



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-09930  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

March 15, 2010

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on May 20, 2008 (Government Exhibit 1). On May 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns 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 answered the SOR in writing on June 19, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 16, 2009. This case was assigned to me on July 17, 2009. DOHA issued notices of hearing on August 7, 2009, and September 2, 2009. I convened the hearing as scheduled on September 9, 2009. The Government offered Government Exhibits 1

through 6, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through H, also without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit I on September 18, 2009, and it was admitted without objection. DOHA received the transcript of the hearing on September 18, 2009. The record closed on September 18, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 56 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

### **Guideline F, Financial Considerations**

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits the factual allegations in SOR ¶¶ 1.a., 1.b., 1.c., 1.d., and 1.g. Those admissions are hereby deemed findings of fact. He denies SOR ¶¶ 1.e., 1.f., and 1.h.

The Applicant testified that he was employed in the defense industry from 1983 until 1999, when he was laid off. He then worked for a metropolitan area transit system from 1999 until a reduction in force in 2005. The salary for this job was substantially less than his defense industry job. From June 2005 until April 2008 he was unemployed. In April 2008, he resumed work in the defense industry. (Government Exhibit 1 at Section 11; Transcript at 22-23, 32-37, 46-47, 94-99.)

1.a. Applicant admits that he filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code in March 2001. He received a discharge in July 2001. According to the Applicant, the family debt situation occurred because of a period of underemployment, exacerbated by a series of family related financial emergencies. Eventually, a bankruptcy was the only way he saw to resolve the situation. (Applicant Exhibits A, and I at 1-10; Transcript at 36-37, 40-41.)

1.b. This August 2001 county luxury tax lien in the amount of \$83 was removed in June 2004, as shown by the applicable release of lien. (Applicant Exhibit I at 13-14; Transcript at 40-41.)

1.c. This August 2001 county luxury tax lien in the amount of \$97 was removed in June 2004, as shown by the applicable release of lien. (Applicant Exhibit I at 11-12; Transcript at 40-41.)

1.d. Applicant admitted that he owed \$40,000 on a past-due mortgage when the SOR was issued. This occurred because of the Applicant's unemployment between 2005 and 2008, as well as a personal situation regarding the Applicant's wife, which

resulted in her losing her job as well. The Applicant attempted, over a period of several months, to work out a payment arrangement with his mortgage company. This was unsuccessful, primarily because the Applicant's mortgage was sold to another lender in the midst of negotiations. Ultimately, the Applicant's house was foreclosed upon and sold at auction in May 2009 for \$122,000. At that time the Applicant had lived in the house for 23 years. Under his state's "One Action Law," the lender has no other recourse and the Applicant has no further obligation on this debt. (Applicant Exhibits C, and I at 21-42, 57-65; Transcript at 41-45, 84-88.)

1.e. Applicant has paid this collection account in full, as shown in a communication from the creditor. (Applicant's Exhibit I at 43-49; Transcript at 47-53, 82-85.)

1.f. Applicant has consistently denied owing this dental bill, which is for unapproved work done to his step-son. The original creditor now refuses to deal with him, and the collection agency is no longer in business. The Applicant has submitted disputes to all three of the credit reporting agencies. I find that the Applicant has done all that he can to resolve this debt. (Applicant Exhibits E, and I at 50-56; Transcript at 53-61.)

1.g. Applicant admits that he owed a credit union \$5,026 for an automobile lease. The records show that this debt was discharged as part of the Applicant's 2001 Chapter 7 filing, as discussed above. (Applicant Exhibit A at 6; Transcript at 61-67.)

1.h. Applicant has consistently denied owing \$80 for a past-due pest control bill. He submitted a copy of a paid check to the contractor from 2004. Applicant further stated that he has filed disputes with the credit reporting agencies concerning this debt. The most recent credit report, from July 2009, does not show this debt. (Government Exhibit 5; Applicant Exhibit G; Transcript at 69-72.)

## **Mitigation**

Applicant submitted a letter from his supervisor. This person, who has known the Applicant for about 15 years, states the Applicant:

[I]s a man and employee that I would trust any level of our nation's sensitive information as I am 100% confident he would protect that information to the best of his ability. I would highly recommend that his security clearance be granted. (Applicant Exhibit H.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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

The security concern 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(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, by his own admission, and supported by the documentary evidence, declared bankruptcy in 2001, had his home foreclosed upon in 2009, and had other past-due debts. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." In addition, AG ¶ 20(b) states that the disqualifying conditions may be mitigated 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's financial difficulties arose because of a series of family emergencies, exacerbated by a bout of underemployment from 1999 to 2005, and unemployment from 2005 to 2008. He documented a serious and long-standing attempt to resolve the financial problem with his house. He showed that he has paid his legitimate debts, that tax liens were released several years ago, and that he has properly disputed debts, which he alleges are paid or are not his. At all times he has acted responsibly. These two mitigating conditions apply.

Applicant has initiated a good-faith effort to pay off his creditors. As stated above, several have been paid. Accordingly, AG ¶ 20(d) is applicable.

Applicant's current financial situation is stable. He is able to pay his current indebtedness in a timely manner. I find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

## **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 relevant circumstances. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant had some financial problems, but his current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant's foreclosure and his debt history. As stated at length above, much of this was brought about because of layoffs and family situations. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. through 1.h.: For Applicant

## **Conclusion**

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

WILFORD H. ROSS  
Administrative Judge