



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-08865 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 14, 2009

**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaires for Investigations Processing (e-QIP) on March 12, 2008, as part of his employment with a defense contractor. On April 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F. 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 on April 14, 2009.

Applicant answered the SOR in writing on April 14, 2009. He admitted all seven allegations under Guideline F, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 28, 2009, and the case was assigned to me on June 18, 2009. DOHA issued a Notice of Hearing on June 30, 2009, for a hearing on August 19, 2009. Applicant signed for the Notice of Hearing on August

3, 2009. I convened the hearing as scheduled. The government offered four exhibits, marked Government Exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant testified on his behalf and offered 11 exhibits, marked Applicant Exhibits (App. Ex.) A - K which were received without objection. DOHA received the transcript of the hearing (Tr.) on August 25, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted the factual allegations under Guideline F.

Applicant is 30 years old and has been a lead technician with a defense contractor for over two years. Applicant served seven years on active duty in the Army and three years in the Army Reserve. He started working for the defense contractor immediately after leaving active duty. He is divorced, but has remarried, and has custody of the two children from his first marriage. He deployed to the Middle East twice on 12 month tours while on active duty, once to Iraq and once to Afghanistan. He has also deployed twice to the Middle East with his present defense contractor employer (Tr. 27-31). Applicant's present monthly net income is approximately \$5,000, \$3,341 from his employer, \$1,174 from the Veteran's Administration for a disability, and his wife's income of \$600. Their monthly expenses are approximately \$4,200 to \$4,300, leaving about \$700 to \$800 monthly in discretionary funds. Applicant also works overtime each month which adds to his income (Tr. 34-38).

Credit reports (Gov. Ex. 3, Credit report, dated January 12, 2009; Gov. Ex. 4, Credit report, dated March 28, 2008) reveal the following delinquent debts for Applicant; a collection account for jewelry for \$1,612 (SOR 1.a); a city electric bill in collection for \$59 (SOR 1.b); a charged off account for a computer company for \$1,177 (SOR 1.c); an automobile repossession debt for \$15,766 (SOR 1.d); a charged off credit card debt for \$5,029 (SOR 1.e); a finance company debt charged off for \$2,372 (SOR. 1.f); and a debt to a government agency placed for collection for \$6,756 (SOR 1.g). Applicant does not have a debt for his Military Star Card as that debt was paid in full on June 8, 2007 (Tr. 20-21, App. Ex. H, Letter, dated June 3, 2009).

As a young married soldier, Applicant did not pay sufficient attention to his finances nor check his credit reports. At the end of his Army tour, he was in a no-pay-due status so he was unable to pay his debts. He now has a steady income and he and his present wife have a budget. He is following his budget and all of his present accounts are current (Tr. 31-34).

Delinquent debt SOR 1.a is a debt in collection for a jeweler. Applicant settled this account for \$900 and it has been paid in full (Tr. 14, 23; App. Ex. B, Bank transaction, dated August 10, 2009; App. Ex. B, Check, dated July 10, 2009).

Delinquent debt 1.b is to a city utility. The debt was paid in full (Tr. 15, 23; App. Ex. D, Account statement, dated February 26, 2009).

Delinquent debt 1.c is for a computer. The debt was paid in full (Tr. 15-16; App. Ex. E, Letter, dated April 29, 2009).

Delinquent debt 1.d is the amount remaining on a car repossession. Applicant co-signed for another individual and that person defaulted on the loan. Applicant settled the debt for \$4,900. The initial payment of \$1,500 and the first subsequent payment of \$250 on the settlement plan have been paid (Tr. 16-18, 32-33; App. Ex. G, Settlement agreement and payment receipt, dated August 10, 2009).

Delinquent debt 1.e is for a loan. Applicant has been making monthly payments of \$206.69 for over a year and his payments are current (Tr. 20-21; App. Ex. I, Letter, dated June 3, 2009, and Payment transactions for May, June, July 2009).

Delinquent debt 1.f is for a charged off loan of \$2,372. The debt has been paid in full (Tr. 21; App. Ex. J, Letter, dated August 12, 2009).

Delinquent debt 1.g is for the balance due on a reenlisted bonus of \$6,821 that was being collected because Applicant left the Army earlier than anticipated. Applicant has been paying this debt for some time and the payments are current (Tr. 25-26, 31-32; App. Ex. K, letter, dated June 3, 2009).

### **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 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.

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.

## **Analysis**

### **Financial Considerations:**

Under 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 overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts as listed on credit reports and admitted by Applicant are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant’s testimony. FC MC AG ¶ 20(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), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) do not apply. Applicant has been steadily employed with no periods of unemployment. He did not raise any unusual circumstances that caused his delinquent debt. In fact, he attributes his delinquent debt to poor financial management. It is noted that he either paid or is paying his delinquent debts so they do not cause doubt concerning his current reliability, trustworthiness, or good judgment.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. Applicant paid four of the debts in full. He has payment plans in effect on the remaining three debts and his payments under the settlement agreements are current. He has not accumulated any additional delinquent debts. He has a concrete sustainable plan to pay his remaining debts. Applicant mitigated security concerns based on his finances.

### **"Whole Person" Analysis**

Under the whole person concept, the Administrative Judge must evaluate an 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.

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Appellant's over ten years of active and reserve service in the Army including his two deployments to the

war zones of the Middle East. I considered that he again twice deployed to the Middle East for his defense contractor employer in support of the United States war effort.

Appellant has established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. He is not required, as a matter of law, to establish that he paid off each and every debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his plan to reduce his outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, 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.

Applicant established a meaningful track record of debt payment by presenting sufficient information to show he paid four of the delinquent debts in full. He has payment and settlement plans in effect for the remaining three debts and his payments under the plans are current. His present accounts are also current. He has sufficient monthly income to meet his present obligations. Applicant demonstrated that his plan is credible and realistic, and he is managing his finances responsibly under the circumstances. The management of his present finances and his past obligations indicates he will be concerned, responsible, and not careless in regard to sensitive information. Appellant is not financially overextended and he is living within his means. Overall, the record evidence leaves me with no questions or doubts as to Appellant's judgment, reliability, and trustworthiness. He established that he is suitable for a security clearance. I conclude Appellant has mitigated the security concerns arising from his financial situation.

### **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 |

## **Conclusions**

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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THOMAS M. CREAN  
Administrative Judge