



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



In the matter of: )  
)  
) ISCR Case No. 08-06774  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

September 28, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has acted responsibly to meet his financial obligations and has mitigated the security concerns raised under the guideline for Financial Considerations. Accordingly, his request for a security clearance is granted.

**Statement of the Case**

Applicant requested a security clearance by submitting an electronic Questionnaire for Investigations Processing (e-QIP) on November 16, 2005. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary

affirmative finding that it is clearly consistent with the national interest to grant Applicant's request. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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.

On March 19, 2009, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG). In his Answer to the SOR, signed and notarized on April 10, 2009, Applicant admitted all allegations under Guideline F, except for allegations 1.c., 1.d., 1.g., and 1.j. Applicant also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on June 17, 2009, and the case was assigned to me on June 22, 2009. DOHA issued a Notice of Hearing on July 2, 2009, and I convened the hearing as scheduled on July 23, 2009. During the hearing, the government offered four exhibits, marked as Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant had attached nine documents to his answer to the SOR; for administrative convenience, I marked them as Applicant's Exhibits (AE) A through I. At the hearing, Applicant offered his own testimony and that of one witness. He also offered six exhibits, which were marked as AE J through O, and admitted without objection. I held the record open to allow Applicant to submit additional documentation. Department Counsel forwarded without objection Applicant's timely submission of three additional documents. I admitted the additional documents as AE P through R. DOHA received the transcript on July 30, 2009.

### **Findings of Fact**

Applicant's admissions are admitted as fact. After a thorough review of the pleadings, Applicant's response to the Statement of Reasons, and the record evidence, I make the following additional findings of fact.

Applicant, 47 years old, has been married for 13 years. He has two daughters, aged 21 and 23. His 12-year-old son resides with Applicant and his wife. He is a field engineer and has been employed by the same defense contractor since 2000. He has been taking college courses since March 2008, and will complete credits for his associate's degree in February 2010. His company pays for his tuition and expenses. He hopes to move ahead in his company once he completes his degree. He has not been unemployed in the past ten years. This is his first application for a security clearance (GE 1; Tr. 30-32, 39, 67).

Applicant was born in a southern city (A) and worked there for most of his life. He began working for defense contractor B in that city in 2000. In November 2005, his

employer informed him of pending job cuts. Although the company could no longer employ him in city A, his supervisor appreciated his skills, and offered him a position in another city (B). Despite having just purchased a house in city A, Applicant and his wife decided he needed to stay employed, and they moved the family to city B in early 2006. Applicant's spouse was unemployed for several weeks after their move. City B had a higher cost of living, and Applicant had to pay for housing there as well as the mortgage payment on the house he had purchased in city A. Most of Applicant's bills started to become delinquent after the move, and he struggled financially for about one year. He did not avoid his creditors, but talked with them and explained that he was unable to afford the settlements or large payments they required (GE 1, 3, 4; Tr. 32-36, 93).

Applicant considered renting his house in city A, but the standard rental rate would not have covered Applicant's expenses, such as the cost of the property manager. When he was having trouble paying his mortgage on the house in city A, Applicant stayed in touch with the mortgage lender. The company worked with Applicant and he was allowed to make half-payments. The company eventually allowed Applicant to do a short sale, and Applicant was able to sell the house in 2007 (GE 2 [letter dated May 22, 2007]; Tr. 37-39).

Applicant sought out consumer credit counseling, but was told that his debts were too substantial. He also investigated filing for bankruptcy, and spoke with an attorney. He decided against it because he felt that the negative effect of bankruptcy on his financial record would be significant. He talked with two banks about obtaining a consolidation loan, but he did not qualify at that time (Tr. 35-37).

The debts alleged in the SOR total approximately \$77,000. Applicant and his wife earn a net monthly income of approximately \$4,487, which equals a net annual income of approximately \$54,000. After paying expenses of \$2,640 and debt payments of \$1,487 (including the payment on his wife's 2009 car), Applicant has about \$360 net monthly remainder. He did not separately list his payments for child support arrears under monthly debts because the \$200 per month is automatically deducted from his paycheck (GE 2; Tr. 40-43).

Applicant's wife has worked as a security guard for a defense contractor since 2006. When she applied for a security clearance, questions were raised as to their debts, but she was approved and has held a security clearance for approximately one year. She testified that their financial problems began when they moved to city B, while still paying a mortgage in city A. She noted that they have worked to bring their debts back to a current status, and their credit score is improving. She purchased a 2009 car in her own name and has made all payments timely. (Tr. 93-99)

The Statement of Reasons alleges 11 debts. The current status of the alleged debts follows.

- **Credit card - \$1,289** (allegation 1.a.): Payment plan. Applicant had difficulty determining what company held this account. When he reached the correct agency, he established a plan of \$50 per month and had made two payments as of the date of the hearing (GE 3, 4; AE K; Tr. 55-57).
- **Credit cards - \$671** (allegation 1.b.) and **\$271** (allegation 1.c.): Payment plan. Applicant believes allegation 1.c. may be a duplicate of 1.b. In 2003 or 2004, he was able to consolidate several credit card balances, including 1.b., with the creditor listed in 1.e. That creditor sold the account to the creditor shown in AE J. However, the credit bureau reports mistakenly list the original credit card balances as still delinquent. The outstanding balance on the account is \$13,567. He was paying \$125 per month when he was in city A. He is now paying \$60 per month and hoping to obtain a settlement in the future (GE 4; AE F, J; Tr. 58-62, 64-68).
- **Finance - \$1,337** (allegation 1.d) and **\$8,452** (allegation 1.e.): Payment plan (allegation 1.e.). He was offered a settlement amount of \$5,000 but was unable to make a lump-sum payment. He established a payment plan and provided evidence that he is making payments according to the plan at a rate of \$150 per month, automatically deducted from his checking account. Applicant does not recognize the debt in 1.d. (GE 3, 4; AE C, M; Tr. 52-55, 69-71).
- **Child support - \$38,824** (allegation 1.f.): Automatic deduction. Applicant originally paid both child support and arrears. AE D and N show the amounts deducted for child support and arrears between 2003 and 2007. As of April 2007, Applicant owes only arrears. His monthly payments of \$200 are deducted directly from his paycheck. Between 1997 and 2009, he paid a total of \$30,220 (GE 3, 4; AE D, N; Tr. 44, 48-52).
- **Automobile loan - \$23,475** (allegation 1.g.): Paid. Applicant obtained a settlement offer from the creditor for \$4,695. Applicant paid the amount in full in March 2009 (GE 3, 4; AE E, L; Tr. 26, 52).
- **Secured loan - \$210** (allegation 1.h.): Unpaid. This debt is a loan Applicant obtained when he operated a small computer business in city A. He is willing to pay the debt, but has been unable to locate the creditor (GE 3, 4; Tr. 62-63).
- **Credit cards - \$778** (allegation 1.i.) and **\$584** (allegation 1.j.): Paid; Payment plan. Applicant provided documentation that he paid the debt alleged at 1.i. in October 2008. Allegation 1.j. is included in the consolidation plan discussed under allegation 1.b., above (GE 3; AE A)<sup>1</sup>

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<sup>1</sup> The debts in allegations 1.i. and 1.j. are owed to the same creditor. Applicant testified that 1.i. was included in the consolidation plan and 1.j. is paid. However, AE A shows that 1.i. is paid. I find Applicant confused the debts to the same creditor, and it is allegation 1.j. that is included in the consolidation plan.

- **Credit card - \$1,210** (allegation 1.k.): Unpaid. Applicant was paying on it timely when he lived in city A. He had trouble maintaining the payments after he moved to city B. Once he was financially able to resume payments, he could not locate the current holder of the account (GE 3; Tr. 74-77).

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>2</sup> Decisions must reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under the Financial Considerations Guideline.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest<sup>3</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>4</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.<sup>5</sup>

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<sup>2</sup> Directive. 6.3.

<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan* at 531; Revised Adjudicative Guidelines, ¶ 2(b).

## Analysis

### Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Disqualifying condition AG ¶19(a) (*inability or unwillingness to satisfy debts*) and AG ¶19(c) (*a history of not meeting financial obligations*) apply. Applicant has numerous debts, most of which became delinquent between 2006 and 2007. He was unable to pay them because of limited resources after a move to a city with a high cost of living. The record contains no evidence of other disqualifying conditions such as debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations Guideline (AG ¶ 20) also contains factors that can mitigate security concerns. The following mitigating conditions are relevant:

(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.

After Applicant's employer in his home state decided to downsize, Applicant accepted the offer of a position in another city. Between 2006 and 2008, he was paying

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the mortgage on his home in city A, while paying rent and living expenses in city B. The company's downsizing was an unexpected event that Applicant could not control. He unfortunately purchased a home about the same time, not knowing that he would be losing his position. He could not anticipate that he would need to move to an expensive area in order to retain his job. He acted reasonably by consulting with a consumer counseling agency, discussing his options with an attorney--including bankruptcy--keeping in touch with his creditors, and seeking to establish payment plans. AG ¶ 20(b) applies.

Once Applicant became financially able to work on his debts, he made persistent efforts to bring his financial situation under control. Applicant paid several debts and established payment plans for others. The relatively small amount outstanding on two unpaid debts is not enough to raise a security concern. Applicant's financial situation is under control and his conduct shows a good-faith effort to resolve his delinquencies. AG ¶ 20(c) and (d) apply. I find for Applicant on Guideline F.

### **Whole Person Analysis**

Under the whole person concept, an administrative judge must evaluate the 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the Guidelines and the whole person concept. Under the cited Guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued a substantial amount of delinquent debt over the past several years. His financial problems resulted from a combination of factors including his company's downsizing, a home purchase that occurred at the time of the downsizing, and a move to a more expensive area in order to keep his job. His inability to pay his debts resulted from factors that he could not control or anticipate. However, Applicant kept in touch with the creditors, established payment plans when he could, and paid off several debts. His efforts show that his debts resulted not from any desire to avoid his

obligations, but from lack of funds. Applicant acted in a mature and responsible fashion. The DOHA Appeal Board has held that an applicant is not required to have paid every debt in the SOR, but must show that he has established a plan and has taken actions to implement the plan.<sup>6</sup> Applicant's efforts demonstrate a sincere intent to meet his financial obligations. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has satisfied the doubts about his ability or willingness to protect the government's interests.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

### **Formal Findings**

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a. through 1.k.	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

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RITA C. O'BRIEN  
Administrative Judge

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<sup>6</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).