



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-11317  
)  
)  
Applicant for Security Clearance )

For Government Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

November 23, 2010

**Decision**

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On June 23, 2008, Applicant submitted a Questionnaire for Investigations Processing Investigation Request (e-QIP). On May 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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 Adjudicative Guidelines effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 13, 2009, and waived his right to a hearing before an administrative judge. On July 27, 2010, he withdrew his waiver and requested a hearing. (Tr. 8.) On August 9, 2010, DOHA assigned the case to me. On

September 8, 2010, DOHA issued a Notice of Hearing, setting the case for September 21, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) A through U into evidence without objection. The record remained open until October 15, 2010, in order to provide him time to submit additional documents. On September 27, 2010, Applicant transmitted a letter and another exhibit. I marked the transmittal letter as AE V and the exhibit as AE W and admitted them into the record without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on September 28, 2010.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a, 1.c, 1.f, 1.k, and 1.l. He denied all other allegations. His admissions are incorporated herein.

Applicant is 48 years old. In December 1980, Applicant enlisted in the U.S. Navy. In February 2001, he honorably retired as a Chief Petty Officer (E-7). He was an aviation maintenance control chief. He received eight Navy Achievement Medals, a Navy Expedition Medal, and an Enlisted Aviation Warfare Specialist. He held security clearances while in the Navy.

After leaving the Navy, Applicant worked for a private company and within four years became the Director of Facilities. He remained there for seven years and then worked in landscaping for a short time. In July 2008, he started his current position as a computer trainer and technician with a federal contractor that provides support for the armed forces. (GE 1.)

Applicant married his wife in March 1983. They have three children, ages 24, 21, and 17. He has been the main source of family income over the past 25 years. In June 2007, his wife began using drugs and gambling, which lead to financial problems and the initiation of a divorce. Applicant was unaware of the extent of his delinquent debt situation or accounts until he was interviewed by the government investigator in September 2008 and reviewed his credit report. His wife managed the household finances up to that time. (Tr. 32.) He filed for divorce in June 2009 and anticipates finalizing it soon. (Tr. 32-33.)

Based on credit bureau reports from 2008 and 2009, the SOR alleged that Applicant accumulated 15 delinquent debts between 2007 and early 2009 totaling \$39,069. Those debts were owed to utility companies, credit card companies, department stores, and for a car loan. The status of each debt is set out in AE U and documented by Applicant's exhibits. A summary of the debts is as follows:

1. Nine debts, totaling \$20,343 are paid. They are listed in SOR ¶¶ 1.a, 1.b, 1.f, 1.h, 1.i, 1.l, 1.m, 1.n, and 1.o. (AE I, J, N, P, Q, R, J, and S.)

2. Applicant started making monthly payments of \$100 on two debts listed in SOR ¶¶ 1.c and 1.g. The total indebtedness is \$1,918. (Tr. 36, 40; AE K, O.)
3. Applicant is attempting to resolve the debts listed in SOR ¶¶ 1.d and 1.k. Those two debts total \$5,429. He has contacted the creditors on more than one occasion, but been unsuccessful in reaching them. He is willing to pay the debts, which he acknowledged as his obligations. (Tr. 37, 46.)
4. Applicant's wife is responsible for the delinquent debt listed in SOR ¶ 1.e for \$1,271. He believes it will be included in their divorce agreement. (Tr. 38.)
5. Applicant successfully disputed the debt listed in SOR ¶ 1.j for \$10,112 because it is his wife's debt and not his. It will be removed from his credit report. (Tr. 44-46; AE W.)

Applicant submitted a budget. His net monthly income is \$6,690. His expenses are \$5,013, including payments on his two repayment plans, leaving \$1,677 at the end of the month for other items. He intends to continue making the payments on the two delinquent debts because he is "trying to clear my credit up and trying to get the divorce behind me and move on [as] my intentions are to climb the ladder very quickly with [his current employer]." (Tr. 56.) He does not intend to have financial problems in the future. (Tr. 60.)

Applicant submitted three letters of recommendation. His senior program manager, a retired captain in the Navy, has known Applicant for three years. He referred to Applicant as his "top" associate engineer and detailed his responsibilities, which involve projects related to the nation's security. He strongly recommends him for a security clearance. (Tr. 67; AE A.) His parents also wrote a letter. They believe that Applicant's "ultimate destiny [is] protecting our Nations' homeland from terrorist activity." (AE B.) A friend also wrote a supportive letter. (AE C.)

Applicant testified candidly and credibly. Since learning of his debts, he has taken steps to resolve them. He is serious about achieving financial solvency and improving his credit standing. If he receives a security clearance, he may be activated and deployed to the Middle East to work on government bases. (Tr. 57.) "This secret clearance means a lot to me and supporting my family and ultimately protecting my country, which is very near and dear to my heart. . . I've always been concerned about our nation and our country." (Tr. 56.)

### **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 (AG) list potentially disqualifying 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 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.

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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 to obtaining a favorable clearance 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 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."

## **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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Applicant began accumulating delinquent debt in 2007, which he was unaware of until interviewed by a government investigator in September 2008. Some of the debt remains unresolved. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial 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.

AG ¶ 20(a) has some application. Applicant's financial problems arose between 2007 and early 2009 while he was married to his wife who began gambling and abusing illegal drugs, unbeknownst to him. Those unusual circumstances are unlikely to recur as he is in the process of finalizing a divorce. They do not cast doubt on his current reliability, trustworthiness, or good judgment. Similarly, those circumstances were beyond his control. Once he learned of the debts, he began to slowly but responsibly resolve them, warranting the application of AG ¶ 20(b).

Applicant presented sufficient evidence to trigger the application of AG ¶ 20(c) and AG ¶ 20(d). Applicant did not present any evidence that he obtained credit counseling, but he did present evidence that his financial situation is under control, based on the actions he has taken to establish a workable budget and resolve his delinquent debts, including implementing a repayment plan for two debts. He paid nine of the 15 delinquent debts and is trying to resolve two debts. He believes one debt will be assumed by his wife when their divorce decree is entered.

Applicant presented evidence that he successfully disputed one debt that is his wife's, resulting in its deletion from his credit report and triggering the application of AG ¶ 20(e). There is no evidence to support the application of 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 relevant 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.

Under 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 48-year-old man, who retired from the Navy after more than 20 years of honorable service, during which time he held a security clearance. After leaving military service, he began employment with a federal contractor and continues to support the armed forces' mission in the Middle East. Applicant began accumulating delinquent debt in 2007, primarily due to his wife's

illegal drug use and gambling habits. Since learning of the problems, he systematically addressed and resolved about \$33,000 of the \$39,000 of the SOR-listed debt. Applicant paid nine of the 15 SOR-listed debts, successfully disputed one debt, is paying two debts through a repayment plan, and is willing to pay the two debts that remain unresolved and total \$5,400. One debt will be included in his divorce. At this time, he has established a credible track record of resolving the delinquent debts. His candor regarding his financial situation and proactive efforts to achieve resolution of the debts has eliminated any ongoing potential for pressure, coercion, exploitation, or duress.

Given his budget and awareness of the negative effect that delinquent debts may potentially have on his employment, similar financial problems are unlikely to recur. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has ‘. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>1</sup>

Overall, the record evidence creates substantial confidence as to Applicant’s eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from his financial considerations.

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<sup>1</sup>ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## **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.o:              For Applicant

## **Conclusion**

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

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SHARI DAM  
Administrative Judge