



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-05573
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 30, 2009

**Decision**

---

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) on October 5, 2007. On December 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations 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 acknowledged receipt of the SOR on January 2, 2009.

Applicant answered the SOR in writing on January 12, 2009. He denied three of the allegations under Guideline F since the accounts had been paid in full. He admitted the remaining four allegations. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 6, 2009, and the case was assigned to me on April 7, 2009. DOHA issued a notice of hearing on April 16, 2009, for a hearing on May 11, 2009. I convened the hearing as scheduled. The government

offered three exhibits, marked Government Exhibits (Gov. Ex.) 1 through 3, which were received without objection. Applicant testified on his behalf. The record was held open at Applicant's request so he could submit documentation of debt payments and a debt management plan. Applicant timely submitted three documents marked Applicant Exhibits A-C received without objection (See, Gov. Ex 4, Memorandum, dated May 14, 2009; Gov. Ex. 5, E-mail, dated June 4, 2009; Gov. Ex. 6, E-Mail, dated June 11, 2009). DOHA received the transcript of the hearing (Tr.) on May 19, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Procedural Issues**

Department Counsel notified Applicant in early April 2009 that he had his request for hearing and sought Appellant's availability for a hearing. After both parties consulted with me, I issued a Notice of Hearing on April 16, 2009, for a hearing on May 11, 2009. At the hearing, Applicant was unsure when he received the written official notice of hearing. Subsequent to the hearing, the receipt for the Notice of Hearing was received with Applicant noting he received the Notice on May 30, 2009. Applicant misdated the receipt for the hearing since he stated at the hearing on May 11, 2009, that he had received the notice. Applicant, after being advised of his right to 15 days notice of a hearing, specifically waived the 15 day notice requirement (Tr. 5-7).

### **Findings of Fact**

After a thorough reviewed of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted four and denied three of the allegations under Guideline F. He provided additional information to support his request for eligibility for a security clearance.

Applicant is 35 years old and has been a security official for a defense contractor at an isolated Department of Defense facility since January 2008. Prior to obtaining that job, he was a car salesman. He is a college graduate, with some credits towards a Master's degree. He is not married. Applicant only made sufficient salary to support his minimum monthly expenses until he started working for the defense contractor in January 2008. His monthly net pay is now approximately \$3,000. He has no living expenses because of his location at the isolated facility where all of his basic living needs are provided by his employer. He owns a car for which he recently made the final payment. Since a personal car is not allowed at the isolated location, the car is in storage where he formerly lived. The funds used for car payments are now available to make payments on other debts. (Tr. 22-24, 31-35, 37-42, 54-56; Gov. Ex. 1, Security clearance application, dated October 5, 2007).

Credit reports (Gov. Ex. 2, Credit report, dated July 29, 2008; and Gov. Ex. 3, Credit report, dated December 10, 2008) show that Applicant had the following delinquent debts; consolidated student loans of \$58,346 in collection (SOR 1.a); a charged off credit card account for \$253 (SOR 1.b); another charged off credit card

account for \$2,870 (SOR 1.c), a student loan to a university in collection for \$2,914 (SOR 1.d); a cell phone account in collection for \$422 (SOR 1.e); a student loan from a state agency in collection for \$7,575 (SOR 1.f); and another student loan from the same state agency in collection for \$4,410 (SOR 1.g).

Applicant admitted SOR allegations 1.a, 1.c, 1.f, and 1.g. He denied SOR allegations 1.b, 1.d, and 1.e, since they had been paid. Department counsel acknowledged that the debts listed in allegations 1.b, and 1.e had been settled and paid. The latest credit report shows these two accounts have been paid (Tr. 13, 17-18; See, Gov. Ex. 3, Credit report, dated December 10, 2008). Applicant provided information that the student loan to a university has been paid (Tr. 18-19, 43-44; App. Ex. A, Account statement, dated May 12, 2009).

Applicant attended various colleges using student loans to receive a degree. He was a full-time student with a part-time job most of the time. Sometimes, he attended on a part-time basis while working full time. He received a Bachelor's degree in History in 1998. About 90% of his schooling costs were covered by student loans. Three of the four admitted delinquent debts are for student loans totaling about \$70,000 (Tr. 43-44; SOR 1.a, 1.f, and 1.g). Most of Applicant's student loans were consolidated into one loan of approximately \$58,346. He had difficulty finding employment in his chosen field of law enforcement because he has petit mal epilepsy. He would be selected for a position but he was unable to pass the physical. When he did not find a law enforcement position, he worked in lower paying security positions. His student loans were deferred for a time but went delinquent in spring 2005 because of his lack of full-time employment (Tr. 19-28).

The collection agency for the consolidated student loan creditor started garnishment action to collect on Applicant's student loans. After Applicant learned of the garnishment action, he entered an agreement in March 2009 with the collection agency to establish a plan to pay approximately \$627 monthly for twelve months. After making the \$627 payments for a year, the loan will be transferred to the Department of Education, and the interest rate for the student loans will be lowered with corresponding lower monthly payments. Applicant has made two payments of \$627 towards this plan (Tr. 35-42; App. Ex. B, Agreement, dated June 4, 2009).

Applicant has not reached a settlement or made any payments towards the two student loans held by the state agency for \$4,410 and \$7,575 as noted in SOR 1f, and 1.g. Applicant intends to start paying these loans in June 2009 when he returns to the isolated location. He has the funds to make these payments since he no longer has a car loan payment. He anticipates these loans will be paid by the end of 2010 (Tr. 49-50).

Applicant has a settlement agreement with the collection agency for the credit card debt at SOR 1.c. He will pay \$1,000 by the end of June 2009, and \$1,330.58 by the end of July 2009. Applicant's plan is to pay \$2,000 from his approximately \$3,000 of monthly disposable income to pay student loans and the other credit card payments.

He will save the remaining \$1,000 each month (Tr. 51-54; App. Ex. C, Letter, dated June 4, 2009).

## **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 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.

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.

## Analysis

### Financial Consideration:

Under 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 protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent student loan debts and a delinquent credit card debt as admitted by Applicant and listed on the credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony. FC MC AG ¶ 20(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) does not apply. Applicant had periods of unemployment but that did not prevent him from purchasing an expensive car. While some of the debts have been paid, the remaining debts are current and have only been recently addressed. For example, Applicant has only recently reached an agreement to settle the remaining credit card debt and payments under the plan have not yet started. His debts did not arise under unusual circumstances and were incurred voluntarily by Applicant to finance his education.

FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) has some application. Applicant's chosen career field was law enforcement. He was unable to find employment in that field because of a medical condition. He did work some low paying security jobs while seeking a law enforcement position. He also worked selling cars. He purchased an

expensive car which could indicate he did not act responsibly under the circumstances. However, he has managed to pay off this car which does show responsible behavior.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) applies. For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. Applicant paid three of the debts and was able to complete payment of a car loan. He settled the one remaining credit card debt and will make two payments on the debt in the next month to complete payments. He has been making payments according to a plan on the consolidated student loans. While he has not started paying the remaining two student loans with the state agency, he will start shortly. He has a concrete sustainable plan to pay his debts. Applicant has mitigated security concerns based on his finances.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an 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.

Under AG ¶ 2(c), 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. I considered that Applicant had difficulty finding good employment at a good salary in his chosen field because of a medical condition. His lack of meaningful employment opportunities created financial problems. I considered that the majority of his delinquent debts are for student loans used to further his job potential. Applicant has paid three of the seven listed debts, and has payment plans to pay two other debts, including the largest a student loan. He has not begun to pay towards two other student loans. Normally promises to pay in the future do not indicate that an individual made a good-faith effort to resolve delinquent debts. Applicant developed plans to pay his remaining debts and he is making

payments according to those plans. Even though he has not initiated action on two student loanse, his meaningful track record of debt payments so far, coupled with the fact that he has the needed assets to make payments according to his plan, shows that he will continue in good-faith to resolve his debts. Applicant understands that he must continue to resolve his delinquent debts to maintain access to classified information. His actions to resolve his debts do not indicate poor self control, lack of judgment, or unwillingness to abide by rules and regulations. He is not financially overextended. Overall, on balance the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from financial considerations.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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.

---

THOMAS M. CREAN  
Administrative Judge