



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-09954  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg Cervi, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 23, 2009

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF 86), on December 21, 2007. On February 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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.

On March 26, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and the case was assigned to me on June 3, 2009. Applicant and Department Counsel agreed to a July 8, 2009, hearing date. On June 11, 2009, a Notice of Hearing was issued scheduling the hearing for that date. The hearing was convened as scheduled. Department Counsel submitted four exhibits (GE) 1-4,

without objection. Applicant introduced seven exhibits (AE) A-G, without objection. He testified on his own behalf. The transcript (Tr.) was received on July 15, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, dated March 26, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.c of the SOR. He denied the factual allegations in ¶¶ 1.d through ¶ 1.h and ¶ 2.a of the SOR with explanations and denied any intentional falsification.

Applicant is a 54-year-old employee of a defense contractor. He graduated from high school in 1973, and attended college in 1987. His first marriage ended in divorce in 1993. Applicant has three children from that marriage. He has worked for his current employer since 2008 but he has worked for other defense contractors on a naval air station for almost 20 years (Tr. 15). He held an interim clearance in 2002 (Tr. 29).

When Applicant divorced in 1993, the court ordered his ex-wife to be responsible for various marital debts. Applicant's wife was awarded the house and the family car. She did not adhere to the order. Applicant did not know about the various marital debts assigned to his wife that were delinquent and were reported on his credit report.

Applicant had a medical problem in 2007. He had a blockage in his heart and had to undergo a medical procedure in the hospital. He paid the medical bills and hospital bills that were presented to him at the time (Tr. 36). He believed that all the medical bills had been paid.

The SOR alleges eight delinquent debts, including medical accounts. The current status of Applicant's delinquent debts is as follows: Applicant paid the \$244 medical debt alleged in SOR ¶ 1.a for \$488. This medical bill is a result of an emergency procedure. Applicant's insurance did not pay the total bill, but Applicant had no knowledge of that until recently (AE G).

Applicant settled the \$6,926 account alleged in SOR ¶ 1.b for \$2,543 in 2009. His ex-wife used this account. He was not aware that it had not been paid as he did not receive any notices. Applicant provided documentation of his payment (AE B).

Applicant paid the account in SOR ¶ 1.c in 2009. This was an electric bill for \$168. He provided his bank statement as proof of payment (AE G).

Applicant presented proof that the debt alleged in SOR ¶ 1.d for \$5,356 is a duplicate of the debt alleged in SOR ¶ 1.b. The account had been sold to a collection agency. Applicant researched the account that appeared on his credit report and the account number is the same (GE 4).

Applicant paid the \$490 medical account listed in SOR ¶ 1.e. He presented documentation of three cancelled checks, each in the amount of \$163.36. The first check was paid in 2008 (AE D).

The debt alleged in SOR ¶ 1.f is a duplicate of the debt referenced above in 1.b. This debt has been paid (AE B).

The account listed in SOR ¶ 1.g is satisfied. Applicant's wife paid this account (Tr. 61). This debt is not on Applicant's current credit report.

The medical account listed in SOR ¶ 1.h is a duplicate bill. This account is paid as referenced in SOR ¶ 1.e.

Applicant earns approximately \$60,000 a year. He received credit counseling in 2008 (GE 2). He is current with his monthly expenses. He pays for his daughter's college expenses. He now pays a monthly fee to monitor his credit reports (Tr. 70). He has a budget. His net monthly remainder is approximately \$500. He has a savings account (GE 2). He has no credit cards (Tr. 79).

Applicant completed his June 2007 security clearance application. In that application he answered "no" to question 28a concerning financial delinquencies in the last seven years of over 180 days (GE 1).

In 2009, in his answer to the SOR, Applicant explained that when he completed the SF 86 in 2007 he did not know of any delinquent accounts. He incorrectly answered the question to 28a but did not intentionally falsify his application.

### **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 common sense decision. According to AG ¶ 2, 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**

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(a), an inability or unwillingness to satisfy debts<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debts on several accounts for a

period of time. His credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions, requiring a closer examination.

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. Applicant did not realize that he had the delinquent accounts. His ex-wife was ordered to pay various accounts. She did not do so. He paid his medical bills and thought that all were paid. He did not realize that the insurance did not cover the full amounts. This mitigating condition applies in this case.

Under AG & 20(b), it may be mitigating 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. I find this a factor for consideration in this case. As noted above, the divorce that occurred in 1993 impacted Applicant financially. He did not ignore any bills or live in an extravagant manner. He has acted responsibly in paying his accounts.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has received financial counseling. He has resolved the delinquent accounts. His efforts are sufficient to carry his burden in this case. I conclude these mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that he did not believe he owed some accounts. When he researched his credit report and learned that his wife had not paid certain accounts, although he initially disputed or denied them, he paid them. I conclude this mitigating condition applies in part.

### **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 cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel 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” is potentially disqualifying.

In this case, when Applicant completed his 2007 security application, he did not answer “yes” to question 28a. He stated in his answer to the SOR that he answered the questions to the best of his ability and did not know about the indebtedness. He incorrectly answered the question but he did not intentionally falsify his application.

When a falsification allegation is controverted or denied, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant’s state of mind when the omission occurred. An administrative judge must consider the record evidence as whole to determine whether there is direct or circumstantial evidence concerning an applicant’s state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)). Thus, AG ¶ 16(a) does not apply in this case. I find for Applicant on SOR ¶ 2.a.

### **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 and conclude they are sufficient to overcome the Government’s case. Applicant has worked for defense contractors for approximately 20 years. He is currently working. His 1993 divorce was the cause of the delinquent accounts. He paid the delinquent accounts and provided documentation. He

answered question 28a. concerning financial delinquencies in the last 7 years to the best of his ability. He did not falsify his SF 86.

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 security concerns arising from his financial considerations and personal conduct.

### **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
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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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NOREEN A. LYNCH  
Administrative Judge