



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-10451
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

May 21, 2010

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant has established a plan to resolve his financial problems and has taken significant actions to implement his plan. He mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 19, 2008, Applicant submitted a security clearance application. On November 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary

affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant answered the SOR allegations on December 4, 2009, and requested a hearing before an administrative judge. The case was assigned to me on January 26, 2010. DOHA issued the notice of hearing on January 29, 2010, convening a hearing on February 17, 2010. The hearing was convened as scheduled. The Government offered Government Exhibits (GE) 1 through 5, which were admitted without objections. Applicant testified and submitted Applicant Exhibits (AE) 1 through 6, which were admitted without objection. AE 6 was received post-hearing. DOHA received the transcript of the hearing (Tr.) on February 23, 2010.

### **Findings of Fact**

Applicant admitted the debts alleged in SOR ¶¶ 1.a, 1.c-1.g, 1.j, 1.m, and 1.n. He denied the allegations in SOR ¶¶ 1.b, 1.h, 1.i, 1.k, and 1.l. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 33-year-old network engineer employed by a defense contractor. He finished high school in 1995, and the following year he enlisted in the U.S. Army. He served in the Army from November 1996 to December 1999, achieved the grade of E-3, and his service was characterized as honorable. While in the service, he possessed a secret level security clearance.

Applicant married his first wife in December 1997, and they were divorced in December 1998. He has had sole custody of his 13-year-old son since his divorce. He married his current wife in June 2008. He and his wife are currently attending college. They have combined college expenses of approximately \$4,000 per semester. He expects to receive his associate's degree in information technology in May 2010.

After leaving the Army, Applicant was unemployed and underemployed from December 1999 until September 2001. He has been consistently employed since September 2001. However, he continued to be underemployed until 2006. He submitted his security clearance application in July 2008, and was granted interim access to classified information. In April 2009, he started working for his current employer, a government contractor, who is sponsoring his application.

Applicant attributed his current financial problems to being unemployed and underemployed since he left the Army until sometime in 2006. He was not making sufficient money to pay his delinquent debts and his and his son's day-to-day living expenses. His financial situation improved in 2006; however, he did not start to address his delinquent debts until 2008-2009. He explained he wanted to stabilize his financial situation prior to paying his debts. (Tr. 68) He claimed he attempted to take a debt

consolidation loan, but it was not approved. He also claimed he looked into starting a debt consolidation program. He rejected the idea because it did not make sense to him to pay for something he could do on his own. Applicant has not participated in any financial counseling. (Tr. 87)

The SOR alleges 14 delinquent debts totaling approximately \$23,000. At his hearing, Applicant presented documentary evidence showing he had resolved the following debts:

1. SOR ¶ 1.a. This debt was paid in February 2010 (\$163) (AE 7).
2. SOR ¶ 1.b. He claimed he disputed this debt telephonically prior to the hearing. He disputed it again in writing in March 2010. (AE 7)
3. SOR ¶ 1.c. He established a payment agreement in September 2009, and has made six consecutive payments. (AE 7)
4. SOR ¶ 1.d. He settled and paid this debt for less than the amount owed. (AE 7)
5. SOR ¶¶ 1.e, 1.f, 1.g, 1.j, and 1.m. These debts were paid in November-December 2009. (AE 7)
6. SOR ¶ 1.h. Applicant disputed this debt through the credit bureau. (GE 5) He claimed he was told the dispute was resolved in his favor and that he was informed the debt was removed from his credit report. He presented no documentary evidence to show the account was resolved in his favor, or that it was removed from his credit report.
7. SOR ¶ 1.i. An \$11,425 judgment was filed against Applicant in 2007. He claimed this is not his debt, that he was not notified of the judgment proceedings against him, and that he was not aware of the debt until his background interview. He claimed he disputed this debt telephonically in October 2009 and January 2010. He presented documentary evidence he disputed it again in writing in March 2010. (AE 7) Applicant intends to dispute the judgment. He promised to pay the debt if it is his financial obligation.
8. SOR ¶ 1.k. This is a medical debt for an unidentified creditor. The Government conceded it would be difficult for Applicant to address the debt without knowing the identity of the creditor.
9. SOR ¶ 1.l. Applicant claimed he disputed this debt in November 2009. As of his hearing, he had not received a reply.
10. SOR ¶ 1.n. This debt was paid in February 2010. (AE 7)

Applicant's financial situation has improved substantially since he started working as a network engineer in 2008. His earnings have doubled. His wife works full time and their combined monthly income is approximately \$110,000. His household net monthly income is approximately \$6,000. He has monthly expenses of around \$3,665, and his net remainder is \$2,335. I note, however, that Applicant listed no monthly payments for any of his delinquent debts in his personal financial statement. In addition to the debts listed in the SOR, Applicant disclosed he owes \$10,000 in deferred student loans and \$2,600 on the only credit card he carries. Also, his wife crashed her car in 2007, and they purchased a new vehicle in 2009.

Applicant testified he and his wife have a budget and they try to follow it. His plan is to pay all his delinquent debts, including the disputed debts if they are his financial obligations. Applicant was forthcoming about his past and present financial situation. He acknowledged his prior financial mistakes and his failure to resolve his delinquent debts diligently. He expressed remorse for his financial problems and for not being more responsible addressing his debts. With his wife's assistance, he is now in a better financial position to address his past debt. He promised to make satisfactory payment arrangements with all of his creditors sometime in the future. He believes that his recent efforts paying his debts show he is trying to be financially responsible. He highlighted his good performance for his employer and that he is considered to be honest, trustworthy, and a valued employee.

Applicant's references consider him to be trustworthy, honest, and responsible. He has a strong work ethic and carries himself in a professional manner. He has a reputation for knowing and complying with security guidelines and regulations. There is no evidence that Applicant has compromised or caused others to compromise classified information.

### **Policies**

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 required 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence.”<sup>1</sup> Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

## **Analysis**

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

Under Guideline F, the security concern is that 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 ¶ 18.

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<sup>1</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

The SOR alleged 14 delinquent debts totaling approximately \$23,000, which were delinquent for a number of years. Applicant resolved nine of the alleged delinquent debts. He disputed SOR ¶¶ 1.b, 1.h, 1.i, 1.k, and 1.l. The Government conceded the creditor in the debt alleged under SOR ¶ 1.k was not properly identified. The remaining four delinquent debts are unresolved. Based on the credit reports, these are Applicant's delinquent debts, which have been delinquent for many years. His total liability is approximately \$16,000 in unresolved SOR debt. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant presented documentary evidence to show that he has settled and paid nine of the alleged debts. He disputed the remaining five debts. He started addressing his delinquent debts after submitting his security clearance application when he realized that his bad credit would adversely impact on his eligibility for a clearance.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because he did not act more aggressively and responsibly to resolve his delinquent debts from 2006 until 2008-2009.

Applicant established some circumstances beyond his control, which contributed to his inability to pay his debts, i.e., his period of unemployment and underemployment

after leaving the Army, and being a single parent. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. He does not receive full mitigating credit because he did not establish that he acted with sufficient initiative and resolve to address his delinquent debts.

AG ¶ 20(c) fully applies. Applicant has not participated in financial counseling. However, he demonstrated he has the self-discipline necessary to reduce and resolve his debts. He followed a budget, settled and established payment plans with creditors, and substantially reduced his debts. He has also established partial mitigation under AG ¶ 20(d) because he showed good faith<sup>2</sup> in the resolution of his SOR debts. He receives only partial credit because he should have been more diligent addressing his debts. Applicant properly contested the validity of five debts. AG ¶ 20(e) does apply.

Considering the evidence as a whole, there are clear indications that his financial problems are being resolved or are under control. Applicant's evidence shows he has been paying consistently on his payment plans. He has a viable plan to resolve his financial predicament and I believe that he will be able to avoid similar financial problems in the future. Although Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts and he still has four unresolved debts, his past behavior and current financial situation do not raise doubt about his current reliability, trustworthiness, and judgment. Financial considerations concerns are mitigated.

### **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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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<sup>2</sup>The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

(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.

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. AG ¶ 2(c).

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 Guideline F in my whole-person analysis. Applicant should have been more aggressive in his efforts to establish payment plans on his delinquent debts. He had sufficient income to make greater progress in delinquent debt resolution. These factors show some financial irresponsibility and lack of judgment.

Notwithstanding, the mitigating evidence under the whole-person concept is sufficient to warrant granting Applicant's security clearance. He served honorably in the Army for three years and has worked for government contractors since 2008. On both occasions he has access to classified information. There is no evidence he has ever compromised or caused others to compromise classified information. He has a reputation as a law-abiding citizen and a good father. He is considered to be honest and trustworthy. His financial problems were caused, in part, by factors beyond his control. He has continued his education with a view to improve his financial situation. He has worked well for his employer. Moreover, he has taken control of his financial situation, and recently has made significant progress in resolving his debts. He has established a plan to resolve his financial problems and has taken significant actions to implement his plan. He now understands what is required of him to be eligible to possess a security clearance. These factors show some responsibility, good judgment, and mitigation.

### **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.n:	For Applicant



## **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge