



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00880  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein, Esq., Department Counsel

For Applicant: *Pro se*

February 11, 2010

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 9, 2008 (Government Exhibit 1). On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning 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 August 11, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 9, 2009. This case was assigned to me on September 16, 2009. DOHA issued a notice of hearing on September 22, 2009, and I convened the hearing as scheduled on October 27, 2009. The Government offered Government Exhibits 1

through 6, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through I, also without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit J on November 23, 2009, and it was admitted without objection. DOHA received the transcript of the hearing on November 4, 2009. The record closed on November 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 38 and married. He and his wife have been married 20 years, and have three children. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

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

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits SOR ¶¶ 1.a., 1.c., 1.d., and 1.f. Those admissions are hereby deemed findings of fact. He denies SOR ¶¶ 1.b., and 1.e.

Applicant testified about his financial situation. Much of it is related to the health of the Applicant and his wife. Applicant was a manual labourer when he was younger. In 1990, he was seriously injured on the job. His injury required surgery, and he was informed that he could not return to manual labour. He went back to school and obtained the equivalent of an Associate's degree in a technical field. Applicant has worked his way up in this technical field from 1993 to the present day. (Transcript at 34-36.)

When she was a teenager, Applicant's wife was diagnosed with a serious and chronic health condition which affects her ability to work or even lead a normal life. She has had five major surgeries, nine surgeries in total, in connection with her condition. She can only work sporadically. Her health care provider states, "Currently the patient is on a regimen of oral medications and infusion therapy for her [condition]. Her disease is advanced and severe and will require chronic lifelong treatment." (Applicant Exhibit J at 3, 12-13; Transcript at 33-34, 37-39, 49-56.)

1.a. Applicant admits that he filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code in 1999. He received a discharge in about February 2000. According to the Applicant, the family debt situation never recovered from his injury and two years of unemployment. Eventually, a bankruptcy was the only way they saw to resolve the situation. (Transcript at 36-37, 40-41.)

1.b. Applicant denied that he was currently indebted to a cable television company in the amount of \$116. He states, exhibits support, and the Government

agrees, that this debt has been paid. (Government Exhibit 6 at 1; Applicant Exhibit H; Transcript at 13, 66-71.)

1.c. Applicant admitted that he owed a debt to an automobile finance company on a repossessed vehicle. He denies that the amount he owes is \$6,876. According to Applicant, he owed less than \$3,000 on this vehicle when it was repossessed in approximately 2006. This was after paying on the automobile for seven years, and four major engine repairs. After the vehicle was sold for substantially less than that, the finance company informed him that he owed the amount stated in the SOR. (Government Exhibit 2 at 3; Transcript at 74-79, 89-91.) In November 2009, Applicant wrote the three credit reporting agencies, disputing the amount he owes on this account. (Applicant's Exhibit J at 9-11.) Applicant also wrote a statement concerning his actions after the hearing regarding this debt. This letter states that this finance company "is no longer in business and all attempts to contact them were unsuccessful." Applicant expresses a credible desire to resolve this debt if possible. (Applicant's Exhibit J at 8.)

1.d. Applicant admitted that he owed a debt to an automobile finance company on a repossessed vehicle in the amount of \$5,938. Applicant owned this car at the same time as the one in 1.c. The family could not afford two automobiles on one income, so he allowed this car to be repossessed in 2001. (Transcript at 79-82.) Applicant wrote a statement concerning his actions with regards to this debt after the hearing. Specifically, Applicant has made payment arrangements with the successor in interest to the original creditor. (Applicant's Exhibit J at 8.)

1.e. Applicant has consistently denied that he is indebted to a collection agency in the amount of \$35 for a returned check. This was a check to a pharmacy and the Applicant states that it has been paid directly to the hospital. The hospital has confirmed with the Applicant that he does not have any returned check charges currently owing. (Government Exhibit 2 at 2; Applicant's Exhibit J at 8; Transcript at 82-85.)

1.f. Applicant admits that he was indebted to a collection agency for a telephone bill. Applicant has paid this bill, as shown by a statement from the creditor. (Applicant Exhibit I; Transcript at 85-87.)

Applicant maintains, and records show, that he is able to pay his regular debts. Applicant, and his family, budget as they can, and they have been successful in this, given the Applicant's wife's limitations and the responsibility of the family. (Government Exhibit 6; Transcript at 57-66.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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, by his own admission, and supported by the documentary evidence, has approximately \$12,000 in past-due debts for two automobile repossessions, which have been due and owing for several years. 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), the disqualifying condition may be mitigated where "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 difficulties arose about six to ten years ago, primarily between 1999-2004. In addition, these two repossessions occurred because of the unique situation regarding the health of the Applicant and his wife. He has paid off two of the other past due debts alleged in the SOR, stated credibly that he does not owe a third, evinced a credible and believable intent to pay off his remaining past due indebtedness, and his current financial situation is stable. This mitigating condition applies to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated 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." As stated above, the Applicant and his wife both have suffered from severe medical conditions. The wife's situation is severe and chronic. Despite that, and with a family of five to support on his salary alone, with the exception of the two repossessions, his financial condition is stable. This mitigating condition also applies.

Applicant has initiated a good-faith effort to pay off his creditors. As stated above, several have been paid, including at least one debt not alleged in the SOR. (Government Exhibit 2 at 2, 6.) Accordingly, AG ¶ 20(d) is applicable.

Applicant is over \$11,000 in debt. However, the record is clear that he is not running up new debt. Indeed, he is paying his debts as his financial situation allows him to do so. Under the particular circumstances of this case, I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

### **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 relevant circumstances. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant had some financial problems about four to ten years ago, but his current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant’s medical condition and that of his wife. Under the particular circumstances of this case, it is clear that they have done the best they can. Her debilitating disease makes the “normal” two income marriage impossible. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8); and that there is no likelihood of recurrence (AG ¶ 2(a)(9).

Overall, the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation.

On balance, I conclude that Applicant has successfully overcome the Government’s case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. through 1.f.: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge