



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-11951
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

November 19, 2010

**Decision**

HOWE, Philip S., Administrative Judge:

On August 19, 2008, Applicant submitted his Security Clearance Application (SF 86). On April 23, 2010, 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 7, 2010. He answered the SOR in writing on May 24, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 16, 2010, and I received the case assignment on the same day. DOHA issued a Notice of Hearing on June 18, 2010, and I convened the hearing as scheduled on June 25, 2010. The Government

offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A and B, without objection. DOHA received the transcript of the hearing (Tr.) on July 7, 2010. I granted Applicant's request to keep the record open until August 3, 2010, to submit additional matters. On August 3, 2010, he submitted Exhibit C, without objection. Applicant then requested permission to submit another three exhibits. Department Counsel had no objection, so I granted the request to submit Exhibits D to F on August 30, 2010. The record closed on August 31, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

## **Procedural and Evidentiary Rulings**

### **Notice**

At the hearing, Applicant indicated he received the hearing notice on June 18, 2010, by email, within the 15 days required under the Directive. (Tr. 11) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15-days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. His email is marked as an exhibit. (Tr. 11, 12; Administrative Exhibit)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 32 years old, married, and has two children. He works for a defense contractor in the aviation business. He served in the U.S. Army from 1996 to 1999. He had a top secret security clearance in the Army. After separating from the Army, he worked in several jobs until he obtained a degree in aviation maintenance. He used student loans to finance that education. Applicant admits he spent money beyond his ability to repay it during the 2000 to 2005 period. (Tr. 20-26, 32-50; Exhibits 1-5)

Applicant owes nine delinquent debts that are listed in the SOR. Those debts total \$24,263. He also owes \$26,181 on his student loans. He pays \$150 monthly on his student loans and they are in good standing. He has paid the interest on the student loans regularly for the past three years. (Tr. 41-43, 50-59; Exhibits 2-5)

Applicant owes \$123 to a medical provider for treatment to his son (Para. 1.a). Applicant will pay that debt as soon as he has money to do so. This debt is not yet resolved. (Tr. 55, 56, 76; Exhibits 2-5)

A telephone company has a \$231 debt from 2004 that Applicant owes (Para. 1.b). Applicant has not yet contacted that creditor. He intends to pay the debt when funds are available. This debt is not yet resolved. (Tr. 56, 57; Exhibits 2-5)

Applicant owes a satellite television company \$655 for service when he lived in another state (Para. 1.c). He had a roommate who was suppose to pay the bill but did not. Applicant is attempting to obtain payment from the former roommate. Applicant has not contacted the creditor to arrange payment. This debt is not yet resolved. (Tr. 57, 58; Exhibits 2-5)

Applicant moved from one apartment to another and the former landlord is charging him an extra month's rent of \$1,254 including fees in 2007 (Para. 1.d). Applicant contacted the creditor to dispute the amount owed five months ago They could not reach an agreement, so he will work to repay the amount owed. This debt is not yet resolved. (Tr. 57, 58; Exhibits 2-5)

A cellular telephone company seeks \$496 from Applicant for service provided five years ago (Para. 1.e). He will repay it, but it has not been resolved yet. (Tr. 59; Exhibits 2-5)

A gym membership debt dates to 2004 (Para. 1.f). Applicant joined a gym and used it once. He did not cancel his membership properly and the company continued to bill him for his monthly fee and penalties. The debt is now \$1,593. Applicant wants to settle the debt for \$850. No resolution has yet occurred. (Tr. 22, 59; Exhibits 2-5, F)

In 2005 an auto accident occurred in which Applicant suffered injuries (Para. 1.g). Applicant did not have medical insurance at the time. He recalls paying the \$1,531 medical bill but cannot find documents to prove his assertion. If he cannot find the documents, he will repay the debt again. This debt may be resolved but currently it shows on credit reports as due and owing. (Tr. 60; Exhibits 2-5)

The debt for \$801 owed to a bank was settled for \$250 and paid on August 31, 2010 (Para. 1.h). This debt is resolved. (Tr. 22; Exhibits 2-5, D, E)

The final debt owed is to a bank on a car loan (Para. 1.i). The amount owed from 2005 was \$17,579. The vehicle was repossessed. Applicant settled this debt on July 30, 2010, for \$4,000. The creditor sent Applicant two letters as evidence the debt is satisfied by payment of the settlement. This debt is resolved. (Tr. 22, 23, 50, 51; Exhibits 2-5, B, C)

Applicant is the sole wage earner in his family. His family's welfare and prosperity is important to him, hence the need to repay these debts and clear his credit record of these overdue financial obligations. In addition to paying his delinquent debts, he is also paying his wife's credit card debts incurred before they were married. Applicant has one company credit card on which there is no balance owed. He is allowed to use that card when he travels on business. He and his wife do not have any other credit cards. Applicant moved to a less-expensive apartment in the past year to reduce his rent from \$1,400 to \$950. The personal financial statement in Exhibit 4 is otherwise the same now as July 2009 when completed. Applicant has not incurred any new debt except for his car on which he made a \$3,000 deposit on a \$12,000 purchase price. Applicant does

not have any money in his checking or savings accounts on a continuing basis. Applicant has not received any financial counseling. (Tr. 30, 63, 70-77)

Applicant's supervisor wrote a character letter on his behalf. He stated Applicant has an excellent work ethic and is very professional in his daily job performance. Applicant knows his duties and aircraft extremely well. The supervisor recommends Applicant receive his security clearance. (Exhibit A)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 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.

Under 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 an applicant or proven by Department Counsel, and has the ultimate burden of persuasion as 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.” 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts in this case:

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

Applicant accumulated \$24,263 in delinquent debt from 2004 to the present time that he did not begin resolving until 2009 and 2010. Applicant has nine delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be 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;

(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.

Seven of the debts are on-going and unpaid. The other two were unpaid until July and August 2010. Now they are settled and resolved. Therefore, the delinquencies are recent and not infrequent. AG ¶ 20 (a) does not apply.

AG ¶ 20 (b) does not apply because Applicant spent more money than he could repay on the earnings he made from 2000 to 2005. He knew what he was doing and admitted at the hearing he spent irresponsibly.

AG ¶ 20 (c) does not apply because Applicant did not obtain any financial counseling.

Applicant focused his efforts on starting a regular process of paying his debts. Based on his current progress in repaying his delinquent debts, it is likely Applicant will have the remaining seven debts, currently unresolved, paid within the near future. He intends to pay them. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts demonstrated by his expressed commitment and his current progress in repaying the two largest debts and maintaining three years of monthly payments on his student loans. He may also have repaid the \$1,531 medical debt from 2005 but must find documentary proof he paid it. His frank and forthright discussion of his past financial errors, coupled with his current efforts to resolve his debts, shows Applicant is credible in his commitment about his future repayment plans. He testified his family is important to him and he wants to provide a better life for them. Applicant reduced his living costs substantially and is well-regarded at his work place. All these attributes show he will adhere to his repayment plan to resolve the delinquent debts so he can maintain his employment.

Applicant sought to dispute the rent debt and the satellite television debt, but decided not to do so. AG ¶ 20 (e) does not apply because there is no ongoing or valid dispute in progress.

Finally, there is no affluence mentioned as a source of payment. AG ¶ 20 (f) does not apply.

## 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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 is a young man who spent more than he could afford to repay while he was single. He is now married and fathered two children in the past several years.

Applicant also obtained a responsible job in the aviation business, at which he is talented and enjoys. He now recognizes his financial obligations must be paid if he is to provide a decent life for his family, including the future purchase of a house. He has not incurred new delinquent debt since 2007 when he met his wife. He does not have credit cards. His only debt is for his current car on which he owes less than \$10,000. He is making those payments. His income is directed toward supporting his family and repaying his debts as listed in the SOR. He is current on his student loan payments.

It is obvious Applicant has a mature understanding of his financial situation and what he needs to do to resolve the past delinquencies. He has resolved over \$17,000 of debt through settlement agreements. The remaining seven debts total \$5,760. This amount can be paid within a relatively short time period with the continued diligence Applicant has applied to date in resolving the debts.

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations., "[a]n applicant is not required to show that [he] has completely paid of [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement

