



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



In the matter of: )  
)  
) ISCR Case No. 08-10574  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro Se*

June 8, 2009

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

On January 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 in writing on March 12, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on April 17, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an

opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 25, 2009. He responded with a letter dated May 12, 2009, and two attachments. Department Counsel did not object to his response. The letter and two attachments are marked Applicant Exhibits (AE) A through C, and admitted. The case was assigned to me on June 2, 2009.

### **Findings of Fact**

Applicant is a 25-year-old employee of a defense contractor. He served on active duty in the U.S. Navy from 2001 through 2004. He attended college from 2004 through 2006. He has never been married and has no children.<sup>1</sup>

Applicant incurred student loans to pay for his college education. He was employed by a company from May 2006 through February 2008. He maintained his student loan payments while he was employed. He notified his employer in February 2008 that he would be leaving the company in about a month to work with another company. His company decided to immediately end his employment. His SF 86 does not reflect that he ever worked for the company that was going to employ him. Applicant did not explain why he did not work for that company. He was unemployed from February 2008 until he obtained a job with his current employer in July 2008.<sup>2</sup>

When Applicant became unemployed in February 2008, he contacted the holder of his student loans. He told the creditor that he was unemployed and could not make the scheduled payments at that time. The company would not provide him with an alternate payment plan. He did not make his student loan payments while he was unemployed and the loans went into a collection status. He contacted the lender after he obtained his current job. He agreed to pay \$372 per month starting in September 2008. He went overseas for his job. He told the collection company handling the loans that he would maintain the \$372 monthly payments until he returned from overseas in February or March 2009. He would then pay the loans in full.<sup>3</sup>

The SOR alleges the two delinquent student loans, one for \$6,269 and the other for \$12,442. Applicant submitted documentation establishing that the \$6,269 loan was settled in full and the \$12,442 loan was paid in full. The record contains no other indications of any other financial problems.<sup>4</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition

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<sup>1</sup> Item 5. Information in this paragraph was obtained from Applicant's Questionnaire for National Security Positions (SF 86) dated July 28, 2008.

<sup>2</sup> Items 4-8; AE A-C.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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(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.

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 the 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 adverse 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. Two are potentially applicable in this case:

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

Applicant had two student loans that became delinquent. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant could not maintain the payments on his student loans when he became unemployed in February 2008. It is unclear why he did not start working with

the company where he planned to work after he gave notice to his employer. Without more information, I am unable to find that his unemployment was a circumstance that was largely beyond his control. He acted responsibly by making payment arrangements when he obtained his current employment. He made payments while he was overseas. After he returned from overseas he paid the larger loan in full and settled in full the smaller loan. He made a good-faith effort to repay his overdue creditors and his financial problem has been resolved. AG ¶¶ 20(c) and 20(d) are applicable.

### **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. I have incorporated my comments under Guideline F in my whole person analysis. Applicant's student loans became delinquent when he was unemployed. He is now employed and has paid or settled the student loans. There are no other issues of concern, financial or otherwise.

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 Financial Considerations security concerns.

### **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.b: For Applicant

## **Conclusion**

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

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Edward W. Loughran  
Administrative Judge