



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



In the matter of: )  
 )  
 ) ISCR Case No. 08-10510  
 )  
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 Applicant for Security Clearance )

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: Donald L. Schense, Esquire

July 22, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On September 12, 2006, Applicant submitted an Electronic Questionnaires for National Security (e-QIP). On January 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Appellant a Statement of Reasons (SOR) 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 or about February 13, 2009, and requested a hearing. DOHA assigned the case to me on March 11, 2009, and issued a Notice of Hearing on May 11, 2009. The case was heard on June 11, 2009, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence without objection. Applicant testified and offered Exhibits (AE) A through D into evidence without objection. At the conclusion of the hearing, I left the record open until June 22, 2009, to give Applicant an opportunity to submit additional information. Applicant timely submitted four exhibits that I marked AE E through H, and admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on June 29, 2009.

### **Findings of Fact**

Applicant admitted all allegations contained in the Paragraph 1 of SOR. His admissions are incorporated into the following findings of fact:

Applicant is 39 years old, married and has two children, ages 8 and 5. In 1993, he graduated from college with a bachelor's degree in mathematics, and in 1999, he earned a master's degree in applied mathematics. In February 1997, he began a position as a software engineer for a defense contractor. He received a Top Secret security clearance in March 1997 that he has held since.

In September 2006, Applicant began the security clearance renewal process. In July 2007, he and his family moved to his home state and started a position for which a security clearance was not required. About ten months later, he and his wife returned to live in the state that they had previously left. In September 2008, he obtained a position with a subcontractor for his former employer, who then re-initiated the security clearance process. Applicant informed his employer of financial concerns that arose during the initial clearance investigation in 2006. (Tr. 29) He did not attempt to hide the issue from his employer. (Tr. 33)

Applicant's financial problems began in 2004 when he and his wife were spending more money than they earned and essentially "living beyond one's means." (Tr. 36) After accruing about \$95,000 in delinquent debt by late 2005, he and his wife decided to seek financial assistance through a company that specializes in resolving debt. (Tr. 40) In February 2006, he deposited \$900 into a trust account and has subsequently deposited \$1,200 every month since. He has deposited approximately \$35-40,000 into the fund to-date. When the fund accumulates sufficient funds to settle a debt, the company negotiates a resolution. (Tr. 42-44)

Based on credit bureau reports (CBR), dated October 4, 2006 and October 17, 2008, the SOR alleged four debts, totaling \$82,303 that became delinquent in September 2006. The status of the debts is as follows:

1. SOR ¶ 1.a alleges a \$35 medical debt. He paid the debt in January 2009. (Tr. 45-46)

2. SOR ¶ 1.b alleges a \$25,030 debt owed to a credit card company. The debt resolution company has been negotiating a resolution of the debt. He anticipates paying it in 12 to 14 months after he has deposited sufficient money into the debt resolution fund. He believes he will be able to settle it for about \$12-14,000. (Tr. 49-51)
3. SOR ¶ 1.c alleges a \$52,396 debt owed to a credit card company. The debt resolution company settled the debt for \$21,000. It was paid in May 2009 with monies that had accumulated in the debt fund. He is awaiting a final receipt from the creditor. (Tr. 53-60; AE B)
4. SOR ¶ 1.d alleges a \$4,842 judgment that he paid with the assistance of the debt resolution company which negotiated a \$3,000 settlement. He made \$150 monthly payments for about 24 months and then a lump sum payment of \$1,300 in February 2009. (Tr. 62-66; AE C, D)

In summary, Applicant has resolved three of the four debts. He anticipates paying the remaining \$25,030 debt in a year when he accumulates between \$12-14,000 in the debt trust fund to which he contributes monthly. (AE F)

Applicant and his wife have a combined yearly salary of \$134,000. Their net monthly income is \$7,884 and their monthly expenses, which include the \$1,200 payment, are about the same. (AE H) He and his wife no longer use credit cards. They have taken steps to prevent similar problems from recurring in the future, as they strictly adhere to their budget. (Tr. 82-84)

Applicant submitted a Letter of Recommendation from the president and chief executive officer (CEO) of the company for which he works. The CEO is aware of Applicant's financial problems and steps he is taking to resolve them. He noted that Applicant has "always displayed a high degree of integrity, responsibility, and ambition." (AE E) Applicant's 2009 Performance Appraisal notes an over-all good performance record. (AE G)

Applicant testified credibly and displayed remorse and embarrassment over his delinquent debts. He accepts full responsibility for the financial obligations and acknowledges his irresponsible spending. He is aware of the potential negative effect that delinquent debt may have on his employment. He has a solid understanding of his financial situation and budget.

### **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 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.

Directive ¶ E3.1.14 requires the Government to 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 and has the ultimate burden of persuasion to obtain a favorable security decision." 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."

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.

## **Analysis**

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

The security concern relating to the Financial Considerations guideline 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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) an inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant began accumulating a significant amount of delinquent debt between 2004 and December 2005, as a result of overspending. In early 2006, he started resolving the debt, some of which remains unresolved. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

- (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's financial problems arose between 2004 and December 2005, involved numerous creditors, were the result of overspending, and reflected poor

judgment at the time; thus, AG ¶ 20(a) cannot apply. Applicant's debts are attributable to overspending and financial mismanagement, which were conditions within his control. Hence, AG ¶ 20(b) has no application. In February 2006, he sought credit counseling and has been aggressively addressing the delinquent debts since, such that there are "indications that the problem is being resolved," warranting the application of AG ¶ 20(c). He has resolved and paid three debts, totaling \$52,273, and is accumulating money to resolve the final \$25,030 debt. His action, along with a budget that takes into account the delinquent debt, is evidence of a good-faith effort to "repay or otherwise resolve debts," and triggers the application of AG ¶ 20(d).

The record evidence does not support the application of AG ¶ 20(e) or AG ¶ 20(f).

### **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). They include the following:

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include an overall commonsense 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. Applicant is a 39-year-old man, who candidly admits that he and his wife spent more money than they earned, leading to the accumulation of significant debt by the end of 2005. In early 2006 (before the initiation of the security clearance process), he entered into a debt resolution program through which he has resolved \$57,273 of the \$82,303 delinquent debt. He will resolve the remaining \$25,303 in twelve to fourteen months. He acknowledged his financial obligations and the potential negative effect it can have on his employment. After listening to him and observing his demeanor, I find that it is unlikely that he will repeat his irresponsible financial behavior or fail to follow through on his current plan to resolve the remaining debt. He is committed to financial solvency.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under financial considerations.

### **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 through 1.d:   For Applicant

### **Conclusion**

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

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SHARI DAM  
Administrative Judge