



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



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 09-00138
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esq., Department Counsel  
For Applicant: *Pro Se*

March 30, 2010

**Decision**

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TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On September 24, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. 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 answered the SOR in writing on September 24, 2009, which DOHA received on September 25, 2009. Department Counsel was prepared to proceed on October 9, 2009. The case was assigned to me on October 20, 2009. DOHA issued a notice of hearing on October 20, 2009, scheduling the hearing for November 18, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 7, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through I, which were received without objection, and he testified on his own behalf.

I held the record open until December 4, 2009, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE J through P, which were received without objection. DOHA received the hearing transcript (Tr.) on November 25, 2009. The record closed on December 4, 2009.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶ 1.a. with explanation, and he denied the remaining allegations in SOR ¶¶ 1.b. through 1.f. with explanations. His answers with explanations are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 25-year-old electronic technician, who has worked for his defense contractor employer since September 2008. GE 1, Tr.13-14. He is applying for a security clearance, which is a requirement for his continued employment. Tr. 14-15.

Applicant graduated from high school in May 2003. He briefly attended college from October 2003 to January 2004 before entering the U.S. Marine Corps Reserve, discussed below. Applicant is currently working towards an on-line associate's degree. GE 1, Tr. 15-16. He married in August 2007. Applicant and his wife have a two-year-old son. GE 1, Tr. 16-18, 27-28. His wife works full-time in the circulation department of the local newspaper and earns \$7.50 per hour. Tr. 67.

Applicant was adopted at age five. His adopted father was previously married to his biological mother, and is a prominent member of his community. After Applicant left home, he took in his younger half-brother who was in his sophomore year of high school. At the time Applicant took in his younger brother, he was living with their biological mother in Mexico and she was "up to no good." He subsequently raised and supported his younger brother until he became of age. Tr. 32-35. Applicant has no contact with his mother, who is currently serving a 15-year sentence for drug trafficking. Tr. 77.

Applicant served in the Marine Corps Reserve from February 2004 to April 2008, where he earned a Military Occupational Specialty of 3521 (automotive

organizational mechanic), and achieved the rank of Lance Corporal (pay grade E-3). GE 1, Tr. 18-27.

## **Financial Considerations**

Applicant's background investigation addressed his financial situation and included the review of his September 2008 e-QIP; his May 2009 Responses to DOHA Financial Interrogatories; and his October 2008, August 2009, October 2009, and November 2009 credit reports. GE 1 – 7.

Applicant's SOR identified six separate debts – four collection accounts, one charged off account, and one repossession, approximating \$15,757. Tr. 10-11.

Applicant has settled, paid or successfully disputed the six debts alleged. A brief summary of each debt follows. The debt alleged in SOR ¶ 1.a. is a collection account in the amount of \$167 on behalf of a telephone company. Applicant settled and paid this account for \$91.60. AE C, AE L, Tr. 35-38. The debt alleged in SOR ¶ 1.b is a collection account on behalf a physician for medical services received in the amount of \$138. Applicant settled and paid this account for \$122. AE C, AE M, AE O, Tr. 38-40. The debt alleged in SOR ¶ 1.c. is a collection account on behalf of a cell phone company in the amount of \$459. Applicant settled and paid this account for \$240. AE C, AE O, AE P, Tr. 40-41.

The debt alleged in SOR ¶ 1.d. is a charged off account on behalf of a former landlord in the amount of \$185. Applicant paid this account in full. AE A, AE D, AE K, AE N, Tr. 41-44, AE E. The debt alleged in SOR ¶ 1.e. is a collection account for a vehicle repossession in the amount of \$14,644. Applicant successfully disputed this debt and the debt has been removed from his credit reports. AE K, AE O, Tr. 46-50. The debt alleged in SOR ¶ 1.f. is a collection account for medical services provided to Applicant's half-brother in the amount of \$164. Applicant paid this account in full. AE C

Applicant attributes his financial problems to his youth, financial inexperience, and lack of resources, or as he explained:

. . . just me being a dumb person, I guess, dumb kid. I don't know how to put it. I was – most of 'em are from when I was young and just didn't have the money to pay anything and I just – a lot of the little ones are medical bills and I raised my little brother from when I was 21 or 22 till he graduated high school 'cause he was living in Mexico and he had medical bills, and I just couldn't afford a lot of things. I was only making nine or ten bucks an hour and I couldn't afford nothing with my – I was still with my wife – well, it wasn't my wife yet, but she lived with me. Tr. 32

Applicant sought financial counseling from a financial advisor. His advisor assisted him in developing a comprehensive financial strategy that includes a viable budget that will allow Applicant to live within his means. AE A, Tr. 44-45, 65-66. In conclusion, Applicant has paid, settled, made good-faith efforts to repay overdue creditors, or resolved all debts alleged. His monthly budget reflects a net remainder of \$992.

### **Character Evidence**

Applicant provided reference letters from his adopted father, a long-time personal friend, and a former employer and personal friend. AE F – H. His adopted father went into detail describing Applicant’s upbringing and challenges he has faced. All reference letters describe Applicant as a hard worker, who is honest, dedicated and dependable. AE F – H.

Additionally, Applicant’s adopted father testified on his behalf. He stated that he was previously married to Applicant’s biological mother. When he divorced Applicant’s mother, Applicant chose to move in with him. Applicant’s adopted father has been in radio and television for 51 years with an emphasis on agriculture. He described Applicant as a “tough player” in soccer and football. Applicant’s adopted father also has ten children; however, his oldest child passed away in 2008. He described the Applicant as trustworthy and dependable. Tr. 88-93.

### **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(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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The 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 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**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (financial considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and evidence presented. As indicated in SOR ¶¶ 1.a. to 1.f., he had six delinquent debts totaling about \$15,757 that have been in various states of delinquency. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially 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; 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.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) or 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debt. Because there is more than one delinquent debt, his financial problems are not isolated. The debts were not paid until 2010, and therefore his debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt "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." Under AG ¶ 20(b), he receives partial mitigation because of his underemployment and challenging family situation. However, he did not provide sufficient information to establish that he acted responsibly under the circumstances.<sup>1</sup>

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<sup>1</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

AG ¶ 20(c) is applicable because there is evidence of financial counseling. Applicant's evidence is sufficient to show not only evidence of counseling, but also that his financial problems are resolved and under control. There is also sufficient information to establish full mitigation under AG ¶¶ 20(d)<sup>2</sup> and 20(e). Applicant has settled or paid all of his debts except the debt in SOR ¶ 1.e., which he successfully disputed. He understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt.

### **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 the 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.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists six debts totalling \$15,757 that were at one time or another in various states of delinquency. He failed to keep his accounts current and negotiate lesser payments,

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<sup>2</sup>The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

showing some financial irresponsibility and lack of judgment. His lack of success resolving delinquent debt raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is more substantial. Applicant's record of military service and good employment weighs in his favor. He is a law-abiding citizen. His debts are current and his SOR debts are all paid or resolved. His monthly expenses are current. 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 demonstrate 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is making a contribution to the national defense. His family and friends fully support him and recommend him for a security clearance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. He has paid his debts. Furthermore, he has established a "meaningful track record" of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.



## 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.f.:       For Applicant

### Conclusion

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

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Robert J. Tuidor  
Administrative Judge