



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



In the matter of: )  
)  
) ISCR Case No. 09-00420  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

April 26, 2010

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) as part of his employment with a defense contractor on May 5, 2008. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated October 6, 2009, to Applicant detailing security concerns for financial considerations under Guideline F. 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 November 24, 2009.

Applicant answered the SOR in writing on December 22, 2009, admitting 12 and denying 18 of the allegations under Guideline F. Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 5, 2010, and the case was assigned to me on January 14, 2010. DOHA issued a Notice of

Hearing on January 25, 2010, scheduling a hearing for March 9, 2010. I convened the hearing as scheduled. The government offered four exhibits, marked Government Exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant testified on his behalf. Applicant offered three exhibits, marked Applicant Exhibits (App. Ex.) A through C, which were received without objection. I kept the record open for Applicant to submit additional documents. Applicant timely submitted three additional sets of documents marked App. Ex. D through F. Department counsel had no objection to the admission of the additional documents. (Gov. Ex. 5) DOHA received the transcript of the hearing (Tr.) on March 17, 2010. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant admitted 12 of the 30 factual allegations in the SOR. I included Applicant's admissions in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 33 years old and has been employed as a technician for a defense contractor for approximately two years. He is presently suspended awaiting a determination on his security clearance application. Applicant served four years on active duty with the Marines, four years on active duty with the Army, and two years in the Army Reserve for a total of ten years of military service. He held a security clearance up to top secret and access to sensitive compartmented information while serving on active duty. He was married in August 1998, divorced in November 2003, and remarried in July 2006. He is supporting two of his own children and three step-children. He pays child support for a child living with his first wife. When he was working, Applicant's monthly net pay was \$2,200 and his wife's net monthly pay was \$1,700. Applicant also receives \$600 monthly in Veterans Administration (VA) disability, for a total family monthly income of \$4,500. His monthly expenses are \$3,900, leaving him with \$600 monthly in disposable or discretionary funds. (Tr. 13-15, 23-26, 60-69)

Applicant admits that a check he wrote for \$100 was dishonored for insufficient funds (SOR 1.a). Credit reports (Gov. Ex. 3, dated May 16, 2008; and Gov. Ex. 4, dated July 22, 2009) show the following delinquent debts for Applicant: medical debts for \$59 (SOR 1.b), \$505 (SOR 1.c), \$1,141 (SOR 1.d), \$7,132 (SOR 1.e), \$358 (SOR 1.h), \$574 (SOR 1.i), \$35 (SOR 1.n), \$2,946 (SOR 1.q), \$87 (SOR 1.r), and \$111 (SOR 1.x); for unpaid utility bills of \$473 (SOR 1.f), \$453 (SOR 1.k), and \$73 (SOR 1.v); for unpaid cable service bills of \$400 (SOR 1.g), and \$413 (SOR 1.m); two unpaid car insurance bills of \$82 (SOR 1.i), and \$368 (SOR 1.y); \$3,069 (SOR 1.j); an on-line dating service debt of \$13,000 (SOR 1.o), car repossession debts of \$19,000 (SOR 1.p), and \$4,577 (SOR 1.dd); a credit card debt of \$705 (SOR 1.s); a judgment from an automobile accident of \$65,796 (SOR 1.t); telephone service bills of \$398 (SOR 1.u), \$554 (SOR 1.w), and \$100 (SOR 1.z); a bank overdraft fee of \$129 (SOR 1.aa); and two unpaid loans from the same lender for \$625 (SOR 1.bb), and \$1,071 (SOR 1.cc). The total delinquent debt listed in the SOR is \$123,000.

Applicant was stationed in a mid-Atlantic state on active duty with the Army. The accident that resulted in his biggest debt happened in that state. Applicant incurred most of his delinquent debt when he relocated from one state where he was assigned for military duty to his present location. When he moved, he was unable to find employment sufficient to support his family. He worked more than one job to get funds to make debt payments. He worked in a convenience store and drove a tow truck. Since he started working for the defense contractor with a sufficient steady income, he has not accumulated any additional delinquent debt, and has paid off the debts for two vehicles and other small debts. However, he has not been able to make payments on all of his prior delinquent debts. His intent is to pay all of his debts as he receives sufficient income to make the payments. (Tr. 23-25)

The allegation in SOR 1.a is for a check Applicant gave his first wife for a partial child support payment. Applicant told his wife not to present the check for payment for a few days to ensure sufficient funds were in the account. Instead, his former wife immediately presented the check for payment. The check was dishonored and his former wife filed a criminal complaint for uttering a worthless check. Applicant paid the judgment and court costs. (Tr. 26-33, 70-71; App. Ex. A, Sheriff Letter of No Criminal History, dated February 3, 2010; App. Ex. D, Court Documents and Receipt, dated March 22, 2010)

Applicant paid the \$59 medical debt at SOR 1.b. (Tr. 34-35; Answer to SOR, e-mail receipt, dated November 24, 2009) The medical debt of \$505 at SOR 1.c is for medical treatment for his son's ear. Applicant did not have health insurance at the time. He has not paid this debt. (Tr. 34-35) The medical debt of \$1,140 at SOR 1.d is a result of medical treatment for Applicant's chest pains. He did not have health insurance at the time. The debt has not been paid. (Tr. 35)

The medical debt of \$7,132 at SOR 1.e and \$358 at SOR 1.h resulted from an accident requiring Applicant to be evacuated by helicopter to a hospital. Applicant was driving a vehicle for his employer when his vehicle was hit by another car. At the time of the accident, Applicant was entitled to medical care from the VA because he is a disabled veteran. Applicant disputed the debts since the medical costs and resulting debt should have been paid either by his employer, workman's compensation, or the VA. The creditor is billing workman's compensation for the debt. (Tr. 35-39; App. Ex. E, Hospital statement, undated)

The delinquent debt at SOR 1.f is for electric utility service at Applicant's present location. The delinquent debt at SOR 1.k is for water service at the same location. Applicant does not dispute the debts but does dispute the amounts owed. The debts are valid. The delinquent debt at SOR 1.m is for cable service at this address. Applicant returned the equipment to the cable company. After Applicant moved to this address, he could not afford to pay all of his debts as they were incurred, and he fell behind on his bills. The debts have not been paid, but Applicant is trying to make payment arrangements with the creditors. (Tr. 39-40, 44-47)

The delinquent debt at SOR 1.g is for cable service at Applicant's former residence. Applicant paid the cable company \$89 when he moved, but did not realize he still owed the cable company \$400. He has not paid the \$400 debt. (Tr. 40-42; Gov. Ex. 2, answers to Interrogatories. Date April 13, 2009, at 3)

The delinquent debt at SOR 1.i is for car insurance. It has been paid in full. (Tr. 42-43; Answer to SOR, Bank statement, dated December 3, 2009, and e-mail confirmation, dated December 2, 2009)

The delinquent debt at SOR 1.j is fees associated with an on-line dating service. Applicant disputes this debt. Applicant stated he only gave the dating service authorization to use his picture on their web site at no cost to him. He did not sign up and use the dating service. The dispute has not been resolved. (Tr. 43-44)

The delinquent debts at SOR 1.n, 1.q, and 1.r are medical debts. Applicant has no information on the debts or the creditors. The information in the credit reports is insufficient for Applicant to learn about the debts. (Tr. 46-47, 50-51) Applicant paid the medical debt listed at SOR 1.x in full. (Tr. 55; Answer to SOR, dated November 3, 2009, at 2, letter, dated November 25, 2009)

The delinquent debts at SOR 1.o and 1.p are for the debt remaining from car repossessions. Applicant purchased the car listed at SOR debt 1.o after moving to his present location. Since he did not find good employment, he was unable to make the payments. He does not dispute the debt but does dispute the amount of the debt. He has not made payments on this debt. Applicant co-signed the purchase of the car listed at SOR 1.p for his girlfriend before he moved. She was to make the payments. His girlfriend made a few payments but could not make further payments. She turned the car back to the creditor. The creditor is seeking payment of the remainder from Applicant as co-signer on the note. He has not made any payments on this debt. (Tr. 48-50)

The delinquent debt at SOR 1.s is for a credit card Applicant used at his former location. He attempted to negotiate a settlement with the creditor but has not been successful. He has not made any payments on this debt and still owes the full \$705. (Tr. 51-52)

The delinquent debt of \$65,796 is for a judgment against Applicant for damage and injury resulting from an automobile accident that happened before Applicant moved. Applicant did not have the proper type of insurance on his own vehicle for the state where the vehicle was located. He cancelled the insurance he did have and did not drive the vehicle. He was driving a vehicle he borrowed from a friend when he had the accident. Applicant had no automobile insurance, and his friend did not have insurance on his vehicle. The judgment is for the payment of injury and damage to the other driver involved in the accident. Applicant has made only one payment of \$1,000 on the judgment. He does not have sufficient funds to make any additional payments at this time. (Tr. 25-29, 52, Answer to Interrogatories, dated April 13, 2009, at 2)

The delinquent debt at SOR 1.u is for telephone service at Applicant's present location. The delinquent debt at SOR 1.z is for telephone service Applicant's former wife opened in his name at another location where they were stationed while Applicant was on active duty. Both debts have been paid in full (Tr. 52-53, Answer to SOR, dated, November 3, 2009, at 5 and 6, Payment Receipts, dated December 3, 2009). Applicant disputed the telephone service debt at SOR 1.w since he had terminated service with the telephone company and the bills were current. The debt has been removed from his credit report. (Tr. 54-55)

The delinquent debt at SOR 1.v is for electrical utility service from Applicant's former residence. Applicant notified the utility to terminate service because he was moving. The utility did not timely stop service and he incurred additional charges. Applicant paid the current charges when he moved. He disputes this debt and it has not been paid. (Tr. 53-54)

The delinquent debt at SOR 1.y is for car insurance owed on vehicles Applicant voluntarily returned for repossession. The debt has not been paid. (Tr. 55-56)

The delinquent debt at SOR 1.aa is for an overdrawn bank account. Applicant thought he paid the account but learned he still owed over \$860. The account has not been paid. (Tr. 56-57)

The delinquent debts at SOR 1.bb and 1.cc are loans opened with the same creditor by his former wife in his name while they were married and he was serving overseas. When he returned from overseas, Applicant and his wife separated and he learned of the loans. He set up an allotment to pay the loans. The loans are paid in full. (Tr. 57-58; App. Ex. F, Letters, dated March 15, 2010)

The delinquent debt at SOR 1.dd is for a car Applicant purchased from the towing and automotive company he worked for after moving. The car was purchased with warranty from the employer. The car had high mileage, did not work well, and had to be repaired by the company. Applicant paid over \$3,000 in repairs to the car before returning it to his employer. He continued to work for them for another 18 months. When he left the company, he was informed he owed over \$4,500 for the car. After he returned the car to the employer, it was sold to another person. He disputes that he owes this debt because of the warranty, the repairs made to the car, and its sale to another person. (Tr. 58-60)

Applicant was awarded the Joint Service Commendation Medal, the Army Achievement Medal, and two Good Conduct Medals during his active duty service in the Army. (App. Ex. B, Award Certificates, various dates) Applicant's pastor notes that he has known Applicant for over four years. Applicant is dedicated, dependable, honest, trustworthy, and compassionate. Applicant was also commended by his local police department for his involvement with youth activities. A police community relations specialist has known Applicant for over five years when Applicant served as a youth football coach teaching the youth life skills. Applicant is a dedicated youth mentor. He

considers Applicant to be a person of honesty and integrity. Applicant's former employer states that he has known Applicant for over five years. When he was Applicant's supervisor, Applicant was responsible for over \$60,000 of cash and equipment. Applicant proved himself to be reliable, dependable and honest. He required very little supervision. (App. Ex. C, letters, various dates)

### **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 must be considered 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 obtain 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 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.

## Analysis

### Financial Considerations

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 ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances responsibly to meet his financial obligations. The delinquent debts listed in credit reports for Applicant are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ AG 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Applicant incurred delinquent debt while on active duty, and after moving and being unable to find good-paying employment. He also incurred debts from his first marriage that he was unable to pay. Applicant has paid some of his debts but some still remain unpaid.

I considered Financial Considerations Mitigating Conditions (FC MC) AG ¶ 20(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), and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions partially apply. The largest debt, the judgment from the automobile accident, happened while Applicant was on active duty. Most of the remaining debts were incurred after Applicant left active duty and moved to a new location. The accident was not beyond his control since he was at fault and he was driving the car without knowing if it was properly insured. Most of his other debts were the result of his inability to find good employment when he left active duty and moved. Some other debts were incurred by his former wife without his knowledge. Under the circumstances, Applicant acted responsibly. He found work, even though it was not at the rate of pay he formerly made, paid bills as he could, lived within his means, and did not incur any additional delinquent debt. He paid as many of the debts as his finances permitted.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic method of handling debts is needed. The concept of good-faith action requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant took action to pay the debts he could based on the limit of his financial resources. Applicant fully paid eight of his debts. He actively disputes six more debts and has plausible reasons for the disputes. He tried to determine the reasons for and the creditors of three other debts but does not have sufficient information to determine the nature of the debt and the creditor. He has not paid twelve of the debts because he does not at this time have the financial resources to pay them. He made a token payment on his largest debt, the accident judgment. The actions to pay his debts that he has taken show a good-faith effort to repay creditors or otherwise resolve his debts.

I considered FC MC AG ¶ 20(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 documentation to substantiate the basis of the dispute or provides evidence of actions taken to resolve the issue). Applicant disputes six of his delinquent debts. Three disputes (SOR 1.e, 1.h, and 1.w) have been resolved in his favor. Three others (SOR 1.j, 1.v, and 1.dd) still have to be resolved. Applicant did not present documentation of his dispute on these three debts, but based on the information provided by Applicant, it appears he has a reasonable basis for his disputes.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for access to classified information 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for access to classified information 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. I considered Applicant served over



ten year of active and reserve military duty. He held a high level security clearance without issue while on active duty. He was rewarded and commended for his military service. I considered the Applicant provides voluntary services in his church and community and has a reputation for honest, integrity, reliability, and trustworthiness.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. The issue is not simply whether all of Applicant's debts are paid. It is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has established a meaningful track record by paying eight of his debts and disputing another six. Still of concern are the debts he cannot pay because he does not have the financial resources to pay them. The debts were incurred because of an automobile accident, his move to a new location, and his inability to find good paying meaningful employment to pay his bills. He worked at jobs he could find while seeking better employment. He is now living within his means and not incurring any additional delinquent debt. Applicant intends to continue to pay his debts as resources become available. It is doubtful he will have sufficient income to ever repay the automobile accident judgment. His inability to completely pay his delinquent debts is countered by the fact he successfully held a top level security clearance for over eight years while on active duty. Applicant established that he acted reasonably and responsibly towards his finances. His actions indicate he will act reasonably and responsibly to protect classified information. The management of his finances indicates he will be concerned, responsible, and not careless concerning classified information. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility for access to classified information. I conclude Applicant has mitigated the security concerns arising from his financial situation.

### **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 - 1.dd: 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 access to classified information. Clearance is granted.

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THOMAS M. CREAN  
Administrative Judge