



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-04728  
)  
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Applicant for Security Clearance )

For Government: Paul M. Delaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 23, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On September 27, 2007, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On November 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Appellant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 on or about December 19, 2008, and requested a hearing. DOHA assigned the case to me on February 27, 2009, and issued a Notice of

Hearing on April 28, 2009. The case was heard on May 12, 2009, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Exhibits (AE) A through G into evidence without objection. At the conclusion of the hearing, I left the record open until May 27, 2009, to give Applicant an opportunity to submit additional information. On May 26, 2009, Applicant submitted exhibits that I marked as AE H through M, and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on May 21, 2009.

### **Findings of Fact**

Applicant admitted all allegations contained in the Paragraph 1 of SOR, except Paragraphs 1.d and 1.h. He denied the allegations contained in Paragraph 2 of the SOR. His admissions are incorporated into the following findings of fact:

Applicant is 44 years old and married three times. He has two children from his first marriage. He was married from December 2001 to August 2007 to his second wife. They do not have children. He married his present wife in November 2008 and has two step-children. He enlisted in the U. S. Army in June 1988 and was medically discharged in February 2001 due to an injury. He was a staff sergeant (E-6) and taught nuclear, biological and chemical warfare to the soldiers. (Tr. 21-22)

After leaving the Army, Applicant was unemployed for a few months. He then worked for a department store and other private companies before beginning his current civilian position in July 2004 with a battle command training program for the Army. He is a computer system's administrator. He has held a Secret security clearance for the last five years. Applicant's program director supports his request for a security clearance. He wrote, Applicant "is a solid, strong employee; one that I count on to assume the responsibility for the hard projects. He has consistently demonstrated his reliability in the context of this contract for at least the six years that I have been in charge. . . . As for his trustfulness and honesty, it is unquestionable." (AE B) He is aware of Government's security concerns regarding Applicant's finances. Two other colleagues wrote letters of recommendation on his behalf. (AE C and D)

Applicant's financial problems began while married to his second wife. During the marriage, he traveled for extended periods of time for work and did not monitor the family finances. For example, he traveled for approximately 170-180 days annually for a couple years. (Tr. 74; 78) While gone, he thought his wife was managing the bills and did not know that she was not paying them. In May 2007, his wife moved out of the house along with their furnishings. On August 2, 2007, the court entered a final divorce decree. According to the property settlement agreement, he agreed to assume about \$40,000 of marital debt in exchange for retaining the marital residence. (AE M) Prior to the entry of the decree, he paid \$2,800 in July 2007 for outstanding property taxes for 2004, 2005 and 2006 that he learned were delinquent. (AE A and L) He also agreed to pay his former wife's car insurance for six months and her health insurance for one year after the divorce. (GE 2 at 4) In March 2008, he completed making payments on a

garnishment for \$2,519 that was ordered in December 2007 for a marital debt he assumed. (GE 2 at 8)

Based on credit bureau reports (CBR), dated November 13, 2007 and January 29, 2009, the SOR alleges eight debts, totaling about \$44,519 that became delinquent between December 2005 and November 2007. The status of the debts is as follows:

1. SOR ¶ 1.a alleges a \$30,222 debt owed to a creditor for personal loan. The original loan was for \$21,000. He has been unable to resolve it because the creditor wants a lump sum payment that he cannot afford at this time. (Tr. 25; 50; GE 2 at 10) This is a marital debt that he assumed in the property settlement. (AE M)
2. SOR ¶ 1.b alleges a \$9,637 debt owed to car company on a repossessed vehicle. His lawyer is resolving the debt. He anticipates paying \$325 per month until the debt is paid. (Tr. 26, 52; AE J) This is a marital debt that he assumed in the property settlement. (AE M)
3. SOR ¶ 1.c alleges a \$957 debt owed to a department store. He paid the debt on March 16, 2009. This is a marital debt that he assumed. (Tr. 26; AE E and M)
4. SOR ¶ 1.d alleges a \$20 medical debt that he paid electronically on May 10, 2009. (Tr. 29)
5. SOR ¶ 1.e alleges a \$504 debt owed to a cellular telephone company. He paid it on April 23, 2009. This is a marital debt that he assumed. (Tr. 29-30; AE F and M)
6. SOR ¶ 1.f alleges a \$1,361 debt owed to a telephone company. He telephoned the listed creditor, who is unable to locate the account. It remains unresolved.<sup>1</sup> (Tr. 30-31; AE H and M)
7. SOR ¶ 1.g alleges a \$1,718 debt owed to his mortgage company. He has paid \$850 or more from February 2008 to April 2009 to make up any deficits. It will be current by January 2010. (Tr. 31-32; AE L; GE 4 at 3)
8. SOR ¶ 1.h alleges a \$100 medical debt. He paid it on March 18, 2009. (Tr. 32; AE G)

In summary, Applicant has resolved five of the eight debts and his lawyer is resolving another debt. He is investigating one debt and is intending to resolve the largest debt as funds become available.

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<sup>1</sup>This debt does not appear on either the November 2007 or January 2009 CBR. (GE 3 and 4)

Applicant's net monthly income is \$4,911, and includes his wife's unemployment and child support. His monthly expenses are \$2,444. His payments on his financial obligations total \$1,832, and include a projected \$325 monthly payment on the debt listed in SOR ¶ 1.b, leaving approximately \$634 at the end of the month. (AE H) He anticipates receiving a monthly \$584 disability payment through the Veteran's Administration in the coming months that he will be able to use for further debt reduction. (Tr. 44)

In January 2008, Applicant submitted an e-QIP. In response to "*Section 28: Your Financial Delinquencies. a. In the last 7 years, have you been over 180 days delinquent on any debt(s),*" he answered "no." In response to *Section 28: Your Financial Delinquencies. b. Are you currently over 90 days delinquent on any debts(s),*" he answered "no." When he completed the e-QIP, he knew he had debts, but did not believe they were delinquent three to six months. His ex-wife had been managing the household bills during their marriage and did not inform him of the delinquencies. (Tr. 35) He thinks she may have been saving money in anticipation of her departure instead of paying their bills. (Tr. 60) He did not intentionally attempt to defraud the Government. (Tr. 36) He disclosed a 1986 felony conviction in the e-QIP. (GE 1 at 32)

Applicant testified credibly and forthrightly. He is aware of his obligations, but has not had enough money to pay all of the debts at one time since the divorce. He is attempting to pay them one at a time or as his budget permits. (Tr. 85)

### **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 commonsense 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.

Directive ¶ E3.1.14 requires the Government to 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 to obtain a favorable security decision.” 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.”

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.

## **Analysis**

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

The security concern relating to the Financial Considerations guideline 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.

AG ¶ 19 describes two conditions that could raise a security concern and maybe be disqualifying in this case:

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

Applicant began accumulating a significant amount of delinquent debt in December 2005 while married to his second wife and as part of their divorce. Those debts continued to accrue through November 2007. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial problems arose around December 2005 and continue to be unresolved into 2009; thus, AG ¶ 20(a) cannot apply because the problems have been ongoing for several years. Applicant's financial problems are attributable to his second marriage and their August 2007 divorce agreement in which he assumed a significant portion of marital debts. Those conditions were "beyond his control." There is some evidence that after learning of the debts in the summer of 2007 he took steps to begin managing his obligations. Hence, AG ¶ 20(b) has partial application. He has not sought credit counseling to-date, but has been addressing some of the delinquent debts, such that there are "indications that the problem is being resolved," warranting a limited application of AG ¶ 20(c). He has paid five debts, is negotiating the resolution of another, and has attempted to address the remaining two. His action, along with a budget that takes into account the delinquent debt, is evidence of a good-faith effort to "repay or otherwise resolve debts," and triggers a partial application of AG ¶ 20(d).

The record evidence does not support the application of AG ¶ 20(e) or AG ¶ 20(f).

## **Guideline E, Personal Conduct**

The security concern pertaining to the Personal Conduct guideline is set out in AG ¶ 15:

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 Government alleged in SOR ¶¶ 2.a and 2.b that Applicant falsified answers to two questions on his e-QIP, regarding disclosure of debts more than 90 or 180 days delinquent. The Government contended that his omissions of delinquent debts may raise a security concern and be disqualifying 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.

Applicant denied that he intentionally omitted information about his delinquent debts.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

When completing his e-QIP, Applicant knew that he had some debts, but did not realize the scope of those delinquencies or the length of time they had been outstanding because his former wife managed the household budget and never informed him of the outstanding debts. Since his separation from her, he has learned of his financial problems and promptly paid outstanding property taxes, and later a marital debt through a garnishment. Given the actions he has taken to address his obligations and his truthful disclosure of a 1986 criminal conviction, I find his explanation for not disclosing delinquent debts credible. The omission of the information was not intentional. Hence, the evidence does not establish deliberate falsification. This Guideline is found in his favor.

## 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). They include the following:

(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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. Applicant is a 44-year-old man, who had a thirteen-year career with the U.S. Army before becoming injured and medically discharged. Since 2004, he has worked for a federal employer supporting the Army. He began accruing financial delinquencies during his second marriage, unbeknownst to him. While in the divorce process in the summer of 2007, he started paying some of his outstanding bills. In accordance with an August 2007 divorce decree, he assumed about \$40,000 of marital debt. Since then, he has paid or is in the process of resolving about \$13,000 of delinquent debts listed in the SOR. He has paid an additional \$5,300 of other marital debts, plus covered his former wife's car and health insurance for a period of time. He intends to continue resolving the remaining outstanding debt and has a detailed budget that provides money to do so. Should his wife obtain employment, he will have additional monies available in the budget. His supervisor and wife are aware of this problem, eliminating a potential for pressure of coercion. He acknowledges his financial obligations and the potential negative effect it can have on his employment. After listening to him, I find that it is unlikely that similar problems will recur in the future or that he will fail to resolve his current obligations.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under financial considerations and personal conduct.



## **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 through 1.g: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a and 2.b: 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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SHARI DAM  
Administrative Judge