



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-03936  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Department Counsel  
For Applicant: *Pro Se*

January 23, 2009

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**Decision**

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TESTAN, Joseph, Administrative Judge:

On July 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant 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 answered the SOR in writing on September 11, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on October 28, 2008. Applicant filed a response to the FORM on December 3, 2008. The case was assigned to me on December 12, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

## Findings of Fact

Applicant is a 44 year old employee of a defense contractor. He served honorably for over twenty years in the U.S. military.

**SOR Allegation 1a:** Applicant is indebted to Bank of America (BA) in the amount of \$9,519.00. In August 2008, he contacted the bank and suggested two options to settle the debt. In December 2008, he settled the debt for \$3,253.29, which is to be paid in three monthly installments of \$1,084.43 beginning on December 31, 2008.

**SOR Allegation 1b:** Applicant was indebted to Chase in the amount of \$2,228.00 on an account that had been placed for collection. Applicant settled this debt for \$1,671.00 in September 2008. A letter dated October 3, 2008 from the creditor confirms applicant paid the settlement amount.

**SOR Allegation 1c:** Applicant was indebted to WFFINANCE (WF). He admitted the SOR Allegation that the debt was in the approximate amount of \$5,705.00, and that the debt had been charged off. However, there were different WF accounts listed in his old credit reports, and it appears that after applicant disputed the number of accounts with various credit reporting agencies in early 2008, long before the SOR was issued, all but one was removed. The most recent credit report in evidence that Department Counsel relies on (Exhibit 7) indicates a WF debt of \$1,049.00. In his response to the FORM, applicant submitted a December 2008 letter from the current assignee of the debt who reported that the debt stood at \$1,244.14 and that the debt was settled with applicant for \$950.00. Applicant stated he made the \$950.00 payment. Based on the evidence presented, I find that applicant is no longer indebted to WF.

Applicant and his wife have been separated since 2004 and are now in the process of getting divorced. In his response to the SOR, applicant stated some of his financial obligations were not addressed because of a failure of communication with his soon to be ex-wife, as well as her failure to satisfy "divided debts" as she had agreed.

A letter from one of applicant's coworkers was admitted into evidence. In it, he stated applicant is reliable and trustworthy.

## Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **Analysis**

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

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant did have a few debts go delinquent. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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 has satisfied two of the

three alleged debts and has reached a settlement agreement with the third creditor, which leaves his current delinquent indebtedness at \$3,253.29. The little derogatory financial evidence the Government offered does not cast doubt on applicant's current reliability, trustworthiness, or good judgment. Accordingly, this mitigation condition is applicable.

Under Paragraph 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 stated his financial problems were caused by his wife from whom he has been separated since 2004. However, he provided insufficient specific evidence to conclude his financial problems were caused by factors largely beyond his control. Accordingly, this mitigating condition is not applicable.

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 Paragraph 20.c. It is clear the problem is under control. This mitigating condition is applicable.

Paragraph d. applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has either satisfied or settled all three debts. This mitigating condition is applicable.

### **"Whole Person" Analysis**

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant 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 man who, after honorably serving his country for over twenty years, fell behind on three financial obligations. Whether these delinquencies were caused by him or his wife is not entirely clear. What is clear, however, is that applicant began addressing these three delinquencies before the SOR was issued, and since then has paid off two of the debts and has reached a repayment agreement with the third creditor. His current past-due indebtedness stands at a manageable \$3,253.29, and it should be paid off by February

2009. Based on the evidence presented, I conclude applicant mitigated the security concerns arising from 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

### **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.

JOSEPH TESTAN  
Administrative Judge