



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 08-08994
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: Rocky Gonzalez, Personal Representative

February 17, 2010

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns under Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing on (e-QIP), on March 27, 2008. On June 25, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 answered the SOR in writing on July 28, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 11, 2009, and I received the case assignment on August 21, 2009. DOHA

issued a notice of hearing on August 21, 2009, scheduling the hearing for September 25, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 6, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through EE, which were received without objection, and he testified on his own behalf.

I held the record open to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant submitted an e-mail dated October 6, 2009 with numerous attachments, collectively marked as AE FF, which was received without objection. On October 6, 2009, Applicant's personal representative submitted a "cover letter" on behalf of Applicant marked as AE GG, which was received without objection. On January 29, 2010, Applicant's immediate supervisor submitted a letter on behalf of Applicant, marked as AE HH, which was received without objection. On February 13, 2010, Applicant submitted additional material to include a current budget, marked as AE II, which was received without objection. DOHA received the hearing transcript (Tr.) on October 5, 2009.

### **Findings of Fact**

Applicant admitted the allegations contained in SOR ¶¶ 1.a. – 1.c. with explanations, and denied those allegations contained in SOR ¶¶ 1.d. – 1.g. with explanations. His admissions and denials with explanations are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 61-year-old training developer, who has worked for his defense contractor employer since December 2007. GE 2, Tr. 41. Applicant testified that he has successfully held a security clearance since 1998. Tr. 39-40. Applicant seeks to renew his secret clearance and indicated his future duties may require him to have a top secret clearance. Tr. 50-52.

Applicant attended college from September 1967 to June 1971, and was awarded a Bachelor of Arts Degree in International Relations in June 1971. GE 2, Tr. 40. He attended a university from May 1999 (estimated) to April 2000 (estimated) and "partially completed" the requirements for a Master's Degree in Computer Science. GE 2, Tr. 40-41.

Applicant was previously married from 1972 to 1977. That marriage ended by divorce. Applicant remarried in June 1980. He has a 26-year-old daughter, a 36-year-old stepdaughter, and a 38-year-old stepson. GE 2, Tr. 46-49.

## Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his March 2008 e-QIP; and his April 2008, February 2009 and August 2009 credit reports. GE 2-5.

Applicant's SOR identified seven separate collection accounts totaling \$65,343. (SOR ¶¶ 1.a. – 1.g.) SOR ¶¶ 1.a.-1.c. are student loans that Applicant incurred on behalf of his daughter. They were alleged as three separate debts; i.e. \$13,000, \$12,000, and \$10,000. Applicant fell behind on his payments due to illness, discussed *infra*. He consolidated these loans in late 2008, and had made seven of nine monthly payments towards "successful rehabilitation" of these loans by the time the hearing commenced. Applicant makes these payments by direct debit. AE A – AE D, Tr. 52-57.

SOR ¶¶ 1.d. and 1.f. are collection accounts in the respective amounts of \$9,000 and \$13,144. Applicant has been unable to ascertain with any degree of reasonable certainty the source of these debts and has used the contact information contained in the credit reports provided to him by Department Counsel before the hearing.

Additionally, Applicant consulted with an attorney in January 2009, and later hired him to assist him in ascertaining the identity of these two creditors and with issues regarding his credit report. Applicant's attorney stated once he determined the owners of these accounts, he would enter into settlement agreements with these creditors. Additionally, this same attorney referred him to a credit counseling service, which Applicant utilized, to assist him in budgeting and money management issues. This credit counseling service is bankruptcy court-approved. AE GG, GE 3, Tr. 57-64, 84.

SOR ¶ 1.e. is a collection account for \$7,693. In July 2009, Applicant settled this account for a lesser amount and has been making monthly payments by direct debit since then. Tr. 64-71, AE E, AE DD, GE 5.

SOR ¶ 1.g. is a collection account for \$506. Applicant paid that account in full by direct debit in August 2009. Tr. 77-79, AE F.

From August 2005 to December 2007, Applicant accepted a position and took up residence teaching English at a university in Mexico. He estimates his salary was \$6,500 in 2005, \$18,000 in 2006, and \$18,100 in 2007. Applicant was unable to obtain Mexican health care insurance because of his weight and high blood pressure. During his time in Mexico, Applicant and his wife sustained several uncovered medical problems, discussed *infra*. Tr. 79-81, AE GG.

Applicant's wife was bedridden for approximately three months after she sustained a severe back injury (collapsed spine). Applicant was hospitalized three

times for cancer-related treatment. Tr. 80-81. With Applicant's reduced salary and uncovered medical bills, he fell behind on his debts. Tr. 81. In December 2007, Applicant made the decision to return to the United States to secure a better paying job and obtain health care insurance. It was in December 2007 that he began his current job with an annual starting salary of \$58,200. Upon their return to the United States, Applicant and his wife rented a small house for \$625 per month and began addressing their indebtedness. Tr. 83. 101, AE GG.

Summarized, Applicant's medical issues include his being diagnosed with diverticulosis in December 2006, his being diagnosed with colitis in August 2008, his being diagnosed with renal cell carcinoma (kidney cancer) and prostate cancer in September 2008. He had an operation for kidney cancer in October 2008, and an operation for prostate cancer in January 2009. Each of these operations resulted in recovery periods approximating six weeks and a 70% salary reduction while he was not working. Also, during these operations, Applicant incurred additional costs associated with travel to a non-local medical treatment facility and uncovered medical expenses. Tr. 86-91. Applicant's current annual salary is \$68,000. Tr. 101, AE GG, AE II.

Applicant has made payment arrangements, settled, paid off, or initiated a good-faith dispute with all debts identified in SOR. He took the initiative to resolve his debts well before his SOR was issued and retained an attorney well before his SOR was issued to dispute two debts. Applicant's current monthly budget reflects a net monthly remainder of \$1,542 after his bills are paid. AE II. Applicant testified that he is able to live within his means and remain current on his debts. Tr. 83.

### **Character Evidence**

Applicant submitted at least ten favorable character reference letters from a cross section of individuals to include his spouse, co-workers, supervisors, and a childhood friend. The collective sense of these letters describes Applicant in a most favorable way. In particular, adjectives such as "dependable," "trustworthy," "honest," "loyal," and "professional" are repeated throughout these letters. His immediate supervisor described the importance of Applicant's work in support of national defense. All references fully support Applicant in retaining his security clearance. AE G, AE H, AE I, AE K, AE N, AE EE, AE GG, AE HH.

Applicant also submitted a recent employee evaluation covering the period July 2007 to June 2008, which reflected above average performance. AE O. He also successfully completed an Army Basic Instructor Course (102 hours) in May 2009, and was awarded a Certificate of Training. AE P. His contribution to the current war effort is documented in an article from a major U.S. newspaper published in October 2008. AE Q. Applicant comes from a family with a long lineage of service to the national defense, which is documented beginning in World War I to the present. AE R, AE S, AE Y, AE Z, AE AA.

## 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.

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

AG ¶ 18 articulates the security concern relating to financial problems:

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 ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is documented in his credit reports, his answers to DOHA interrogatories, his SOR response, and his statement at his hearing. The government established through Applicant's admissions and evidence presented, the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through 20(e) 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's evidence indicates his financial situation was fairly stable until he began teaching English at a Mexican university at a reduced salary without health care insurance. When he and his wife incurred significant uncovered medical bills and associated travel costs, they were unable to remain current on their previous obligations. Applicant returned to the United States to secure a better paying job with benefits, but unfortunately, by then, his personal finances had gone into a tailspin.

Since Applicant began his new job, his financial situation has substantially improved. Even before receiving his SOR in June 2009, Applicant took this process quite seriously and took reasonable steps to correct his financial situation. He has settled and/or paid all debts alleged except for debts alleged in SOR ¶¶ 1.d. and 1.f. For those debts, he has retained the services of an attorney to ascertain who the creditors are, and challenge or settle as necessary. He is current on his payments for those debts, for which he has set up a payment plans. His monthly budget reflects a net remainder of \$1,542 after his bills are paid. What is different now as opposed to before is he has the means, tools and resolve to achieve financial stability.

Considering the record evidence as a whole,<sup>1</sup> I am able to give Applicant full credit under AG ¶¶ 20(b) through 20(e). The evidence supports the notion that Applicant's finances were under control until he accepted a teaching job at a Mexican university at a substantially reduced salary. When he and his wife had medical problems while in Mexico, they found themselves, on their reduced salary, absorbing the costs of treatment and travel to the United States. This situation no longer exists now that Applicant has returned to the United States and secured a better paying job with benefits.

The attorney retained by Applicant to investigate and resolve the two debts discussed, *supra*, also referred him to a credit counseling service. Applicant has benefited from this service and has regained control of his finances. As noted *supra*, Applicant has paid one debt, consolidated three debts, settled one debt for a lesser amount, and has hired an attorney to resolve two debts. Applicant provided documentation substantiating the foregoing. In short, Applicant has turned his financial situation around. He has established a viable budget, which shows a net remainder after he has paid his bills, and is able to save money.

### **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):

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<sup>1</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

(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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The comments in the Financial Considerations Analysis section of this decision are incorporated in the Whole Person Concept. Applicant's financial difficulties have spanned a number of years. His inability to maintain a state of financial responsibility placed his security clearance at risk and required further review.

On the other hand, Applicant has successfully maintained a security clearance for 12 years without incident. His character references provide compelling evidence that Applicant is a loyal and trustworthy U.S. citizen. Applicant's family lineage is one of long-standing military or government service. Applicant's supervisors have made the case that he has made and continues to make a contribution to the defense industry and war on terrorism.

Applicant receives substantial credit for his service as a defense contractor and for his recent efforts to recover from his financial difficulties. His work for a defense contractor is excellent, and aside from the SOR allegations, no other disciplinary or security-related problems surfaced. His record of good employment weighs in his favor. There is a definite dichotomy between how Applicant handled his financial affairs and his work-related performance. I am convinced that he is loyal to his family, his company, and his country.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>2</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant

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<sup>2</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).



