



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03797  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 31, 2008

**Decision**

HOWE, Philip S., Administrative Judge:

On December 20, 2007, Applicant submitted his Security Clearance Application (SF 86). On May 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline 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 acknowledged receipt of the SOR on June 11, 2008. He answered the SOR in writing on July 28, 2008, and requested a hearing before an administrative judge. I received the case assignment on August 27, 2008. DOHA issued a Notice of Hearing on October 20, 2008, and I convened the hearing as scheduled on November 6, 2008. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection.

DOHA received the transcript of the hearing (Tr.) on November 17, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, dated July 28, 2008, Applicant admitted the factual allegations in the SOR, with explanations about his payment arrangements for each debt. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 34 years old, unmarried, and has no children. He works as a computer technician for a defense contractor. He started this job in December 2007. (Tr. 25-31; Exhibit 1)

Applicant has 12 delinquent debts totaling \$23,606 listed in the SOR. Of those 12 debts, four listed are for private student loans he borrowed for his associate's degree. Those four loans total about \$22,000 of the total debt listed in the SOR. He also has 10 student loans not listed in the SOR which are consolidated federally insured loans and are in forbearance. These student loans total about \$16,000. He used this money to obtain an associate's degree in August 2004. He made three payments in 2008 of between \$89 and \$100 on those loans, even though they are in forbearance. Seven of the debts listed in the SOR are medical expenses he incurred in the past five years. The remaining debt for \$20 (Paragraph 1.g) owed to a telephone company he paid. (Tr. 37-47, 51, 56, 58, 67; Exhibits 1-5)

After his interview with a Government investigator, he took the list of delinquent debts to a consumer credit counseling service. That service structured a budget and repayment plan for his delinquent debts for him. He pays that service \$75 monthly to repay all the debts listed in the SOR, which are his only delinquent debts, except for the four student loans listed (Paragraphs 1.h to 1.k), and the telephone bill in Paragraph 1.g in the SOR. Applicant submitted proof of payment of his first three installment payments to the credit counseling service, from August 2008 to October 2008. He made the November payment immediately before the hearing. The delinquent medical debts listed in Paragraphs 1.a to 1.f, and 1.l of the SOR total \$1,801, and are being paid in the consumer counseling service installment plan used by Applicant. (Tr. 41, 42, 48-55, 58, 59; Exhibits 1-5, B-D)

Applicant pays the four student loans listed in the SOR on a separate installment payment plan he negotiated. He sends \$300 monthly to the manager of those student loans. He made the November 2008 payment two days before the hearing. He submitted proof of payment of the June through October 2008 payments. (Tr. 43-45, 61, 62; Exhibits 1-5, D)

Applicant has no credit cards, no tax debts, and is current on all his monthly financial obligations. Over the past few years, he has learned to live inexpensively,

keep his monthly debts low, lives by himself in an apartment, and works at keeping his expenses under control. He has a savings account and is trying to build a cash reserve fund for emergencies. He lives near his mother, who is advising him on properly managing his money because she handles her personal finances in a responsible way and wants him to learn from her. (Tr. 62, 69-78)

Two of Applicant's supervisors, and a co-worker, submitted favorable character statements on his behalf. They regard him as hard-working, honest, trustworthy, conscientious, competent in the computer work, and courteous to the contractor's customers. (Tr. 22; Exhibit E)

### **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, and 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 accumulated some delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, 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.” Applicant's financial worries arose about 2002 to 2004. He accumulated delinquent debt due to his inability to manage properly his finances. These circumstances are no longer extant because of the good paying job he has now, and his experiences with delinquent debt. The bulk of his debt is for student loans, which is a circumstance not likely to recur for the foreseeable future. I find the behavior occurred under ordinary circumstances but 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 to have a slight application to this Applicant because his financial situation has changed in the past two years since graduating from technical school.

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.” These factors are not present here. I find this potentially mitigating condition is not a consideration in this case.

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 received counseling, prepared a budget with the assistance of the credit counseling service, and is resolving all the delinquent debts by installment payment agreements through the credit counseling service or by his own agreements with the student loan lenders. He is now managing his money responsibly and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

The remaining two mitigating conditions in AG ¶ 20 do not apply. Applicant does not dispute the legitimacy of any of the delinquent debts (AG ¶ 20 (e)). Nor has any affluence occurred (AG ¶ 20 (f)).

### **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 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. When these problems first began, Applicant was a young man, and attending college. (See AG ¶ 2(a)(4).) He

accumulated debt due to poor financial management practices, e.g., spending too much money, and borrowing for college without developing a plan to repay the loans after graduation. (See AG ¶ 2(a)(2).) Since that time, Applicant has undergone significant behavioral changes. He found a good-paying job, and has been recognized by his supervisors for his dedication, integrity and trustworthiness. Most significantly, he has taken affirmative action to pay or resolve all of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) He persuasively and credibly testified to his change in attitude and practice toward managing his personal finances, and brought documentary proof of his payments to the hearing. 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. All of his delinquent debts are being paid in a responsible manner. (See AG ¶ 2(a)(1).)

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

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.” 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. 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.’ 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. 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. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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. I conclude the “whole person” concept for Applicant.

### **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 to 1.i:	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. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge