



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



In the matter of: )  
)  
) ISCR Case No. 08-03962  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kathryn D. MacKinnon, Esquire, Deputy Chief Department Counsel

For Applicant: Lynne Zusman, Esquire

June 26, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guidelines for Financial Considerations and Personal Conduct. Accordingly, his request for a security clearance is granted.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) on November 3, 2007. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On July 30, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision – security concerns addressed in the Directive under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG).<sup>2</sup> In his Answer to the SOR,<sup>3</sup> signed and notarized on September 25, 2008, Applicant admitted to the allegations at ¶¶1.a. and 1.b. under Guideline F and denied the remaining allegations at ¶¶1.c. through 1.g. He also denied the three allegations under Guideline E. He requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on February 20, 2009, and the case was assigned to me on February 26, 2009. DOHA issued a Notice of Hearing on March 24, 2009, setting a hearing date of April 16, 2009. On approximately April 1, 2009, Applicant retained an attorney, who moved to continue the hearing date. Department Counsel had no objection, and the Motion was granted. An Amended Notice of Hearing was issued on April 16, 2009, setting a new hearing date of April 24, 2009. I convened the hearing as scheduled.

During the hearing, the government offered eight exhibits. Seven were marked as Government Exhibits (GE) 1 through 7 and admitted without objection. The government also offered one demonstrative exhibit, marked for identification as GE 8. Applicant reserved the right to object (Tr. 21), but made no further objection, and it was admitted as GE 8. The government later offered an additional exhibit related to GE 5; it was admitted without objection as GE 5a (Tr. 89). In addition, the Answer in the Administrative Judge's file was incomplete. Department Counsel provided a copy of the complete Answer. It was admitted, without objection, as GE 9 (Tr. 94).

Applicant testified and also offered seven exhibits. They were marked as Applicant's Exhibits (AE) A through G and admitted without objection. I held the record open to allow Applicant to submit additional documentation. Department Counsel

---

<sup>1</sup> Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

<sup>3</sup> Applicant attached the following five documents to his Answer: 1 - 2008 letter regarding settlement offer on allegation 1.c.; 2 - 2008 letter showing \$50 payment on allegation 1.d.; 3 - 2008 letter regarding settlement offer on allegation 1.e.; 4 - documents relating to the debt at allegation 1.f.; 5 - September 2008 credit bureau report.

forwarded without objection Applicant's timely submission of ten documents. I admitted the documents as AE H through Q. DOHA received the transcript on May 1, 2009.

### **Findings of Fact**

After a thorough review of the pleadings, Applicant's response to the Statement of Reasons, and the record evidence, I make the following additional findings of fact.

Applicant, 44 years old, completed two years of courses at a community college. He married for the first time while he serving on active duty in the military. He married a second time in 1992 and divorced in June 1996. Applicant married his current wife in November 1996. She had several children. Together with his own, they now have 10 children who range in age from 3 to 28 years old. His wife does not work outside the home (GE 1; Tr. 27-28; 39; 101).

Applicant served on active duty in the U.S. Army from 1984 to 1987. He remained in the active reserves from 1987 to 1992. He worked for 18 years for a large telecommunications company. From 1990, he was a cable technician, and in 2000, he was promoted to manager. He has worked in the security field as a security officer for several companies. He is also a member of the National Guard. He currently receives income from three positions: as a senior cable technician; as a security officer; and a member of the Army National Guard since 2007 (GE 1; AE C; Tr. 28-29; 32; 100).

His income from each position varies depending on the hours worked. In May 2009, Applicant received net pay of \$300 from the National Guard. His net pay at the security firm for a two-week period in February 2009 was \$572, but for two weeks in April, he earned net pay of \$825. In his position as a senior cable technician for a communications company, Applicant earns \$21.35 per hour. His net pay for two-week periods in March and April 2009 varied from \$1,120 to \$1,507. His 2007 tax return shows wages of approximately \$126,400. In 2008, his wages were higher because he received a buyout package from his communications employer that, after taxes, amounted to \$39,746 (AE M; O).

Under Guideline F, the Statement of Reasons alleges four delinquent debts, two bankruptcy petitions, and a home foreclosure. Applicant filed a bankruptcy petition in 1995 (allegation 1.a.). A significant amount of debt accrued during his second marriage, because of his own and his wife's spending habits. Applicant went through a difficult divorce. His attorney advised him to file for bankruptcy. The Chapter 7 bankruptcy was discharged in July 1995 (GE 7; Tr. 35; 101-102).

Although Applicant's remarriage in 1996 resulted in many more dependents, he was able to meet his financial obligations. However, in approximately 2000, the telecommunications firm where he was employed went through a restructuring. Applicant's wages decreased, debts started to accrue and he started to fall behind on his mortgage. He contacted an attorney, who advised him to file for bankruptcy and to

sell his home. In February 2002, he filed a Chapter 13 bankruptcy petition that would allow him to reorganize his finances and pay off the accrued debts. Applicant's mortgage lender moved for relief from the stay afforded under Chapter 13, and permission to foreclose. However, Applicant was able to sell his home, and in October 2002, the mortgage loan was paid. He also moved to dismiss the bankruptcy petition, and used the funds from the sale of his home to pay his debts (GE 5; 5a; 6; Tr. 103-105; 113-114).

Applicant denies the allegation that his home was foreclosed in 2004 because he had sold his home in 2002, and in 2004 he was living in an apartment. The home listed as foreclosed in Applicant's 2007 credit bureau report was the house he sold in 2002. The settlement sheet from that sale shows that the mortgage loan listed in the credit bureau report was satisfied in 2002. The settlement sheet also shows the address of the apartment where Applicant was living on the settlement date. He later purchased another home in 2004 (GE 2; 5a; 9; AE K; Tr. 54-57).

In 2008, Applicant worked for a communications company. The company downsized by eliminating 5,000 management positions, including Applicant's. He accepted a buyout so that he could use the lump-sum payment to pay off outstanding debts. He received \$59,695; which after taxes gave him a net a payout of \$39,000 (AE B; M; Tr. 36-37)

Currently, Applicant has closed several credit card accounts, and is timely on the one remaining credit card. One car is paid off, and he is making timely payments on the other. Applicant also has approximately \$7,000 in retirement savings (AE O; P; Tr. 130-131).

The status of the SOR debts follows.

- **Allegation 1.c. - \$7,058:** This debt represents a deficiency balance remaining after sale of a repossessed automobile. The creditor accepted a settlement. Applicant's September 2008 credit bureau report shows that the debt to this creditor is paid (GE 2; 4; Answer documents 1; 5)
- **Allegation 1.d. - \$1,869:** Applicant established a payment plan for this school debt under which \$50 per month is automatically deducted from his bank account. AE J shows payments starting in November 2007. As of the date of the hearing, Applicant has reduced the balance to \$1,218. (GE 2; 3; 4; AE I; Answer document 2; Tr. 47-48)
- **Allegation 1.e. - \$15,303:** Applicant received a settlement offer of \$5,000 on this automobile loan. He paid the settlement amount, with the last installment of \$2,500 paid on August 1, 2008. The creditor's

rights in the vehicle were released as of December 2008 (AE J; Answer document 3; Tr. 51-52).

- **Allegation 1.f. - \$12,250:** This allegation is a duplicate. The creditor listed at allegation 1.c. is the collection agency for the creditor listed at allegation 1.f. A July 2008 letter from the collection agent for this debt shows that although the two debts appear to have different account numbers, they represent the original creditor's account number and the subsequent creditor's account number. (Answer documents 1; 4; 5).

Applicant completed a security clearance application in November 2007 in which he was asked whether or not he had property repossessed or wages garnished in the previous seven years (question 27b). He answered "Yes" and listed an automobile repossession in 2006. The government alleges that he falsified by not entering information about a home foreclosure in 2002 (Tr. 78-79).

Applicant was also asked whether or not he had debts more than six months past due in the previous seven years (question 28a) and whether he had debts more than three months past due at the time he completed the application (question 28b). He answered "No." The government alleges that he deliberately falsified these answers. Applicant testified that he thought the questions were unclear, and was unsure about how to answer them. He and his wife went over the questions together, and reviewed their financial efforts over the past several years, and determined that their debts had not been over the stated time.

The question wasn't clear. As stated before, I was trying to handle all the debt, trying to pay off the debt and manage the accounts, as best I could. In calling the various lenders, if you will, to try to work out various agreements on each account that I've listed. So, I wasn't sure that any of the debt was 90 to 100 days old. And, I asked my wife, we were sitting down together, when we actually filled out the e-QIP application. And, both of us had stated at the time, we wasn't sure that any of the debt was 90 to 100 days old. I knew I had some debt that was maybe 30 days late, and that I was working on trying to pay it off. However, when this question asked me was it 90 to 100 days, I was like that was 3 months to 6 months, are we that late on any of the debt and what we both came up with was no. (Tr. 80).

### **Policies**

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised

Adjudicative Guidelines (AG).<sup>4</sup> Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest<sup>5</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, an Applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.<sup>7</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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

---

<sup>3</sup> Directive. 6.3.

<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Disqualifying conditions AG ¶19a (*inability or unwillingness to satisfy debts*) and AG ¶19c (*a history of not meeting financial obligations*) apply based on Applicant's substantial delinquencies between 2002 and 2008. There is no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains factors that can mitigate security concerns. Mitigating conditions AG ¶ 20b, 20c and 20d apply.

AG ¶ 20b applies (*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*). When Applicant remarried in 1996, his family and his wife's family together comprised ten children and two parents. His wife does not work outside the home, and he has been the sole support for this large family for the past 13 years. He tried to support this large family on one income. In addition, his employer restructured the company, and Applicant's pay declined. He acted responsibly by filing a Chapter 13 bankruptcy. However, he was able to sell his home, and withdraw the petition. He again showed responsibility by using the funds from the sale of his home to pay his debts. Since 2007, Applicant also sought to provide sufficient income by working several jobs simultaneously. He currently has three jobs. Applicant has acted responsibly and made consistent efforts to meet his financial obligations.

Although Applicant has not received counselling, he does have his financial situation under control. Of the four debts alleged, Applicant owed only three, as one was a duplicate. He has paid two of the three debts, and has a long-standing plan in place with automatic payment deductions for the remaining debt. He significantly reduced his delinquent debts after receiving the buyout in 2008, as shown by his 2009 credit bureau report. AG ¶ 20c (*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*) and AG ¶ 20d (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern about personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Guideline E allegations implicate the following disqualifying condition under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities

The government alleges that Applicant deliberately falsified his answers to questions 27(b), 28(a) and 28(b) on his 2008 security clearance application. Falsification of a security clearance application implicates AG ¶ 16(a); however, application of this disqualifying condition requires a deliberate intent to conceal. Here, Applicant did not intentionally hide relevant information from the government. If he had intended to conceal the fact that financial issues were a concern, he would not have answered "Yes" to question 27(b), and disclosed that his wages had been garnished. He would not have disclosed that he owed more than \$10,000 on the repossessed automobile. Moreover, Applicant did not intentionally conceal that a property had been foreclosed, because his home had not been foreclosed.

As to his past due debts, Applicant credibly testified that he tried to correctly answer questions 28(a) and (b). He and his wife sat together and reviewed their bills and their recent payment efforts, the dates on which they had made payments, the settlements, and the dates of their payment plans. They determined that the correct answer was "No" because they concluded that none of their bills had been either 180 days past due or 90 days past due. If Applicant's intent had been to conceal his financial problems, it is highly unlikely he would have been candid about the garnishment and repossession in the preceding question. Applicant's disclosure put the government on notice that his finances represented a security concern. I conclude that he did not intend to falsify his security clearance application, and AG ¶ 16 (a) does not apply.

### **Whole Person Analysis**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and



all the circumstances. An 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.

AG ¶ 2(c) requires that 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. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued debts over the past several years. He has paid two of the three debts. He has been making payments through a long-standing payment plan for the single remaining debt. Over the past several years, he has worked several jobs simultaneously in an effort to keep his large family afloat. He acted with reason and maturity, using funds from his house sale in 2002 to avoid bankruptcy and pay his debts. He accepted a buyout in 2008, so that he could use the lump-sum payment to pay off debts. He has made significant headway, so that his 2009 credit bureau report lists only one past-due debt, which Applicant is currently paying through a payment plan. Applicant's behavior demonstrates a sincere effort to meet his financial obligations. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has satisfied the doubts about his ability or willingness to protect the government's interests.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Paragraph 1, Guideline F	For Applicant
Subparagraph 1.a. – 1.g.	For Applicant
Paragraph 2, Guideline E	For Applicant
Subparagraph 2.a. – 2.c.	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

---

RITA C. O'BRIEN  
Administrative Judge