



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 08-06093
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Kathryn O. MacKinnon, Esq., Department Counsel  
For Applicant: *Pro Se*

March 3, 2010

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to financial considerations and personal conduct (falsification). Clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on November 26, 2007. On December 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F (financial considerations) and E (personal conduct) 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 answered the SOR in writing in an undated response, which DOHA received on January 7, 2009. Department Counsel was prepared to proceed on June 30, 2009. The case was originally assigned to another administrative judge on July 1, 2009, but due to caseload considerations was reassigned to me on September 1, 2009. DOHA had previously issued a notice of hearing on July 30, 2009, scheduling the hearing for August 25, 2009, which was canceled on August 24, 2009. DOHA issued a second notice of hearing on September 15, 2009, scheduling the hearing for October 28, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 9, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through D, which were received without objection, and he testified on his own behalf.

I held the record open until November 17, 2009, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE E through M, which were received without objection. DOHA received the hearing transcript (Tr.) on November 5, 2009.

### **Procedural Rulings**

#### **Amendment of SOR**

Department Counsel moved to amend SOR ¶ 1.a. to correct the date from “November 200” to November 2000.” Without objection, I granted Department Counsel’s request. Tr. 56.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with explanations except SOR ¶ 1.i., which he denied with explanation. His answers with explanations are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

#### **Background Information**

Applicant is a 35-year-old electrician technician, who has worked for his defense contractor employer since April 2005. GE 1, Tr. 15-16. He is a first-time applicant for a security clearance. Tr. 15-16.

Applicant graduated from high school in May 1992. GE 1, Tr. 17. He has never married and has no dependents. GE 1, Tr. 16-17. Applicant lives as a nuclear family with a woman and her two children, an 18-year-old boy, and a 15-year-old girl. Applicant provides support for his girlfriend and her two children. His girlfriend works as a waitress, and does not receive any support from the father of her children. Tr. 47-48, 60-64.

## Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his November 2007 e-QIP, his July 2008 Response to DOHA Financial Interrogatory, and his December 2007, September 2008, and April 2009 credit reports. GE 1 – 5.

Applicant's SOR identified nine separate debts -- one repossession, two judgments, two charged off accounts, and four collection accounts, approximating \$23,000.

Applicant's financial problems stem from a live-in relationship he had with a former girlfriend in the approximate time frame of 1999 to 2002. At the time Applicant was involved with this woman, he was working offshore on oil rigs in the Gulf of Mexico. His job on the oil rigs required him to be absent for significant periods of time. During these absences, Applicant provided his former girlfriend with money to cover household expenses such as mobile home payments, utilities, food, and the like. Unfortunately, Applicant's former girlfriend developed a substance abuse problem and diverted the money he gave her for household expenses to support her habit. By the time Applicant discovered that his finances were in chaos, it was too late. Applicant severed his relationship with that girlfriend in 2002. Tr. 18-21.

The financial fallout from this experience has had lingering repercussions. After evaluating his options, Applicant filed for Chapter 13 bankruptcy protection on November 29, 2000. He later voluntarily dismissed his petition on July 18, 2002.<sup>1</sup> (SOR ¶ 1.a.) Response to SOR, GE 6. Following dismissal, Applicant ratified his debts and "pulled them out of bankruptcy." The debts in the SOR were primarily incurred during the time frame Applicant was involved in his former relationship. Tr. 64. Given Applicant's financial resources and obligations to his family, it has taken time for him to recover. Since 2005, he has established a track record of paying his debts, with the exception of his older debts listed in the SOR. GE 2 – 4, Tr. 24.

Applicant has paid, settled, initiated a good-faith effort to repay overdue creditors, or resolved all debts alleged. Applicant has paid debts alleged in SOR ¶¶ 1.c., and 1.e., and has made payment arrangements or is in the process of making payments for the debts alleged in ¶ 1.d., 1.g., and 1.j. He is engaged in good-faith disputes for debts alleged in SOR ¶¶ 1.f., 1.h., and 1.i. Applicant has written letters or made telephone calls, or both, with the creditors he has made payment arrangements with or with those creditors he is disputing. Tr. 22-38, 78, GE 5, GE 9, AE A – J.

---

<sup>1</sup> The SOR alleges Applicant's Chapter 13 was dismissed in April 2002. However, GE 6 lists the dismissal date as July 18, 2002. GE 6 is an extract of Applicant's Chapter 13 bankruptcy proceedings.

Applicant submitted a budget with his monthly expenses that demonstrates that he is living within his means. AE K.

### **Personal Conduct**

The SOR alleges that Applicant failed to disclose events that occurred in the seven years preceding the completion of his November 2007 e-QIP: his Chapter 13 bankruptcy, his mobile home repossession, his two judgments filed against him, and debts over 180 days old. (SOR ¶¶ 2.a. – 2.d.) Applicant credibly testified that he believed all of the financial information sought was beyond the seven-year period. It was his belief that he had filed his Chapter 13 bankruptcy petition before November 2000 and the debts in question were included in that bankruptcy petition. In any event, Applicant's Chapter 13 bankruptcy petition was filed on November 29, 2000, and his e-QIP was submitted on November 26, 2007, three days short of seven years. Response to SOR, Tr. 83-84. Applicant summarized his mistake, "But I just had my date wrong (bankruptcy filing date) when I filed it (e-QIP)." Tr. 85.

### **Character Evidence**

Applicant provided a character reference letter from his team leader, who has known Applicant for four years. He described Applicant as a "tremendous worker," whose "performance has been exemplary," adding that he "has successfully demonstrated leadership and has been a great help to our customers." AE L. Applicant also submitted his most recent performance evaluation covering January to December 2009, which reflects above average performance. AE M.

Applicant leads a modest lifestyle, does not take vacations, and supports two children not his own. Tr. 47-49. In his spare time, he hunts in the winter and fishes in the summer. Applicant is actively involved in the lives of his girlfriend's two teenage children. Tr. 86-88.

### **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.

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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines F (financial considerations) and E (personal conduct).

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

AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts”; and “(c) a history of not meeting financial obligations.” ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, “Applicant’s credit report was sufficient to establish the Government’s prima facie case that Applicant had . . . delinquent [SOR] debts that are of security concern.” Applicant’s history of delinquent debt is also documented in his responses to DOHA interrogatories, his SOR response, and his oral statement at his hearing. He failed or was unable to ensure his creditors were paid as agreed. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(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.

Applicant’s conduct warrants full application of AG ¶ 20(a). His debts were incurred during a previous failed relationship that ended in 2002. These debts were included in a Chapter 13 bankruptcy filed in November 2000, which he voluntarily dismissed in July 2002. Applicant has been involved in a stable relationship for some time and has made substantial progress in resolving his lingering debts with his available means. Apart from these “old debts,” he remains current on all of his bills

and lives within his means. He continues to make progress and his delinquent debts are likely to be paid or resolved, and are unlikely to recur. They do not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant receives credit under AG ¶ 20(b) because his financial problems resulted when his former girlfriend diverted household money to support her substance abuse habit. Applicant severed this relationship in 2002; however, the financial fallout from this experience lingers.<sup>2</sup> He receives full mitigating credit because he established that he acted with sufficient initiative and resolve to address his delinquent debts. Applicant provided sufficient documentation about his income and expenditures to receive full credit under AG ¶ 20(b).

AG ¶ 20(c) partially applies. Although Applicant did not seek financial counseling, he has prepared a detailed budget. Moreover, he demonstrated a firm grasp of budgeting, payment plans, and expense reduction. He leads a modest lifestyle, lives within his means, and manages to remain current on his present obligations yet still managed to make payments to former creditors. He has the self-discipline necessary to reduce and resolve his debts. There are “clear indications that the problem is being resolved or is under control.” He has also established full mitigation under AG ¶ 20(d) because he showed good faith<sup>3</sup> in the resolution of his SOR debts.

Applicant contested the validity of several of his debts. Applicant submitted documentation supporting the basis of his disputes with creditors. He receives credit

---

<sup>2</sup>“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether the Applicant maintained contact with his or her creditors and attempted to negotiate partial payments to keep debts current.

<sup>3</sup>The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

under AG ¶ 20(e). I am further convinced if any of his creditors establish that Applicant owes them money, he will repay them.

In sum, Applicant has acted responsibly under the circumstances. He is current on his payment plans. He took the honorable route of validating his debts and is in the process of repaying his creditors. While his journey to financial responsibility is not yet complete, I am confident he will keep his promise because of his continued progress on SOR debt resolution.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case in regard to the allegation Applicant provided a false security clearance application:

- (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; and
- (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

The SOR alleges that Applicant deliberately provided false information or omitted required information on his November 2007 e-QIP. Applicant's alleged falsification of Section 27 of his e-QIP is not substantiated. AG ¶ 17(f) provides a condition that could mitigate security concerns in this case, stating, "the information was unsubstantiated or from a source of questionable reliability." AG ¶ 17(f) fully applies to SOR ¶¶ 2.a. – 2.d. Although he admitted preparing his e-QIP, and answering incorrectly, he honestly and reasonably believed that he was outside the seven-year window envisioned by the question.<sup>4</sup>

---

<sup>4</sup>The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

- (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or



## 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) 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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is evidence against mitigating Applicant's conduct. His debts have been ongoing for a number of years. His delinquent debts raise security concerns. However, the mitigating evidence under the whole person concept is more substantial. Applicant's record of good employment weighs in his favor. There is no evidence of any security violation. Aside from the delinquent debt (which is a civil, non-criminal issue), he is a law-abiding citizen. The overall amount of debt is relatively low. The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each

---

prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant is a high school graduate, who is an electrician technician. He is not sophisticated in the areas of finance. He made a poor choice in a previous relationship, and is still paying the consequences today. There is no reason not to trust his promise to pay his creditors. The record supports the fact that he has paid numerous debts over the years. He has established a “meaningful track record” of debt payment sufficient to trust his promise to pay or otherwise resolve his debts. These factors show responsibility, rehabilitation, and mitigation. Applicant has demonstrated his loyalty, patriotism and trustworthiness through his service as an employee of a defense contractor.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude Applicant has mitigated financial considerations and personal conduct security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has fully mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

### **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. – 1.j.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. – 2.d.:	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. Clearance is granted.

---

ROBERT J. TUIDER  
Administrative Judge