



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-05650  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 22, 2009  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on November 26, 2007. On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for 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 requested a hearing before an Administrative Judge. I received the case assignment on April 16, 2009. DOHA issued a notice of hearing on April 21, 2009, and I convened the hearing as scheduled on May 7, 2009. The Government offered Exhibits (GE 1-5), which were received without objection. Applicant testified on his own behalf. He submitted exhibits (AE) A-F. I held the record open until May 8, 2009, so that Applicant could submit documents. The submissions were timely received, marked as

(AE G-H) and entered into the record. Department Counsel did not object to the documents. DOHA received the transcript on May 20, 2009. Based upon a review of the record, eligibility for access to classified information is granted.

### **Procedural and Evidentiary Rulings**

Department Counsel moved to amend the SOR at the hearing. He withdrew SOR allegation ¶ 2.a under the Personal Conduct Guideline and a corresponding allegation under ¶ 1.f under the Financial Considerations Guideline. I accepted the motion and amended the SOR.

### **Findings of Fact**

In his Answer to the SOR, dated March 23, 2009, Applicant admitted the factual allegations in ¶¶ 1.a-1.c and 2.a of the SOR. He denied the other allegations, including ¶¶ 1.d-1.e. because he was paying on them. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 28-year-old employee of a defense contractor. He graduated from high school in 1999. He has worked for his current employer since December 2006 (GE 1). Applicant is currently attending college toward a degree in computer science (Tr. 22). He will obtain his undergraduate degree in the very near future. Applicant is applying for his initial security clearance.

Applicant is married and has one child. He pays child support for his daughter who lives with her mother but he is not currently under a court order for the support. He sends approximately \$100 per week to the child's mother (Tr. 24).

Applicant had several periods of unemployment. He was unemployed from January 2000 until October 2001 when he was in school. He lived with his parents at that time. He worked as a service representative in 2002 and 2003 but had another period of unemployment in 2003 until 2005 (Tr. 28). He has been employed full time since 2006 (GE 1).

Applicant's brother used his credit cards without Applicant's knowledge for a period of time in 2005 and 2006. Applicant confronted his brother when he learned of the situation much later (Tr. 42). His brother promised to pay the bills but he did not (GE 4).

The SOR alleges five delinquent debts, including two student loans in collection. The total amount of debt that Applicant owes is approximately \$13,031 (GE 3 and GE 4). He has addressed each debt.

Applicant presented documentation at the hearing that he is in repayment status with his two student loans which total \$4,000 (SOR 1.d and 1.e). He pays \$55 a month (Tr. 38; AE E). After initially disputing the debt, he has settled the debt in SOR 1.b for

\$1,000 (AE A and H). Applicant has paid half the debt in SOR 1.c (AE D). He also has paid two other debts not listed on the SOR (AE C). The \$1,434 debt to Cap One is for a credit card that Applicant used in 2002. He has called several times and written a letter to the company to address the debt but they have not located the account (Tr.31; AE F). He will continue to address the issue.

Applicant earns approximately \$39,000 a year. His monthly net income is \$2,800. He has a net remainder after expenses of approximately \$900. He is current on all his expenses and his car payment (Tr. 47). He has no credit cards. He follows a budget that he developed after taking a financing class in college (Tr. 45). He is saving money and contributes to his employee pension plan.

Applicant's evaluations rate him as "excellent" in several areas. He contributes to a high customer satisfaction and quickly establishes customer relationships. He has superior technical and functional knowledge of his job (AE G).

### **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, 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.

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.” 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(a), an inability or unwillingness to satisfy debts<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on several accounts, and did not meet some of his financial obligations from 2002 until the present time. His credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions.

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 Athe 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.<sup>o</sup> Applicant accumulated some delinquent debt and the debt has remained for a period of time. He addressed the debts when he learned about them. The debt was in part due to his brother's actions with respect to Applicant's credit. This serves as mitigation and

lessens doubts about his current reliability, trustworthiness, and good judgment. This potentially mitigating condition partially applies.

Under AG & 20(b), it may be mitigating where 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. Applicant was unemployed for two separate periods of time. His brother used his credit and did not pay the bills. Applicant acted responsibly in initiating action to address or resolve his delinquent debts. I find this potentially mitigating condition applies.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant took a financing class to help him learn about budgets and the responsibility of credit. He has settled or is paying all his debts. I find his efforts are sufficient to carry his burden in this case. I conclude this potentially mitigating condition applies.

### **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):

(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) 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 eligibility for 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. Applicant is a young hard-working individual. He is going to school and working in the field of computer science. He is attempting to build a career. He is married and supports his child. He has good references from his employer. He has been steadily employed with his current employer for almost three years.

Applicant was unemployed for a period of time and this caused some delinquent debt. His brother also took advantage of Applicant and used his credit and did not pay for the items he purchased with Applicant's credit card despite promises to do so. Applicant took action when he learned about the delinquent accounts. He has met his burden of proof to overcome the Government's case.

Overall, the record evidence leaves me without questions and 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 his 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:	Withdrawn
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	Withdrawn

### **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.

---

NOREEN A. LYNCH  
Administrative Judge