



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
-----, ----- ) ISCR Case No. 08-10893  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 31, 2009

**Decision**

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WHITE, David M., Administrative Judge:

Applicant owed more than \$28,000, in five delinquent credit card debts and one delinquent utility bill, before starting his present job. He has resolved all debts allocated to him in his recent divorce decree, and has sufficient means to resolve the three allocated to his former wife if she does not do so. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on June 2, 2008. On February 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 (DoD) for SORs issued after September 1,

2006. Applicant acknowledged receipt of the SOR on March 13, 2009. He answered the SOR in writing (AR) on March 26, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 20, 2009, and DOHA assigned the case to me on April 30, 2009.

DOHA issued a Notice of Hearing on June 1, 2009, setting the hearing for June 22, 2009. On June 11, 2009, I granted Applicant's request for a continuance until July 7, 2009, and DOHA issued an Amended Notice of Hearing reflecting the new date. I convened the hearing as scheduled on July 7, 2009. Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant's Exhibit (AE) A which was also admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 15, 2009.

### **Findings of Fact**

Applicant is a 35-year-old employee of a federal contractor, where he has worked for a year and a half as a performance enhancement specialist. In his answer to the SOR, he denied all but one of the allegations, which he admitted with an explanation. Applicant's admissions are incorporated into the following findings of fact.

Applicant was a national-level athlete until an injury during his sophomore year of college ended his ability to compete. After graduation from college, he attended graduate school and obtained a master's degree in sports psychology. In early 2004, he started a "peak performance counseling" business focusing on elite endurance athletes. He was also working as a salesman in a bicycle store at the time. He stopped working at the store in April 2005, and continued his consulting business until November 2006. He also worked on a university staff from February 2006 to November 2007, when he obtained his current position. (GE 1 at 6-16; Tr. at 33-36.)

Applicant and his former wife were married in August 2001. She worked as an interior designer until she was laid off from three different jobs in 2005 and 2006. With the collapse of the real estate market, that hit early and hard in the city where they lived, she was unable to find work. However, they continued spending more than Applicant was earning through use of their joint credit cards, resulting in the debts alleged in the SOR. They separated in February 2007, and filed for divorce which was finalized March 20, 2009. (AR at 1-3, 12-14.)

In the marital settlement agreement (MSA) approved by the court in its final decree, Applicant and his former wife were each assigned sole responsibility for some of their joint debts. Of those listed in the SOR, Applicant was responsible for the debts alleged in ¶¶ 1.c, 1.e, 1.f, and 1.g. (Note: the debts alleged in SOR ¶¶ 1.e and 1.f reflect a duplicate listing of the same debt to the original creditor and a collection agency.) He was also responsible for two credit card debts not listed in the SOR. On April 30, 2009, he made his final payment to resolve the last of all those debts after negotiating settlements with each of the creditors. (AR; AE A; Tr. at 42-47.)

The only remaining delinquent debts for which Applicant bears some liability are listed in SOR ¶¶ 1.a, 1.b, and 1.d. The court assigned responsibility for resolving these debts to Applicant's former wife through the MSA. He has contacted each of the creditors to notify them of this fact, and authorized them to deal directly with his former wife to arrange resolution. He has also given her all the account information and points of contact so she can deal with the creditors. She has not reported any progress to him, and he is not aware of her current employment or financial situation. The last he heard was on April 22, 2009, when she acknowledged the information and agreed to start addressing the debts. Applicant realizes that the MSA does not sever his contractual liability for the formerly joint debts to the creditors. He was advised by his attorneys, however, that he had to give his former wife a chance to fulfill her agreed obligations before he takes action to resolve them. The MSA contains a provision under which he would have to give her written notice seven days before making payment toward any of those debts, during which time she could object. If he does make the payments, she would then become liable to him for the amounts paid plus interest. (AE A at 16-17; AR, MSA at 8-9; Tr. at 47-49, 62-63, 81.)

Applicant has almost \$1,700 per month in surplus income after living expenses and payments toward his student loans. He has laid out a plan under which he can easily afford to resolve the three remaining delinquent debts if his former wife does not, and intends to follow that plan if necessary. He informed his supervisors about his financial situation when first hired, and has kept them informed as he repaid each of his obligations. (AE A at 17-19; Tr. at 41, 49-51, 82-85.)

Applicant's former and present supervisors (one a retired Army colonel) wrote extremely complimentary letters describing his good character, responsibility, and professionalism. His work performance has been exemplary, resulting in several raises and awards and his selection as interim site manager. He has made substantial contributions to Army mission accomplishment. The retired colonel selected him to serve as his replacement as the site manager in charge of their program at a major Army facility. The other eight site managers under this contract around the country all have between 15-20 years experience in Army leadership positions. (AE A at 18-19; Tr. at 35-41.)

Applicant exhibited a thorough understanding of his financial situation and a firm commitment to follow through, if necessary and with his attorneys' advice, to resolve the three remaining credit card debts for which his former wife assumed primary responsibility. He is well educated, is dedicated to performing his job with excellence, and is now financially in a comfortable position to repay those debts if his former wife does not. I found him to be credible and sincere in all respects.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider and apply 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 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2, describing the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶¶ 2(a) and (c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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: "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 in 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "Any determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel asserted the applicability of two of these potentially disqualifying conditions: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." (Tr. at 76.) Before obtaining his current job, Applicant and his wife suffered through a period, in 2005 and 2006, when his earnings were insufficient to fund all family expenses after she involuntarily lost three different jobs and could not find work. As a result, they accumulated more than \$28,000 in SOR-listed delinquent debts. Their March 2009 divorce decree and MSA allocated primary responsibility for three of these debts (totaling about \$22,000 as alleged in the SOR) to his wife. With his substantially improved income from his current job, Applicant has fully resolved all his other delinquent and credit card debts over the past year. He provided his former wife with all the information and authority necessary for her to meet her obligation to resolve the remaining three debts. Applicant has both the means and the intention to promptly resolve them if she does not do so within a reasonable period. Thus, while his financial inability to pay some debts two years ago supported security concerns under AG ¶ 19(a), his demonstrated present ability and willingness to resolve those debts no longer supports such concerns. He is under no financial duress at present, so is not at risk of having to engage in illegal acts to generate funds. The evidence established a relatively brief and minor history of not meeting some financial obligations that supports security concerns under AG ¶ 19(c), however. Whether this history indicates poor self-control, lack of judgment, unwillingness to abide by rules and regulations, or otherwise raises questions about his reliability, trustworthiness, and ability to protect classified information must be determined.

AG ¶ 20 provides conditions that could mitigate security concerns arising from financial considerations. The potentially applicable mitigating conditions are:

(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; and

(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.

AG ¶¶ 20(a) and (b) provide mitigation because Applicant's delinquencies arose while he was trying to start his own consulting business and his wife involuntarily lost her employment and ability to contribute toward family living expenses. Applicant acted responsibly, and demonstrated his current reliability and trustworthiness, by ending the marriage and obtaining a far-better-paying job to pay off his debts. Applicant has fully repaid all formerly delinquent and credit card debts for which he assumed responsibility under his MSA decree, and is following his attorneys' advice concerning the timing of his intervention to pay those debts for which his ex-wife is primarily responsible. Substantial mitigation is accordingly established under AG ¶¶ 20(c) and (d). Finally, Applicant did not dispute the underlying legitimacy of the three remaining credit card debts, but did demonstrate his ex-wife's primary obligation to repay them and hold him harmless. By analogy, this supports partial application of AG ¶ 20(e) in mitigation of his decision to delay resolution of these debts with his own funds until she has time to demonstrate her inability or unwillingness to fulfill her agreed obligations.

### **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 relevant 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 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's conduct of security concern involves a period of several years when he and his former wife struggled financially while he tried to start a consulting business and she lost her job several times. Applicant completely removed himself from those circumstances, obtained a better-paying job, and has resolved all the debts for which he was primarily responsible. He is willing and able to resolve the three remaining debts for which his ex-wife assumed primary responsibility should she fail to do so within a reasonable period.

Applicant is fully mature, responsible, and has impressed his supervisors to the point they have elevated him to a responsible management position normally requiring significantly more experience. His financial circumstances now permit him substantial savings of surplus income each month, and there is minimal potential for any pressure, coercion, or duress from his three remaining debts. This improved income, and his demonstrated understanding of his budget and his need to fulfill financial obligations make continuation or recurrence of financial problems very unlikely. "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

On balance, Applicant presented sufficient evidence to fully mitigate security concerns arising from his relatively brief and minor history of failure to meet some financial obligations, and his former inability to pay some debts. The record evidence supports complete confidence as to his present eligibility and suitability for a security clearance. For all these reasons, Applicant has mitigated security concerns related to his 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
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

## **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.

DAVID M. WHITE  
Administrative Judge