that became delinquent. He has since taken action to resolve the

debts and to keep possession of the foreclosed home. Thus, I conclude that he has acted responsibly and the mitigating condition is applicable.

Under AG ¶ 20(d) the security concern may be mitigated when the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts. From the evidence presented, this mitigating condition is applicable.

Under AG ¶ 20(e) the security concern may be mitigated when the individual has a reasonable basis to dispute the legitimacy of the past-due debt that 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. He has provided evidence of a reasonable basis for disputing the state tax assessment and has taken, and continues to take, appropriate action to resolve this issue. This mitigating condition is also applicable.

### **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 is a mature adult with significant responsibility in his work and a history of successful accomplishment both in industry and his academic pursuits. The debts arose under unique circumstances unlikely to be repeated. There is little or no likelihood of a recurrence of the problem and there is no potential for pressure or exploitation of the situation.

### **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.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: 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. Access to classified information is granted.

CHARLES D. ABLARD  
Administrative Judge