



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-10075
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

For Applicant: *Pro se*

September 8, 2010

---

**DECISION**

---

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 23, 2008. (Government Exhibit 1.) On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E concerning 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted Answers to the SOR on August 20 and December 8, 2009, and requested a hearing before an Administrative Judge. This case was assigned to me on December 10, 2009. Department Counsel was prepared to proceed on December 12, 2009. DOHA issued a notice of hearing on December 16, 2009, and I convened the hearing as scheduled on January 27, 2010. The Government offered Government Exhibits 1 through 9, which were received without objection. The Applicant testified on

his own behalf and submitted Applicant's Exhibits A through M, also received without objection. The record was left open at the Applicant's request for the submission of additional documentation. The Applicant submitted Applicant's Exhibit N on February 9, 2010. This exhibit was also received without objection. DOHA received the transcript of the hearing on February 12, 2010. The record closed on February 12, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Ruling on Procedure**

Applicant denied Paragraph 2 of the SOR, under Guideline E, which stated that he had falsified an official questionnaire concerning his financial situation. After examining Applicant, Department Counsel moved to strike Paragraph 2 of the SOR and its sole allegation. That motion was granted. (Transcript at 71-72.)

### **Findings of Fact**

Applicant is 47 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 all of the allegations under Paragraph 1 of the SOR. Those admissions are hereby deemed findings of fact.

Applicant testified about his financial situation. He stated that his family's financial difficulties began when they were remodeling their house, and his contractor abandoned the work when it was only partially completed. Applicant began using his own funds to complete the work, which eventually got to be more than he and his wife could pay. As of the time of the hearing, the Applicant was in the midst of completing a short sale for the house. (Transcript at 48-54, 66-69.)

In order to resolve the debt, Applicant signed on with a debt relief company in January 2008. He gave the company \$8,000 over approximately six months, and they did nothing for him. He stopped using the company in June 2008 and began attempting to resolve his debts himself. (Applicant Exhibits E and G; Transcript at 43-47.) As part of that effort, he consulted with a bankruptcy attorney in October 2009, and took a credit counseling course recommended by the United States Bankruptcy Court. (Applicant Exhibit D; Transcript at 48.)

The current status of the Applicant's debts is as follows:

1.a. Applicant admits that he is indebted to a credit card company in the original amount of \$11,442. He has made a payment arrangement with this creditor for payments of \$318 a month, as evidenced by documentation from this creditor. This debt is resolved. (Applicant Exhibit L; Transcript at 57-58.)

1.b. Applicant admits that he is indebted to a credit card company in the amount of \$22,902.45. He has made a payment arrangement with this creditor for payments of \$966.97 a month for 18 months, totalling \$17,405.46, as evidenced by documentation from this creditor. This debt is resolved. (Applicant Exhibit H; Transcript at 37-40.)

1.c. Applicant admits that he is indebted to a credit card company in the original amount of \$15,765. He has made a payment arrangement with this creditor for payments of \$305 a month, as evidenced by documentation from this creditor. This debt is resolved. (Applicant Exhibit N at 6; Transcript at 40-42.)

1.d. Applicant admits that he was indebted to a credit card company in the original amount of \$3,185. He has made a payment arrangement with this creditor to resolve this debt by payment of a lesser amount of \$1,752, as evidenced by documentation from this creditor. This debt is paid. (Applicant Exhibit K; Transcript at 37.)

1.e. Applicant admits that he was indebted to a credit card company in the original amount of \$2,130. He has made a payment arrangement with this creditor to resolve this debt by payment of a lesser amount of \$1,200, as evidenced by documentation from this creditor. This debt is paid. (Applicant Exhibit J; Transcript at 37.)

1.f. Applicant admits that he is indebted to a credit card company in the original amount of \$54,583. He has made a payment arrangement with this creditor to resolve this debt by payment of a lesser amount of \$27,500, as evidenced by documentation from this creditor. This debt is resolved. (Applicant Exhibit N at 7; Transcript at 32-36.)

1.g. Applicant admits that he is indebted to a credit card company in the original amount of \$6,343. He has made a payment arrangement with this creditor to resolve this debt by payment of the lesser amount of \$2,283.06 in payments of \$380.51 a month, as evidenced by documentation from this creditor. This debt is resolved. (Applicant Exhibit I; Transcript at 32-36.)

1.h. Applicant admits that he is indebted to a credit card company in the original amount of \$9,100.58. He has made a payment arrangement with this creditor to resolve this debt by payment of the lesser amount of \$3,640.08 in payments of \$303.34 a month, as evidenced by documentation from this creditor. This debt is resolved. (Applicant Exhibit N at 8; Transcript at 32-36.)

1.i. Applicant admits that he is indebted to a credit card company in the original amount of \$24,912. He has made a payment arrangement with this creditor to resolve this debt in payments of \$300 a month, as evidenced by documentation from this creditor. This debt is resolved. (Applicant Exhibit N at 6,9; Transcript at 59-60.)

1.j. Applicant admits that he is indebted to a credit card company in the amount of \$9,294.06. He has made a payment arrangement with this creditor to resolve this debt by payment of the lesser amount of \$1,033, as evidenced by documentation from this creditor. This debt is paid. (Applicant Exhibit N at 6,10; Transcript at 61-64.)

Applicant submitted a revised personal financial statement. (Applicant Exhibit N at 3-4.) This statement shows that the Applicant is well able to pay his negotiated indebtedness. Applicant maintains, and records show, that he is able to pay his regular debts. (Government Exhibit 8.)

## **Mitigation**

Applicant is a respected worker. He submitted character reference letters from his Director, as well as two co-workers. Applicant is described as being “trustworthy,” “committed, loyal,” and “a dependable and reliable employee.” (Applicant Exhibit A.) He has also received written commendations from his employers. (Applicant Exhibit C.)

## **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 adjudicative guidelines. 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 or her own common sense, as well as 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 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” 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, had \$158,163 in past-due debts, all of which have been due and owing for

several years. 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.” Applicant’s financial difficulties arose primarily because of the money it cost to remodel his house. Once Applicant and his wife realized the extent of their indebtedness, they began working to try and resolve it. He has paid off three of the past due debts, completed negotiations to pay off his remaining past due indebtedness, has made payments to all of his creditors, and his current financial situation is stable. This mitigating condition applies to this case.

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.” As stated above, the Applicant’s debt situation was brought about primarily by the bad faith of his contractor, a situation that will not be repeated. This mitigating condition also applies.

Applicant has initiated a good-faith effort to pay off his creditors. Through negotiation and payment, Applicant has reduced his indebtedness to \$102,947. Accordingly, AG ¶ 20(d) is applicable.

Applicant is over \$100,000 in debt. However, the record is clear that he is not running up new debt. Indeed, he is paying his debts in a responsible manner. Under the particular circumstances of this case, 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. The discussion under Guideline F, above, applies here as well. Applicant, with the best of intentions, wound up in financial straits. However, he has a well-thought-out and reasonable plan, which he is carrying out. His current financial condition is stable. Under AG ¶ 2(a)(3), I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, 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. 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.j.:	For Applicant
Paragraph 2, Guideline E:	WITHDRAWN
Subparagraph 2.a.:	Withdrawn

### **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