



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-08417  
)  
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Applicant for Security Clearance )

For Government: Nicole Noel, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 17, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On February 12, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). 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 on July 6, 2009, and requested a hearing before an administrative judge. On August 21, 2009, DOHA assigned the case to me. On September 21, 2009, DOHA issued a Notice of Hearing, setting the case for October 14, 2009. The case was heard as scheduled. Department Counsel offered exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and called one witness. He offered one exhibit that was marked as AE A into evidence without objection. DOHA received the hearing transcript on October 21, 2009. The record remained open until October 29, 2009, to give Applicant an opportunity to submit additional information. He timely submitted six documents that I marked as AE B through G and admitted into the record without objection from Department Counsel.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied all allegations contained in ¶¶ 1.a through 1.q. He admitted the allegation contained in ¶ 1.r.

Applicant is 33 years old and married. They have two daughters, an 11-year-old and an 8-year-old. The older daughter was born with cerebral palsy and is developmentally disabled.<sup>1</sup> In 2001, his wife was diagnosed with a chronic arthritic condition and was subsequently determined to be medically disabled in 2003. Applicant has completed some college courses and various courses in information technology (IT).

Applicant enlisted in the U.S. Navy in 1995. He was on active duty until he was honorably discharged in October 1999, as a third class petty officer (E-4). He held a security clearance throughout his Navy career. After leaving the Navy, he worked for a defense contractor for a year and then relocated to work with another employer in early 2000.

In October 2003, Applicant filed a Chapter 7 bankruptcy. In January 2004, the bankruptcy court discharged about \$77,000 of unsecured debt, which included household items, vehicles, credit cards, and medical bills related to his daughter's and wife's medical conditions that began accumulating in 2001. (GE 5.)

In June 2006, Applicant again relocated for his employment, but was subsequently laid off in December 2006. He was unemployed from January 2007 until March 2007, when he started his current position. Recently, he received a promotion to a team leader position. He supervises 30 IT technicians.

In February 2008, Applicant completed an e-QIP. On December 23, 2008, he submitted answers to the government's Interrogatories pertaining to his delinquent debts. He attached to his response a copy of a December 2008 credit bureau report (CBR) and copies of eleven letters that he mailed to the credit bureau reporting agency

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<sup>1</sup> Applicant's daughter's premature birth in 1998 resulted in the accumulation of nearly \$1M of medical bills. His insurance, through the Navy, covered all of those expenses. (Tr. 25.)

disputing debts listed in the CBR, most of which are medical debts that he believes were paid by insurance companies. (Tr. 57.)

The June 2009 SOR alleged that since his 2004 bankruptcy discharge, Applicant accumulated \$26,077 of delinquent debts owed to 17 creditors. (GE 3, 4) Applicant stated that he disputed many of the debts again in September 2009, having not received replies to his previous December 2008 dispute letters. The status of each of the 17 debts is as follows:

#### I. Debts Disputed and Removed from Subsequent Credit Bureau Reports

- (1) Applicant twice disputed the debt alleged in ¶ 1. a for \$592. It is owed to a cellular phone company. He denies owing the debt. It is listed on the February 2008 CBR, but not on the January 2009 or September 2009 CBRs. (GE 3, 4; AE A; Tr. 31.)
- (2) In December 2008, Applicant disputed the medical debt alleged in ¶ 1.d for \$617. He stated that he paid the debt. It is listed on the February 2008 CBR, but not on the January 2009 or September 2009 CBRs. (GE 3, 4; AE A; Tr. 35.)
- (3) In December 2008, Applicant disputed the medical debt alleged ¶ 1.n for \$416. It appears on the January 2009 CBR, but not on the September 2009 CBR. (GE 3, 4: AE A.)
- (4) In December 2008, Applicant disputed the medical debt alleged ¶ 1.o for \$148. It appears on the January 2009 CBR, but not on the September 2009 CBR. (GE 3, 4: AE A.)
- (5) In December 2008, Applicant disputed the medical debt alleged ¶ 1.p for \$53. It appears on the January 2009 CBR, but not on the September 2009 CBR. (GE 3, 4: AE A.)

#### II. Debts Disputed and Deleted from Credit Bureau Reporting Agency

- (6-13) Eight medical debts have been deleted from Applicant's credit report pursuant to his dispute: ¶ 1.b for \$73; ¶ 1.c for \$159; ¶ 1.e for \$306; ¶ 1.f for \$46; ¶ 1.g for \$33; ¶ 1.i for \$86; ¶ 1.m for \$257; and ¶ 1.q for \$73. (AE F.) SOR ¶¶ 1.f, 1.g, and 1.i are duplicates. (Tr. 37.)

#### III. Debt Included in 2004 Bankruptcy

- (14) The \$101 cellular debt alleged in ¶ 1.j was included in the 2004 bankruptcy. (AE F; GE 2: 12/10/08 CBR.)

#### IV. Debts Disputed and Verified

(15) After disputing the medical debt alleged in ¶ 1.h for \$4,784, the credit reporting agency verified it as Applicant's debt in October 2009. (AE F, G.) In his December 2008 letter, he indicated that the debt could be for a surgery he had two years earlier, but he was not certain because he thought his insurance would have paid it. (GE 2 at 113.)

(16) After disputing the \$70 medical debt alleged in ¶ 1.i, the credit reporting agency verified it as Applicant's debt. (AE F.)

#### V. Debt in Dispute

(17) Applicant continues to dispute the debt listed in ¶ 1.k for \$18,263, although the credit reporting agency verified it.<sup>2</sup> (AE F.) After working for his previous employer for six years, he lost his job in December 2006. He was offered a severance package that included six months of severance pay, essentially one month's pay for each year he worked. (Tr. 29.) He received that pay, but was informed by the company in October 2007 that he should have only been paid for ten weeks. (GE 2 at 120.) His employer claims he was paid the additional money in error. Applicant thought the matter was resolved until he received a CBR from DOHA in October 2008 and learned the employer submitted the claim to a collection agency. (Tr. 56.) Applicant has not taken legal action because he cannot afford legal fees. (Tr. 71.) This appears to be a legitimate dispute between Applicant and his former employer. (AE B, D, E; Tr. 39-40.)

In summary, \$18,263 of the \$26,077 delinquent debt alleged in the SOR relates to Applicant's dispute with his former employer about severance pay that he received. Applicant has successfully disputed 13 debts, totaling \$2,960, resulting in their deletion or removal from his credit file. Twelve of those debts were medical debts. One of the debts (\$101) was included in his 2004 bankruptcy discharge. Two medical debts, totaling \$4,784, were verified in October 2009 as his debts and need to be resolved or paid by him. (AE G.)

Applicant submitted his budget. His net monthly income is \$3,905. His expenses are \$1,650 and his payments on financial obligations are \$1,857, leaving him a remainder of \$398 at the end of the month. He works overtime many weeks, which adds to his income. (AE C.) In a letter he included in his December 2008 response to the Interrogatories, he explained his financial situation as follows:

I feel that I am in good financial status. I filed bankruptcy 5 years ago due to an overwhelming amount of medical debt incurred due to my daughter's disability and my wife's medical condition and deteriorating health. I have

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<sup>2</sup>The exact amount of this debt is unclear. In the government's interrogatories the debt is listed for \$16,690. In a letter from the collection agency, the amount is listed as \$13,775. (AE E.)

not been late or missed a payment on my mortgage, credit card, or car payment since. (GE 2 at 121.)

Although the February 2008, December 2008, January 2009, and September 2009 CBRs disclose some of the alleged delinquent debts, the CBRs also list numerous accounts that are being "paid as agreed." (GE 2, 3, 4; AE A.)

Applicant's supervisor testified. He has known Applicant since March 2009. He said that Applicant "has shown an incredible aptitude for strategic vision as well as tactical execution. He's performing in the top 10 percent of the company with regard to his work range." (Tr. 67.) He is very supportive of Applicant's efforts to secure a security clearance. He is aware of Applicant's financial problems and does not think they would cause a potential security risk. (Tr. 69.)

### **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 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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

According to Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable clearance 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 an 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.”

## **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 potentially raise security concerns. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has a history of financial problems that began in 2001 and resulted in the discharge of delinquent debt through a bankruptcy in 2004. He subsequently accumulated additional debts that he did not begin to address until 2008. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes six conditions that could mitigate security concerns arising from financial difficulties, three of which may be applicable to this case:

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 started accumulating a large amount of debt attributable to his wife and daughter’s medical condition in 2001 that he resolved through a Chapter 7 bankruptcy discharge in 2004. Since then, he incurred some additional medical bills and became engaged in a monetary dispute with his previous employer about a severance package. Those circumstances have been outside of his control. While he chose to resolve his earlier

debts by means of a bankruptcy, he has disputed all of the SOR alleged debts on the basis that he does not believe he is responsible for them because the medical debts should have been paid by insurance companies, and he believes he has a legitimate dispute with his past employer about his severance pay. I find this potentially mitigating condition has some application.

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). Applicant did not present evidence that he obtained formal credit counseling; however, he submitted copies of letters that he sent to creditors in December 2008 requesting verification of the alleged debts in order to resolve them. He submitted his budget, which indicates that his current financial obligations are under control. This mitigating condition has some application.

AG ¶ 20(e) is fully applicable in this case. It provides mitigation when “an 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 provided evidence of actions to resolve the issue.” Applicant produced evidence that he disputed 11 debts in December 2008 because he believes the medical debts were paid by insurance companies. He testified that he again disputed the debts in September 2009. As a result of his dispute letters, 13 debts were removed or deleted from his credit record. He continues to dispute the largest alleged debt based on his understanding of his severance package and may seek legal assistance. In October 2009, he learned that two medical debts have been verified as being his debts. He has essentially attempted to resolve all of the 17 SOR debts through the dispute process with the credit reporting agency.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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 include an overall commonsense 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 33-year-old man, who honorably served his country for four years in the military. After leaving the service, his wife and daughter experienced severe medical conditions that created significant debt, which was later discharged through a bankruptcy. Since that 2004 discharge, credit bureau reports have indicated that he has accumulated more delinquent debts, but also report that he is current on many financial obligations. Applicant has repeatedly denied owning the alleged debts and challenged all of them. At this time, the largest debt of \$18,263 appears to relate to a legitimate dispute that he has with his previous employer and does not create a security concern. Two medical debts that total \$4,784 have recently been confirmed to be his debts and need to be resolved. All other debts, totaling \$2,960, are resolved.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. There is no other evidence in his background to indicate that a financial dispute with his former employer or two medical bills that total less than \$5,000 may create a security risk. For all these reasons, conclude Applicant mitigated the security concerns arising under 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

Subparagraphs 1.a through 1.r: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted

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SHARI DAM  
Administrative Judge