



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-06742  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 21, 2009

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on March 5, 2008. On December 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 acknowledged receipt of the SOR and he requested a hearing before an Administrative Judge. I received the case assignment on March 12, 2009. DOHA issued a notice of hearing on March 18, 2009, and I convened the hearing as scheduled on April 7, 2009. The Government offered Exhibits (GE.) 1-10, which were received without objection. Applicant testified in his own behalf. He submitted Exhibits (AE) A-L which were admitted into the record without objection. I held the record open until April

14, 2009 for any additional documents that Applicant wished to submit. Applicant submitted one document, which was marked as AE M and entered into the record without objection. DOHA received the transcript of the hearing (Tr.) on April 14, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, dated January 12, 2009, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.h of the SOR. He denied allegations ¶¶ 1.c, 1.f, and 1.g because these debts were either paid or duplicates of other allegations. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 36-year-old employee of a defense contractor. After he graduated from high school, he received an associate of arts degree in June 1997. He obtained a bachelor of arts degree in June 2000. He attended college on a part-time basis while working and was awarded his second undergraduate degree (computer science) in December 2007. He has worked for his current employer since June 2008 (GE 1). He has not held a security clearance.

In May 2000, Applicant's wife left her job to take care of her uncle who had a stroke. This created a financial hardship. Applicant's teaching salary was under \$30,000. Applicant taught high school English until 2001. He worked as a carpenter after his teaching position but was again laid off in June 2002. Applicant had always paid his bills and had no delinquent accounts until 2002.

The SOR alleged eight delinquent debts, including two judgments and credit card bills. The total amount of delinquent debt was approximately \$10,000 (GE 3). Applicant admitted that the majority of the accounts in the SOR allegations were delinquent accounts. He has paid or settled all of his accounts except one. He established a payment plan for one judgment. He also paid several debts in full that are not listed on the SOR (AE A, E, J and K).

The debt in SOR allegation ¶ 1.a is a 2005 judgment. Applicant settled this account. Since January 2009, he has made more than three payments of \$210 a month. The balance owed is \$4,300 (Tr. 62). Applicant's plan is to pay this amount in full by June 2009 through accelerated payments (AE H).

The debt in SOR allegation ¶ 1.b is a 2004 judgment. This judgment is the same as the debt in allegations 1.c and 1.g. Applicant settled this debt for \$995. He made his final payment on April 6, 2009. The judgment is satisfied (AE D).

The debt in SOR allegation ¶ 1.d is a department store credit card account. Applicant settled the account for \$1,043. Applicant has a payment plan and has made

one monthly payment of \$261 (AE B). He plans to accelerate the payments and pay the account in full by the end of April 2009 (Tr. 72).

The debt in SOR allegation ¶ 1.e is a charged-off account. Applicant settled this account for \$514.54 (AE C). The account is paid.

The debt in SOR allegation ¶ 1.f is a collection account that was settled in January 2009 (AE I). The account is paid.

The debt in SOR allegation ¶ 1.h is a collection account that was settled in August 2008 (AE F). A final payment of \$2,000 was made in March 2009.

Applicant presented documentation that several other accounts listed on his credit report have been resolved. Applicant settled two debts with Capitol One Bank (AE A).

Applicant's current net monthly income is \$4,000. His salary has almost doubled compared to his prior salary. After his monthly expenses, he has \$1,530 net monthly remainder. He has two cars and both are fully paid. He has a budget and a savings plan. Applicant used his 2008 tax refund to accelerate debt payments as discussed above (Tr. 82). He has no active credit cards. He is current on all his expenses (Tr. 92).

Applicant's employer describes him as a good and dependable employee who is respected by his coworkers and performs his work in a diligent manner. He is a decent and honorable person. He is recommended for a security clearance (AE M).

### **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), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on numerous accounts and had two judgments. He admits that he did not meet his financial obligations from 2002

until the present. His credit reports confirm that he had the delinquent debts. The evidence is sufficient to raise these potentially 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 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. Applicant's financial worries arose in approximately 2002. Applicant has paid the majority of his debts. He has another account in a payment plan. He has been making regular payments and expects the account to be paid very soon. He has doubled his salary and used his second degree to enter a field of employment that is lucrative and stable. He has used this additional income to reduce his debts. He has reduced his delinquent debt and has no current debt. This potentially mitigating condition 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's wife's role as a caretaker for her uncle impacted his ability to pay his debts. Applicant was earning a lower salary when he was teaching. He was unemployed for almost seven months. Applicant's financial difficulties began with his unemployment. After he became gainfully employed, he addressed each debt. He acted in a very responsible manner in identifying and resolving the debts. I find this 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 has not received formal financial counseling. However, he set up a budget himself and settled or paid his debts. He presented evidence of financial reform and resolution of debts. I conclude these mitigating conditions apply.

### **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.” 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.

Applicant is an intelligent, dependable and trustworthy employee. He provided for his family despite his unemployment. He had no difficulty with his finances until his unemployment in 2002. He was conscientious in researching and addressing all his delinquent debts as soon as he was gainfully employed. He has paid or is in the final stage of payment with all his delinquent debts. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and conclude they are sufficient 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:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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.

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NOREEN A. LYNCH  
Administrative Judge