



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-04729
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
*Pro se*

September 1, 2009

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on August 8, 2007 (Government Exhibit 1). On December 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guideline F stating why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked. 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 President Bush

on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant filed an Answer to the SOR on January 28, 2009, and requested a decision without a hearing. Pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance at Enclosure 3 of the Directive, Department Counsel requested that a hearing be held in this case. (Transcript at 9.) Department Counsel was prepared to proceed on March 3, 2009. This case was assigned to me on March 5, 2009. DOHA issued a notice of hearing on April 8, 2009. I convened the hearing as scheduled on May 19, 2009. The Government offered Government Exhibits 1 through 6, which were received without objection. The Applicant testified on his own behalf, and submitted Applicant's Exhibits A through E, also without objection. The record was left open at the Applicant's request for the submission of additional documentation. The Applicant submitted Applicant's Exhibit F on or about June 2, 2009. This exhibit was also received without objection. DOHA received the transcript of the hearing on May 27, 2009. The record closed on June 2, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The Applicant is 35, married but separated, and is a high school graduate. He seeks a security clearance in connection with his employment in the defense industry. In his Answer to the SOR, Applicant admitted the allegations in Paragraph 1 of the SOR. Those admissions are hereby deemed findings of fact.

#### **Paragraph 1 (Guideline F - Financial Considerations)**

The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of engaging in illegal acts to obtain funds.

The Applicant served about 13 years in the military. He first was an enlisted man in the Marine Corps for seven years, then served for five years as a warrant officer pilot in the Army. He received a medical discharge in 2005 for service connected, non-combat, injuries. (Transcript at 33-35.)

The Applicant left active duty in May 2005, very soon after his medical discharge was approved. By the Applicant's own admission, he did not have sufficient time to prepare himself or his family for his return to civilian life, which included moving from an overseas location back to the United States. (Transcript at 35-36.)

Once he returned to the United States in May 2005, the Applicant was unable to obtain consistent full-time employment until February 2007. At that time he began working for his current employer. He has been employed by this company continually since that time. (Transcript at 36-38; Government Exhibit 1 at Section 11, and Exhibit 2.)

Subparagraph 1.a. concerns the Applicant filing for bankruptcy. By the summer of 2008, the Applicant reached a financial state where he could examine all of his options regarding his past due debt. He testified:

I initially wanted to do credit counseling to see if I could fix myself that way, my wife and I. It wasn't – it wouldn't have worked, so we went through some counseling prior to bankruptcy and it looked like that was the avenue. And I actually took a few more months trying to make that decision before I did it. I did it. And it was discharged in February [2009]. (Transcript at 38.)<sup>1</sup>

The available records show that the Applicant filed a Chapter 7 bankruptcy in November 2008. (Government Exhibit 6 at 1.) He was granted a discharge on February 18, 2009. (Applicant's Exhibit E at 2.) The Applicant submitted the Schedule F - Creditors Holding Unsecured Nonpriority Claims from his bankruptcy petition. (Applicant's Exhibit E at 3-6.) The debts alleged in subparagraphs 1.b through 1.y. of the SOR were included in the schedule. These debts have been discharged and the Applicant no longer has responsibility for them.

The Applicant also submitted the Schedule E - Creditors Holding Secured Nonpriority Claims. (Applicant's Exhibit D at 1-2.) The debts alleged in subparagraphs 1.z. and 1.aa. are included on this schedule. They are nondischargeable in bankruptcy. The Applicant submitted evidence that these governmental claims are being paid through application of his tax refunds from the years 2005, 2006 and 2007. (Transcript at 58-61; Applicant's Exhibits A and B.)

The debts set forth in subparagraphs 1.bb. and 1.cc. are not included in the Applicant's bankruptcy petition. Both debts precede the date of the petition and their absence appears to be an oversight. Under bankruptcy rules, even though these debts are not included in the schedules, as unsecured nonpriority debts they are still discharged. (11 U.S.C. § 727.) (Transcript at 44, 56-57.)

The Applicant testified that he is able to maintain payments on his current debts now that he has been discharged in bankruptcy. This includes his child support responsibilities. He has taken credit counseling, and is working with a certified public accountant to get his financial situation in order. (Transcript at 50-51; Government Exhibit 2 at 12.)

## **Mitigation**

The Applicant submitted a written recommendation from his supervisor. This person describes the Applicant as a person of "Integrity and sound judgment." (Applicant's Exhibit F.)

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<sup>1</sup>See Transcript at 42-43.

## 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 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case, the Government has met its initial burden of proving by substantial evidence that the Applicant has had financial difficulties (Guideline F). The Applicant, on the other hand, has successfully mitigated the Government's case.

### **Paragraph 1 (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. The Applicant failed to pay a series of debts for a period of years. 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. Mitigating Condition ¶ 20(a) states that the disqualifying conditions 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.” In addition, AG ¶ 20(b) states that it may be mitigating if “the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment . . . , or a death, divorce or separation), and the individual acted responsibly under the circumstances.” The Applicant's debt situation was seriously impacted by his

medical discharge from the Army, and the period of underemployment that followed it. The evidence raises these mitigating conditions.

The Applicant's debts have been discharged in a Chapter 7 bankruptcy. This conduct is mitigating under two conditions. He has obtained the required credit counseling, and is working with a certified public accountant on a spending plan. Accordingly, AG ¶ 20(c) applies, which states that it is mitigating where "the person has received or is receiving counseling for the problem . . . ." In addition, under the facts of this case, the bankruptcy shows that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" under ¶ 20(d).

### **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. 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making such a determination:

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, in particular the Applicant allowing these debts to lie fallow for several years, his medical discharge from the Army, which prevented him from properly preparing to enter the civilian workforce, his decision to file a Chapter 7 bankruptcy, and his ability to maintain his current debts. Three of the factors have the most impact on this case. First, I find that there is the "presence or absence of rehabilitation and other permanent behavioral changes," as set forth under AG ¶ 2(a)(6). The Applicant has shown that his failure to pay these debts was a temporary situation that has been corrected. Under the particular facts of this case, there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Finally, the evidence does not show a "likelihood of continuation or recurrence" of the conduct as discussed in AG ¶ 2(a)(9).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the

evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **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 THE APPLICANT

Subparagraphs 1.a. through 1.cc:           For the Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge