



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



In the matter of: )  
)  
) ISCR Case No. 08-08644  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn E. Hoffman, Esq., Department Counsel  
For Applicant: *Pro Se*

June 9, 2009

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated Financial Considerations and Personal Conduct security concerns. Eligibility for access to classified information is granted.

On January 22, 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 and Guideline E, Personal Conduct. 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 on February 19, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 25, 2009. Applicant works and lives overseas. DOHA issued a notice of hearing on April 7, 2009, scheduling the hearing for May 18, 2009, by video

teleconference (VTC). The case was reassigned to me on April 16, 2009. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 8, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits (AE) A through F, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted two sets of documents, which were marked AE G through M, and admitted without objection. Department Counsel's memorandums are marked Hearing Exhibits (HE) I and II. DOHA received the transcript of the hearing (Tr.) on May 28, 2009.

### **Procedural Rulings**

Department Counsel moved to amend the SOR by deleting from SOR ¶ 2.b, the language: "**b. Are you currently over 90 days delinquent on any debt(s)?**" Applicant did not object to the amendment and it was granted.

### **Findings of Fact**

Applicant is a 43-year-old employee of a defense contractor. He has worked for his current employer since about August 2007. He served on active duty in the U.S. Navy from 1984 to May 2006, when he retired as a chief petty officer (E-7). He held a security clearance throughout his time in the Navy and in his post-retirement career with defense contractors. He has an associate's degree and is about 35 credits short of a bachelor's degree. He has been married since 1987. He has two children, ages 21 and 18.<sup>1</sup>

Applicant and his wife filed a Chapter 7 bankruptcy in May 1989. His liabilities were listed at \$15,355 and his assets at \$5,318. His dischargeable debts were discharged in November 1989. Applicant attributed his financial difficulties at that time to being newly married with a young child.<sup>2</sup>

Applicant's last tour in the Navy was served in a different city than where his family was located. After he retired in 2006, he was unemployed for about three months. He worked for a federal contractor from September 2006 to November 2006, in the location where he served before he retired. He was unemployed from about November 2006 through March 2007. He worked as a realtor from March 2007 through August 2007. He stated that he worked on commission but never sold a property. He has worked for his current employer since about August 2007, but in three different locations. He worked initially for the company in a different geographic region than his family. He then worked in his home city. He is now working overseas. With his unemployment, underemployment and living in different locations than his family, his finances started to suffer. He did not pay sufficient attention to his finances and had never checked his credit report. Several debts became delinquent.<sup>3</sup>

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<sup>1</sup> Tr. at 29-34, 79-80; GE 1.

<sup>2</sup> Tr. at 69-71; Applicant's response to SOR; GE 6.

<sup>3</sup> Tr. at 27-28, 31-32, 35, 64-66, 71, 74-78; GE 1.

The SOR alleges Applicant's 1989 bankruptcy and 11 delinquent debts, totaling about \$11,094. In his answer to the SOR, Applicant admitted that they were all originally his debts, but he stated that several had been resolved or he disputed the amounts owed. Specific debts are addressed below.

SOR ¶ 1.b alleges a judgment of \$1,361, plus court costs and interest, entered against Applicant on behalf of a collection company in March 2007. Applicant was unaware that a judgment was entered against him. The judgment, which totaled \$1,872 with court costs and interest, was paid in full in April 2008.<sup>4</sup>

A credit card company obtained a default judgment of \$1,173, plus court costs, fees, and interest, against Applicant in May 2008, as alleged in SOR ¶ 1.c. Applicant was also unaware of this judgment. He paid the judgment, which totaled \$2,099 with court costs, fees, and interest, in full in May 2009.<sup>5</sup>

In May 2009, Applicant paid the delinquent debt of \$312 to a collection company, on behalf of a telephone services company, as alleged in SOR ¶ 1.d.<sup>6</sup>

SOR ¶¶ 1.e and 1.f allege delinquent debts of \$1,853 and \$2,884 owed to the same credit card company that obtained the judgment against Applicant alleged in SOR ¶ 1.c. Both debts are listed on an October 29, 2008 credit report. Applicant credibly testified that he believed the \$1,853 debt alleged in SOR ¶ 1.e and the \$2,884 debt alleged in SOR ¶ 1.f were the underlying debts that resulted in the judgments alleged in SOR ¶¶ 1.b and 1.c. The credit report of May 12, 2009, reports that the \$1,853 debt was transferred to another lender. The collection company that was the plaintiff in the suit is not listed on any of the credit reports in evidence. The plaintiffs in the two lawsuits have addresses in two states other than where the judgments were obtained, but they were both represented by the same law firm. That same law firm wrote a letter to Applicant on February 13, 2009, stating that the debt alleged in SOR ¶ 1.f, with a balance at that time of \$2,348, could be settled with payments of \$880 on February 23, 2009 and March 23, 2009. After the hearing, Applicant indicated that after further research, he discovered that the \$1,853 debt alleged in SOR ¶ 1.e was transferred to a collection company in May 2009. He made arrangements with the company to pay the debt by payments. After considering all the evidence, I find that the debt alleged in SOR ¶ 1.f is the underlying debt that resulted in the judgment alleged in SOR ¶ 1.c. I further find that until recently Applicant honestly believed that the debt alleged in SOR ¶ 1.e was the underlying debt that resulted in the judgment alleged in SOR ¶ 1.b. When he discovered it was not the same debt, he made payment arrangements with the creditor.<sup>7</sup>

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<sup>4</sup> Tr. at 35, 39-42; Applicant's response to SOR; GE 7; AE G.

<sup>5</sup> Tr. at 42-43; Applicant's response to SOR; GE 8; AE D.

<sup>6</sup> Tr. at 43-44; Applicant's response to SOR; GE 3-5; AE C, I.

<sup>7</sup> Tr. at 42-51; Applicant's response to SOR; GE 3-5, 7, 8; AE D, F-H, J.

SOR ¶¶ 1.g and 1.i allege delinquent debts of \$1,257 and \$681 owed to the same collection company collecting on behalf of the same financial institution. Both debts with different account numbers are listed on the February 21, 2008 credit report. The \$1,257 debt is listed by Experian on the October 29, 2008 combined credit report. It is not listed on the March 17, 2009 Equifax report or the May 12, 2009 combined credit report. The \$681 debt is not listed on any of the three most recent credit reports in evidence. Applicant contacted the collection company using the phone number listed on one of the credit reports. He asked to pay all his debts they were collecting. He submitted documentation from the collection company that he paid a debt that they were collecting. The document indicated that the original creditor was a university. Applicant credibly testified that he thought he paid the debts alleged in the SOR.<sup>8</sup>

Applicant has been making monthly payments of \$124 toward the delinquent debt of \$1,303 to a university, as alleged in SOR ¶ 1.h. He testified that he thought the debt was paid in full. The May 12, 2009 credit report listed the balance as \$248. His bank statements show \$124 payments consistently posted to his account on the 10<sup>th</sup> or the 11<sup>th</sup> of the month. The last \$124 payment posted to his account on May 11, 2009.<sup>9</sup>

Applicant disputed the \$144 debt to a collection company on behalf of a cable television provider, as alleged in SOR ¶ 1.j. He stated that the company billed him for a period when there was no cable television provided to anybody in the area in the aftermath of a natural disaster. He contacted the cable company and the company agreed that he should not have been billed for that period. The debt has been removed from his credit report.<sup>10</sup>

In February 2009, Applicant paid the \$25 delinquent debt alleged in SOR ¶ 1.k and the \$100 delinquent debt alleged in SOR ¶ 1.l.<sup>11</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) which he certified as true on February 7, 2008. He answered “No” to Questions 27d and 28a, which asked “In the last 7 years, have you had any judgments against you that have not been paid?” and “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” He answered “Yes” to Question 28b, which asked “Are you currently over 90 days delinquent on any debt(s)?” He listed a delinquent student loan of \$2,100 to the university named in SOR ¶ 1.h. He also added “[w]orking with legal agency to clean up and pay outstanding debts.” Applicant denied intentionally falsifying the SF 86. He was unaware of the judgments and was not completely aware of his financial situation at the time he submitted the SF 86. He also admitted that he did not pay as much attention to the questionnaire as he should have. Applicant provided potentially embarrassing information unrelated to his finances in response to other questions on

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<sup>8</sup> Tr. at 51-61; Applicant’s response to SOR; GE 3-5; AE E, F.

<sup>9</sup> Tr. at 58; Applicant’s response to SOR; GE 3-5; AE F, J, K.

<sup>10</sup> Tr. at 61-62; Applicant’s response to SOR; GE 3-5; AE F.

<sup>11</sup> Tr. at 62-63; Applicant’s response to SOR; GE 3-5; AE F, K-M.

the SF 86.<sup>12</sup> After considering all the evidence, I find that Applicant did not intentionally falsify his SF 86.

Applicant was unaware of how bad his finances had become until the background investigator confronted him with his credit report. He realized that he did not pay sufficient attention to his finances. He has not received formal financial counseling, but he has taken steps to stay on top of his finances. He now has an account with a company that provides him a credit report on a monthly basis. He is determined to resolve any remaining delinquent debts and more closely monitor his finances. Applicant's current financial situation is stable. He earns a good salary; has his military retirement; and his wife works. Their youngest child still lives at home with his wife, but their oldest child is on her own. He does not have a lavish lifestyle and has more than enough income to stay financially solvent.<sup>13</sup>

Applicant submitted two character letters. His commanding officer at his last duty station wrote a very strong letter on his behalf, as did the individual who supervised him before he went overseas in September 2008. His former commanding officer wrote that "[Applicant's] dedication to duty, reliability and commitment to the Navy, the nation and his Sailors was unsurpassed." His former supervisor, a retired senior military officer, wrote that Applicant is very conscientious, highly capable, exceptionally reliable, and "of exemplary character and unquestionably trustworthy." Both individuals highly recommend Applicant for a security clearance.<sup>14</sup>

### **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 to be used 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, administrative judges apply the guidelines 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.

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<sup>12</sup> Tr. at 28, 35, 63-64; Applicant's Answer to SOR; GE 1.

<sup>13</sup> Tr. at 64-65, 74-77.

<sup>14</sup> AE A, B.

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 the 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 adverse 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 *a/so* 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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 had periods of unemployment after he retired from the Navy. His venture into real estate was an unqualified failure and he never sold a property. These qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant admitted that his unemployment and underemployment were only partly accountable for his delinquent debts. He did not monitor his finances and did not begin to address his delinquent debts until after the background investigator brought them to his attention. I find that he did not act responsibly about his debts until after his finances became a security concern. AG ¶ 20(b) is partially applicable.

Applicant honestly thought he resolved all the debts alleged in the SOR. He paid the two judgments against him and thought that resolved the two debts to the same credit card company named as plaintiff in one of the judgments. The other judgment was to a collection company. Applicant only realized after the hearing that there

apparently is still one delinquent debt owed to the credit card company. He has made payment arrangements to pay that debt. He called the phone number for the collection company collecting two of the listed debts. He paid what the company told him he owed. The documentation appears to reflect that this was for a different account. The debts he thought he paid are no longer listed on his credit report. It is unclear who currently owns these debts or their current status. I find that Applicant acted in good-faith to pay all his delinquent debts. AG ¶ 20(d) is applicable. His actions are too recent to warrant the benefit of AG ¶ 20(a). Applicant has not received financial counseling, but his current financial situation is very stable. While his financial issues are not completely resolved, there are clear indications that the problem is under control. AG ¶ 20(c) is partially applicable.

AG ¶ 20(e) is applicable to the SOR ¶ 1.f debt, because it is a duplicate of the debt alleged in SOR ¶ 1.c. It is also applicable to the debt alleged in SOR ¶ 1.j.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 conditions that could raise a security concern and may be disqualifying. The following mitigating condition is potentially applicable:

(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.

Applicant omitted some financial information from his Questionnaire for National Security Positions; however, as discussed above, it was not a deliberate omission. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a and 2.b are concluded for Applicant.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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. Applicant served in the Navy for 22 years. His former commanding officer was very glowing in his praise of him. After he retired he had some periods of unemployment and underemployment. He lived separately from his family on occasions due to the location of his work. Applicant admittedly did not pay as much attention to his finances as he should have and debts became delinquent. The background investigator and the credit report revealed how much he had let things slide. He has since been very proactive in addressing his finances. He has not completely resolved all his delinquent debts, but he credibly testified that he plans to address all his delinquent debt. The Appeal Board has noted that an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant must demonstrate that he has "established a plan to resolve his financial problems and taken significant actions to implement that plan."<sup>15</sup> I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations and Personal Conduct security concerns.

### **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:

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<sup>15</sup> ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.l: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a-2.b: 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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Edward W. Loughran  
Administrative Judge