



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-00136
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 29, 2010

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

Applicant executed and signed his Security Clearance Application (SF 86) on August 27, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on July 20, 2009. 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 acknowledged receipt of the SOR on July 28, 2009. He answered the SOR in writing on August 25, 2009, and requested a hearing before an administrative

judge. DOHA received the request. Department Counsel was prepared to proceed on September 18, 2009, and I received the case assignment on October 8, 2009. DOHA issued a notice of hearing on October 19, 2009, and I convened the hearing as scheduled on November 4, 2009. The government offered six exhibits (GE) 1 through 6, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted 27 exhibits (AE) A through AA, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on November 12, 2009. I held the record open until December 4, 2009, for Applicant to submit additional matters. He timely submitted AE BB through AE SS, without objection. The record closed on December 4, 2009.

## **Procedural and Evidentiary Rulings**

### **Notice**

Applicant received the hearing notice on October 26, 2009. (Tr. 12.) 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. (*Id.*)

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant, who is 51 years old, works as a tempest engineer for a Department of Defense contractor. Since 1991, Applicant has worked as an engineer for his current employer, except for two periods of employment elsewhere. In April 2005, Applicant left his employer to work for a start-up company. One year later, after the start-up company position ended, he returned to his employer. In 2008, Applicant again departed his job with his employer to establish his own business, which ended within the year. He returned to work with his employer in 2009.<sup>1</sup>

Applicant graduated from high school. He received training in the military and on-the-job. He took some college courses, but does not have a degree. Applicant and his first wife married and divorced. He married his second wife in 1982 and they divorced in 2000. He has two children, a 24-year-old daughter and a 22-year-old son. Applicant is not married.<sup>2</sup>

Applicant described his divorce from his second wife as “messy”. They separated in 1998 and battled over many issues in court. The court decided on joint custody of their children, then awarded him primary physical custody of their two children, who

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<sup>1</sup>GE 1; Tr. 19, 26, 36-37.

<sup>2</sup>GE 1; AE V; Tr. 18-21.

were 10 and 12 at the time. The court also directed his wife to pay Applicant over \$500 a month in child support, which she has not paid. His former wife owes him more than \$28,000 in back child support. He does not anticipate receiving this money. He accumulated \$35,000 in attorney fees during his divorce. He exhausted his savings and 401k account to pay some of these fees. He continues to pay his attorney \$100 a month, with a remaining balance of \$2,700 as of October 1, 2009.<sup>3</sup>

In 2004, a hurricane damaged Applicant's home. His damages totaled \$40,000 and his insurance paid \$24,000. He obtained a loan for \$10,000 to help pay the repair costs. He pays \$82 a month on this loan. He has been behind occasionally on his payments. When he made his payment in October 2009, his loan became current. He indicated that the house damage and subsequent repairs had little negative impact on his bills, but did effect his cash flow and budgeting.<sup>4</sup>

In 2007, he and his first wife decided to live together. She moved into his house with her teenage daughter. He provided financial support, as she did not work. She did receive some child support for her daughter. In 2008, they moved 200 miles from his home. He did not rent his house after they moved. Instead, he placed his house for sale with an asking price of \$135,000, which was more than his mortgage balance of \$98,000. He anticipated paying his debts with the money from the sale of his house. His house never sold.<sup>5</sup> In 2008, he paid his mortgage and utilities on his house as well as the apartment rent in his new location, for a total monthly expense of more than \$2,600 a month. He and his first wife ended their relationship in early 2009, and he moved back into his house. She died a few months after their relationship ended. He incurred some unanticipated expenses related to her death in 2009.<sup>6</sup>

In 1994, Applicant and his second wife filed for bankruptcy. She managed the household finances and he did not pay attention to her fiscal management until the finances were out of control. Prior to filing bankruptcy, he has experienced job changes which impacted his income negatively. The court discharged their debts under Chapter 7 of the bankruptcy code in 1994. From 1994 through 1998, Applicant earned between \$59,900 and \$67,500 a year. In 1999, his earnings dropped to \$52,800. He slowly increased his earnings each year through 2004, a year he earned \$67,700. In 2005, he worked for a started-up company, earning \$25,000 in income. He returned to his former employer in 2006, earning \$68,000 that year. His income continues to increase. In 2007 and 2008 he earned \$118,000 including bonuses.<sup>7</sup>

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<sup>3</sup>AE S; AE V; Tr. 18-19.

<sup>4</sup>GE 5; Tr. 19-10, 54-56, 82-84.

<sup>5</sup>Applicant received two offers on his house: one for \$50,000 and one for \$80,000. Since the offers were lower than his mortgage, he did not accept either. Tr. 57-58.

<sup>6</sup>GE 1; Tr. 20-22, 57, 74-75.

<sup>7</sup>AE A; AE Y; AE Z; AE AA; Tr. 19, 72.

Applicant currently earns \$1,923 a week in gross pay and \$1,408 a week in net pay. His net monthly income averages \$5,632 (based on four paychecks).<sup>8</sup> His monthly expenses total \$3,350.<sup>9</sup> In addition to his monthly expenses, Applicant pays \$1,216 a month on his past due debts, his attorney fee, and house repair loan. His remaining income each month is approximately \$1,000 which he uses to pay the entire bill each month on his one credit card and to pay unanticipated expenses.<sup>10</sup>

After reviewing the credit report dated September 3, 2008, July 8, 2009, and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:<sup>11</sup>

<b>SOR ¶</b>	<b>Type of Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	1994 Chapter 7 Bankruptcy	\$47,554	Discharged	AE A; Tr. 19
1.b	Medical bill	\$ 237	Paid	AE B; Tr. 23-24.
1.c	Medical bill	\$ 80	Paid	AE C; AE NN; Tr. 25
1.d	Medical bill	\$ 340	Paid	AE C; AE OO; Tr. 27-29. <sup>12</sup>
1.e	Credit card	\$ 5,939	Payment plan, paid \$900 as of 11/1/09, paying \$150 a month	AE E; AE PP; Tr. 29
1.f	Credit card	\$ 3,847	Payment plan, paid \$1,000 as of 11/1/09, paying \$100 a month	AE F; AE QQ; Tr. 32

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<sup>8</sup>Because Applicant is paid weekly, four months a year he receives five paychecks, increasing his net income for the four months by \$1,408. His monthly expenses remain constant.

<sup>9</sup>Applicant prepared an income and expense affidavit using a family court affidavit. His gross monthly income is based on receiving 4 and 1/3 paychecks, not four. His total monthly expenses of \$3790 include \$440 for entertainment, vacation, sports, and hobbies. These expenses are optional and not included in the monthly expense shown. AE AA.

<sup>10</sup>GE 6; AE AA; Tr. 70, 75-78, 85-86.

<sup>11</sup>GE 2; GE 3.

<sup>12</sup>Appellant paid his required \$150 co-pay on the date he received the medical services. He argued with the insurance company for months over the payment of the remaining balance. Tr. 27-29.

1.g	Credit card	\$ 2,303	Payment plan, paid \$600 as of 11/1/09, paying \$75 a month	AE G; AE RR; Tr. 33
1.h	Credit card	\$ 1,779	Payment plan, paid \$150 as of 11/1/09; paying \$50 a month	AE H; AE SS; Tr. 38-39
1.i	Credit card debt	\$ 890	Paid	AE I; AE DD; Tr. 39-40
1.j	Credit card	\$ 1,843	Payment plan, paid \$450 as of 11/1/09, paying \$75 twice a month	AE J; AE EE; Tr. 40-41
1.k	Credit card	\$ 4,401	Payment plan, paying \$157 a month for 3 years beginning October 22, 2009	AE K; AE FF; Tr. 44
1.l	Store account	\$ 601	Paid	AE L; AE GG; Tr. 45-46
1.m	Store account	\$ 649	Paid	AE M; AE HH; Tr. 46-47
1.n	Store account	\$ 653	Paid	AE N; AE II; Tr. 47-49
1.o	Credit card	\$ 749	Paid	AEO; AE JJ; Tr. 49-40
1.p	Credit card	\$ 878	Payment plan - \$118 a month for 6 months; 3 payments made as of November 1, 2009	AE P; AE KK; Tr. 50-51
1.q	Credit card	\$ 999	Payment plan, paying \$134 for six months; 3 payments made as of November 1, 2009	AE Q; AE LL; Tr. 51-52
1.r	Telephone bill	\$ 269	Paid	AE R; AE MM; Tr. 52

In late 2008, attorneys for the creditors listed in SOR allegations 1.e through 1.h instituted civil actions against Applicant for payment of his debts. In each case, Applicant negotiated a payment plan with the attorney or through the court mediation process. He signed his first agreement on December 3, 2008 and his last agreement on

June 26, 2009. He reached these agreements three to six months before the SOR was issued and has complied with the payment plans. Applicant paid two debts not listed in the SOR in August and September 2009.<sup>13</sup>

When Applicant filed his federal tax return for 2008 in July 2009, he owed an additional \$1,188 in federal taxes over and above the amount of taxes being withheld from his pay. He reached an agreement with the Internal Revenue Service to pay \$50 a month on his tax balance. He made his first payment in September 2009.<sup>14</sup>

Most of the debts in the SOR became delinquent in late 2006 or early 2007. Applicant used his credit cards to pay regular bills in 2005, when he worked for the start-up company. For three months during this employment, he did not receive income. Despite earning income in 2006 comparable to his earnings in 2004, Applicant could not pay all his credit card debts. Applicant currently has one credit card, which he pays in full each month. He is now “living on a cash basis and has done pretty well.” He does not plan to incur future debt and would like to sell his house in the future. His son and daughter-in-law started living with him in April 2009. His son is a full-time student. His son and daughter-in-law had jobs in April 2009, but both later lost their jobs. His daughter-in-law obtained a new job just prior to the hearing.<sup>15</sup>

Six managers, co-workers, or friends wrote letters of recommendation on behalf of Applicant. All agree that he is trustworthy and recommend him for a clearance. They describe him as an expert in a highly specialized field of engineering. They praise his work ethic and his ability to work with his co-workers and management. Applicant listed his debts on his security clearance application.<sup>16</sup>

## **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 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 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

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<sup>13</sup>AE E; AE F; AE G; AE H; AE W; AW X; AE PP; AE QQ; AE RR; AE SS; Tr. 29-36.

<sup>14</sup>GE 4; AE Z; Tr. 78-80.

<sup>15</sup>Tr. 35-36, 76-77, 87-88.

<sup>16</sup>GE 1; AE U.

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 applicant or proven by Department Counsel. . . .” An 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 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 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant delinquent debt and was unable to pay these obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s financial problems are longstanding. His financial problems did not occur under unusual circumstances. This mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s divorce from his second wife was fought through the court system, resulting in significant attorney fees for him. He depleted his savings and 401k to pay these fees, but this money did not pay his entire legal bill. He continues to pay his debt, nearly 10 years after his divorce. His house was damaged in a 2004 hurricane and insurance paid 60% of the damages. He borrowed money to pay the remaining repair cost. He continues to pay this debt, although he has been late with his payments. In 2005, he changed jobs, taking a new job he thought had promise, Instead, the employer lacked funds to pay him, causing a loss of more than \$40,000, or more than 60% in income for the year 2005. Applicant had little choice about what he could do in these circumstances. He used his credit cards to pay normal expenses when he did not have income. He paid the bills he could pay, including his attorney and the repair loan. This mitigating condition is partially applicable.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant has not received financial counseling. However, he has taken control of his finances and his past debts. He paid nine small debts listed in the SOR and he has payments plans in place for the eight remaining SOR debts. Two payment plans will be completed by March 1, 2010. In addition, Applicant developed a payment plan with the IRS, as soon as he received notice from the IRS about his known tax deficit. He pays his other bills as required. Applicant’s financial problems are under control, and his past debts are paid or being resolved through payment plans.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant did not initiate a good-faith effort to repay his bills. He developed four payment plans when



presented with court action. He paid his small bills or developed repayment plans for three other debts after he received the SOR. I conclude this mitigating condition does not apply.<sup>17</sup>

### **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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began during his second marriage. He and his second wife filed a Chapter 7 bankruptcy petition in 1994 when their debts became unmanageable following income loss and poor fiscal management. The court discharged their debts on July 11, 1994. When he and his second wife separated and divorced, Applicant's financial problems continued as he provided sole support for his children and incurred significant attorney fees to end his marriage. A hurricane and underemployment created new financial issues for Applicant. He paid his bills for a time, but in late 2006 he began to fall behind. He has not clearly explained how this happened. However, when his income was reduced by more than 60% in 2005, his ability to pay his living expenses

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<sup>17</sup>AG ¶¶ 20(e) and 20(f) does not apply in this case.

was severely impacted. Once he returned to work at a decent salary, he could pay his regular expenses, but not all his past debts too. The loss of significant income creates financial problems which takes many months or years to resolve.

In 2007, Applicant and his first wife decided they would try living together again. He assumed financial responsibility for her and to some level her daughter. Even though his income began to increase in 2007, the additional cost of supporting two other individuals limited the availability of his resources to pay his old debts. During this time, he did not incur more outstanding debts. When they moved 200 miles away from his home, he decided to sell his home, a sensible decision. Unfortunately, the real estate market changed drastically and he could not sell his house. He continued to pay the mortgage and utilities on his house as well as the rent on the apartment in which they lived. After paying housing costs for both properties and the normal everyday costs of living, such as food, gasoline, clothing, insurance and repairs, Applicant lacked sufficient income to pay his old debts. Their living arrangement ended in early 2009, and he returned to his house, which eliminated the second housing expense. The money he spent on rent is now being used to pay his debts. His slowness in moving forward with paying his old debts relates to his finances, which are now much better than three years ago. He has always acknowledged the debts and his much improved financial position enables him to pay his past debts. Through his recent efforts, he resolved his smaller debts by paying the debts, and he resolved his larger debts through payment plans. He has complied with the payment terms of six plans. Because he complies with these plans, I infer that he will also comply with his most recent payment plans. Applicant has taken control of his finances and his debts. He is financially stable and lives within his financial means. As he said, he is doing well living on a cash basis.

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 mitigated the security concerns arising from his finances under Guideline F.

### **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.r:

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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MARY E. HENRY  
Administrative Judge