



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



In the matter of: )  
)  
) ISCR Case No. 08-09133  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tom Coale, Esq., Department Counsel  
For Applicant: *Pro Se*

May 27, 2009

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

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

On October 31, 2008, 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 on November 12, 2008, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 4, 2009, and reassigned to me on March 11, 2009. DOHA issued a notice of hearing on March 17, 2009, and the hearing was convened as scheduled on April 8,

2009. The Government offered Exhibits (GE) 1 through 3, which were received without objection. The Government also offered a demonstrative exhibit which was marked Hearing Exhibit (HE) I. Applicant testified on his own behalf, and submitted Exhibits (AE) A through L, which were received without objection. The record was held open until April 17, 2009, for Applicant to submit additional information. Applicant submitted six pages of documents, which were marked AE M through P, and admitted without objection. Appellant requested an additional three-week extension to submit information. Department Counsel did not object to an extension through May 8, 2009. Department Counsel's memorandum is marked HE II. I orally granted an extension to May 8, 2009. Applicant submitted an additional nine pages of documents, which were marked AE Q through X, and admitted without objection. Department Counsel's second memorandum is marked HE III. DOHA received the transcript of the hearing (Tr.) on April 15, 2009.

### **Findings of Fact**

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since about August 2005. He served on active duty in the U.S. Air Force from 1980 to 2000, when he retired as a technical sergeant (E-6). He worked for another defense contractor from about August 2000 through August 2005. He has college credits, but has not attained a degree. He was married from 1980 until his divorce in 2001. He married again in 2004. He has three children from his first marriage, ages 27, 24, and 21. He has a four-year-old child with his second wife, and he has two stepchildren, ages 19 and 11.<sup>1</sup>

The SOR alleges six delinquent debts, totaling \$37,837. Five debts total \$3,283, and there is one large debt of \$34,554. In his answer to the SOR, Applicant admitted that they were all his debts, with the exception of the \$280 medical debt alleged in SOR ¶ 1.f. He indicated that the debts in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e had been paid. He also provided additional information to support his request for eligibility for a security clearance.

Applicant encountered some financial difficulties during the time of his divorce and for a period thereafter. The cost of maintaining two households after 21 years of marriage placed a financial toll on him. Applicant bought a mobile home for about \$38,000, and the land on which it was located for another \$50,000. The mobile home was rented to tenants. The tenants stopped paying rent after about six months. When the tenants were finally removed from the home, it was discovered that they had severely damaged the mobile home. Applicant repaired the mobile home to the best of his ability and attempted to sell it. The only offers he received were for less than he owed on the home, and he did not have the funds to make up the deficit. He was able to sell the land, but he could not maintain the payments on the mobile home and it was repossessed. The April 16, 2008 and October 8, 2008 credit reports list the balance on the mobile home loan as \$34,554. Applicant believes that was about the balance due on the loan at the time of the repossession. Both reports list the high credit on the loan as

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<sup>1</sup> Tr. at 23, 45-52; GE 1.

\$46,680. Applicant indicated that he is willing and able to address this debt, but he wants a full accounting from the creditor as to what he truly owes. He stated that his brother who works in the industry told him that the mobile home sold for about \$22,000. Applicant believes that would leave a deficiency owed of between \$10,000 and \$15,000. The debt was sold to another creditor. He has been in contact with the new creditor attempting to obtain specifics from them about the debt. He was told over the telephone that he owes \$34,553, which included “\$25,000 for repair fees, breakdown, moving fees, and miscellaneous charges.” The creditor sent him a letter which indicated that the loan balance at the time of repossession was \$79,453, minus the sale proceeds of the repossessed mobile home of \$44,900, leaving a balance due of \$34,553. Applicant disputes these figures. It is noted that there is a discrepancy between the credit reports and the letter from the creditor. Applicant credibly and persuasively testified that he will satisfy this debt as soon as he receives a complete accounting, or when the company agrees to accept the \$10,000 to \$15,000 that Applicant believes is due.<sup>2</sup>

SOR ¶ 1.a alleges a delinquent debt of approximately \$332 to an apartment complex. Applicant rented an apartment when he was working at a different geographical location than his family, and went home for the weekends. He decided it would be cheaper to live in a trailer. He was given permission to leave before the end of his 12-month lease. He was unaware that he was charged a half-month’s rent. He paid the full \$332 to satisfy the debt on November 7, 2008. He paid the \$127 debt alleged in SOR ¶ 1.b on November 6, 2008. SOR ¶ 1.d alleges a delinquent debt of \$424 to a collection company on behalf of a telephone services provider. Applicant settled this debt in full with payments of \$185 on April 9, 2009 and \$215 on April 27, 2009. He settled in full the \$2,120 debt alleged in SOR ¶ 1.e, with a payment of \$400 on August 8, 2008.<sup>3</sup>

Applicant denied owing the \$280 medical debt alleged in SOR ¶ 1.f. He stated that it was a dental bill incurred by his adult son who has the same first, middle, and last name. He contacted the creditor and the creditor agreed to remove the debt from his credit report. The debt is listed on the April 16, 2008 credit report, but not the more recent credit report of October 10, 2008.<sup>4</sup>

Applicant’s current financial situation is stable. He earns a good salary and does not live a lavish lifestyle. He is saving money and contributing to his retirement accounts. He has the means and ability to address his last remaining debt. There was a possible issue with his ex-wife over her not paying him child support and she not receiving her share of his military retirement. He indicated that they have worked that issue out and he does not foresee it escalating into a problem. He has not received financial counseling except for some Air Force training in the early 1980s.<sup>5</sup>

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<sup>2</sup> Tr. at 25-31, 52, 61-62; Applicant’s response to SOR; GE 2, 3; AE C, L, N, R, U.

<sup>3</sup> Tr. at 31-36; Applicant’s Answer to SOR; GE 2, 3; AE A, B, D, N, R, S, T, X.

<sup>4</sup> Tr. at 36-37; Applicant’s Answer to SOR; GE 2, 3.

<sup>5</sup> Tr. at 37-45, 53-59; Applicant’s Answer to SOR; AE F, G, I, J, N, R.

Applicant spent much of his Air Force career in the special operations community. He was involved in many humanitarian, combat, and highly classified missions. His DD Form 214 reflects more than ten years of foreign service. He retired with numerous awards, medals, and decorations, including the Distinguished Flying Cross, Meritorious Service Medal, Air Medal with one device, and the Air Force Commendation Medal with Valor, among many others. He submitted 17 character letters from his current supervisors and many from individuals that he served with throughout his military career, including in combat. He is described as a leader, honest, ethical, trustworthy, loyal, dedicated, responsible, reliable, professional, and a man of integrity who will always do the right thing. He is highly recommended for a security clearance.<sup>6</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.

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

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<sup>6</sup> AE E, G, H, J, O.

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.

The SOR listed six debts. Applicant paid or settled in full four debts. AG ¶ 20(d) is applicable to those debts, as a good-faith effort to repay his overdue creditors. He successfully disputed the debt in SOR ¶ 1.f. AG ¶ 20(e) is applicable to that debt. The remaining debt of concern is the large debt owed on the loan for his repossessed mobile home. The actions of his tenants 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 has yet to pay that debt, but he is working with the creditor for an equitable amount for him to pay. He is seeking a complete accounting of the debt. That is not an unreasonable request considering the discrepancies between the credit reports and the letter from the collection company. I am satisfied that he will resolve this debt once the specifics are finally worked out. AG ¶ 20(b) is partially applicable. With the exception of the mobile home loan, Applicant's financial situation is very stable. While his financial problem is not completely resolved, there are clear indications that the problem is under control. AG ¶ 20(c) is partially applicable.

### **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 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 Air Force for 20 years. He served in peace and in wartime, earning awards for his valor in combat. Applicant resolved five of the six debts in the SOR. He still has one, albeit by far the largest, debt to resolve. 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>7</sup> Applicant credibly testified that he intends to pay the mobile home loan debt. I find that he 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 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:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.f:	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

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<sup>7</sup> ADP Case No. 06-18900 at 4 (App. Bd. Jun. 6, 2008).