



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



In the matter of: )  
)  
) ISCR Case No. 08-12008  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

August 28, 2009

**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 18, 2008, Applicant submitted a Questionnaire for Investigations Processing (eQIP). On April 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to 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 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.

On April 27, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On May 27, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items and mailed Applicant a complete copy the following day. Applicant received the FORM on June 3, 2009, and had 30 days from its receipt to file objections and submit additional information. On June 24, 2009, Applicant submitted exhibits to which Department Counsel had no objection. On July 24, 2009, DOHA assigned the case to me. After receiving the file, I marked Applicant's Exhibits as AE 1 through 15 and entered them into the record.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations contained in Paragraph 1.a and denied those contained in Paragraphs 1.b through 1.e and offered explanations.

Applicant is 49 years old and married to his second wife. He has two children and two-step children with his former wife from whom he was divorced in 1999. Since September 2004, he has worked as a technician for a federal contractor. Before this position, he worked in private industry from January 2003 to September 2004. He was unemployed from September 2002 to January 2003. (Item 4)

In his Answer, Applicant attributed his financial difficulties to a difficult divorce and subsequent custody suit, his relocation to another area to care for his dying mother, and a period of unemployment and underemployment. (Item 2)

Applicant and his wife sought credit counseling in February 2004 and entered into an agreement with a debt management company to resolve seven debts, a couple which are listed in the SOR. (AE 6) He later sought credit counseling through another service which recommended that he file bankruptcy, which he did not want to do. (AE 2)

Based on a credit bureau reports (CBR), dated July 2008, February 2009, and May 2009, the SOR alleged five delinquent debts, totaling about \$41,000, which began accruing in 2003. The status of the debts is as follows:

1. SOR ¶ 1.a alleges a \$6,035 debt owed to a credit card company that purchased the debt from another credit card company. In June 2009, Applicant negotiated a repayment plan. He will make \$208 monthly payments beginning at the end of July 2009. (AE 2 )
2. SOR ¶ 1.b alleges a \$12,870 debt owed to a company that purchased the debt from a credit card company. This debt was resolved for \$7,863 and paid in August 2008. (AE 2, 8, 9, 10)
3. SOR ¶ 1.c alleges a \$1,679 debt owed to a credit card company that purchased it from another credit card company. The original balance was

\$4,198, and Applicant settled the debt for \$2,518 on January 3, 2006. The difference of \$1,679 was erroneously reported to the CBR and has been removed from Applicant's most recent June 2009 CBR. This debt is resolved. (AE 2, 3, 11, 12)

4. SOR ¶ 1.d alleges a \$12,964 debt owed to a credit card company. In June 2006, Applicant negotiated a \$10,000 settlement of the debt and agreed to make \$100 monthly payments. Per that agreement, the balance is now \$5,700. This debt is resolved by an installment payment program. (AE 2, 13, 14, 15)
5. SOR ¶ 1.e alleges a \$7,436 debt owed to the same creditor listed in ¶ 1.b above. It is being resolved through payments beginning in July 2009. (AE 2, 3)

In summary, Applicant resolved the five debts. He paid two of them and is making monthly payments on the \$11,700 outstanding balance for the remaining two debts, one of which is listed twice on the SOR.

### **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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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. According to 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 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 that an 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 adverse to an applicant 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concerns relating to the guideline for Financial Considerations are 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 sets forth nine conditions that could raise security concerns, two of which are potentially disqualifying in this case:

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

Based on the CBRs and his statements, Applicant began accumulating a significant amount of debt in 2003 that he did not begin to resolve until mid-2005, some of which remains outstanding today. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 20 sets forth six conditions that could mitigate security concerns arising from financial difficulties, three of which may be applicable:

(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.

Beginning in 2003, Applicant encountered circumstances that were beyond his control and resulted in a significant amount of debt, viz., a divorce, unemployment and underemployment, and care giving for his mother. There is evidence that in 2004 he sought credit counseling and established a repayment plan for some creditors listed on the SOR. Since then, he has paid two debts, and the other three (one of which is a duplicate) are being resolved and paid by installment payment plans. He demonstrated a good-faith effort to pay or resolve the debts and there is a clear indication that the problems are under control. His actions are sufficient to trigger the application of AG ¶ 20(b), AG ¶ 20(c) and AG ¶ 20(d).

### **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.

According to 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 49-year-old man, who encountered a series of personal and economic setbacks beginning in 2003. Beginning in 2004, he has taken significant steps to address the resulting delinquent debt and manage his finances, demonstrating reliability and good judgment. The SOR listed approximately \$41,000 in delinquent debt, of which he has resolved about \$30,000. Based on his awareness of the effect that future financial delinquencies could have on his employment, I do not believe similar problems will recur and that he will make his installment payments as agreed. There is no other adverse information in the record that raises a security concern. Overall, the record evidence leaves me without doubts 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 to 1.e: 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