



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-05407
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

July 6, 2009

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Standard Form 86 - Questionnaire for Sensitive Positions, on February 12, 2006 (Government Exhibit 1). On January 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F regarding the Applicant. 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 filed an Answer to the SOR on February 11, 2009, and requested a hearing. Department Counsel was prepared to proceed on March 16, 2009. The case was assigned to a different Administrative Judge on March 17, 2009. I received the case assignment on April 6, 2009. DOHA issued a notice of hearing on April 6, 2009, and I convened the hearing as scheduled on April 28, 2009.

The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant's Exhibits A through H, without objection. The Applicant requested time to present additional evidence and, on May 22, 2009, submitted Applicant's Exhibit I, also without objection. DOHA received the transcript of the hearing on May 13, 2009. The record closed on May 22, 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 26 and married with three children. He is employed by a defense contractor and seeks to retain a security clearance previously granted in connection with his employment.

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

The Government alleges in this paragraph that the Applicant is financially overextended and therefore at risk of engaging in illegal acts to generate funds. The Applicant admitted the factual allegations, but denied that his conduct showed poor self-control, lack of judgment, or unwillingness to abide by rules and regulations.

The Applicant's financial problems began in about 2005. He was out of school, had a growing family, was spending money on his wife and extended family, and was not making enough money at work to meet his expenses.

The Applicant and his family live with his parents. His father had some medical problems in the recent past that required the Applicant to pay some of the household expenses. This also caused him additional financial difficulties. In November 2007 he started working for his present employer and began earning enough money to begin paying his overdue debts, which he has been doing. (Transcript at 32-34, 38-39, 47-48, 67-68; Applicant's Exhibits B, and I at 5.)

Subparagraph 1.a. The Applicant admits that he owed approximately \$9,643.43 for a credit card debt. The original indebtedness was \$5,746.00, with interest making up the total amount. The Applicant began trying to resolve this debt in February 2009. (Applicant's Exhibit E.) He made a payment arrangement with the successor in interest, and agreed to pay \$4,862.79 to resolve the debt. He paid this debt in full on May 5, 2009. (Transcript at 26-29; Applicant's Exhibits G, and I at 2-3.)

Subparagraph 1.b. The Applicant admits that he owes approximately \$5,707.00 for a credit card bill. The Applicant testified that he came to a payment agreement in February 2009 with the law firm representing the creditor. The agreement was for the Applicant to pay \$2,700.00. (Applicant's Exhibits E, and F at 1.) The Applicant testified, "I was contacted by [the law firm's] office a few days later basically saying the offer was no longer valid." (Transcript at 35; Applicant's Exhibit E, and F at 2.) The Applicant

provided documentary evidence showing that he had the funds to pay this debt, and was prepared to pay this debt. (Transcript at 44-46; Applicant's Exhibit H.) The Applicant has had further discussions with the law firm, but he has not been able to reach an acceptable payment agreement with them. (Transcript at 54-56.) The Applicant will continue to work with this law firm until this debt is settled.

Subparagraph 1.c. The Applicant admits that he owes approximately \$3,942.00 for a credit card debt. There appears to be confusion about who the successor in interest is for this debt. In February 2009, the Applicant was told by a collection agency that the same law firm which is handling subparagraph 1.b. is also the collection agency for this debt. (Applicant's Exhibit E.) The law firm denies any knowledge of the debt. (Transcript at 36-37, 57.) Once again, the Applicant indicated that he is ready, willing and able to resolve this debt. The Applicant will continue to work with this law firm until this debt is settled.

### **Mitigation**

The Applicant has worked for his current employer for about a year and a half. His supervisor states that the Applicant is "one of the few outstanding employees I have hired." The supervisor goes on to say, "His [the Applicant's] demeanor and character speaks to his honesty and integrity." (Applicant's Exhibit D.)

The Applicant submitted evidence that he successfully paid off an arrearage on another account in November 2008. This debt was not alleged in the SOR. (Applicant's Exhibit C.) This payment is not reflected in the Government's most recent credit report of March 16, 2009. (Government Exhibit 6.)

The Government's credit bureau reports, and the Applicant's records, show that he has significantly reduced his indebtedness. The Applicant's records also show that his cash flow situation has improved. His parents have agreed in writing to waive the Applicant \$500.00 a month rent, and charge only \$200.00 a month for utilities, for the next two years. (Applicant's Exhibit I at 4; Transcript at 66-69.) The Applicant submits that this supports his argument that he shows good judgment with regards to his debts. He also submits that, with these additional funds, he will be able to negotiate and successfully pay his two remaining past due debts. (Government Exhibit 6; Applicant's Exhibit I at 5.)

### **Policies**

Security clearance decisions are not made in a vacuum. 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. 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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

### 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(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant admits that he owes the debts set forth in SOR Paragraph 1. The evidence is sufficient to raise this potentially disqualifying condition, 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." 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." These mitigating conditions do not apply in this case.

However, AG ¶ 20(c) applies if "there are clear indications that the problem is being resolved or is under control." In addition, ¶ 20(d) applies where, "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Here, the Applicant became indebted due to overspending on his family over several years. Beginning in 2007, the Applicant got a new job, made more money, and began to take care of his indebtedness. He has paid in full the debt in subparagraph 1.a. In addition, he has been working diligently to resolve his other two debts. For whatever reason, the Applicant has not been getting cooperation from the law firm that holds these two debts. I find that the Applicant has the ability to resolve these debts, and he has made a good faith attempt to pay them. The fact that they are not currently paid is through no fault of the Applicant.

### 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



## **Conclusion**

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

WILFORD H. ROSS  
Administrative Judge