



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 09-02631  
SSN: XXX-XX-XXXX )  
 )  
Applicant for Security Clearance )

**Appearances**

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

April 19, 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 January 6, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 26, 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 23, 2009, which DOHA received on July 27, 2009. Department Counsel was prepared to proceed on August 10, 2009.

The case was assigned to me on August 13, 2009. DOHA issued a notice of hearing on August 21, 2009, scheduling the hearing for September 22, 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 G, which were received without objection, and he testified on his own behalf.

I held the record open until October 2, 2009, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE H through T, which were received without objection. DOHA received the hearing transcript (Tr.) on September 30, 2009. The record closed on October 2, 2009.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b., 1.d., and 1.f. with explanations. He denied the allegations in SOR ¶¶ 1.a., 1.c., and 1.e. 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 38-year-old engineering aide, who has worked for his defense contractor employer since June 2008. He testified he is an applicant for a security clearance,<sup>1</sup> which is a requirement for his continued employment. (GE 1, Tr. 22-24.)

Applicant graduated from high school in June 1990. Since graduating from high school, he has attended several college-level institutions throughout the years and has accumulated 93 credit hours. He is currently working towards a Bachelor of Science degree in business administration. (GE 1, Tr. 24-30.)

Applicant served in the U.S. Marine Corps from April 1991 to April 1997, and was honorably discharged as a sergeant (pay grade E-5). His Military Occupational Specialty (MOS) in the Marine Corps was 3112 (Traffic Management Specialist). He then served in the U.S. Army from April 1997 to June 2001, and was honorably discharged as a specialist 4 (pay grade E-4). His MOS in the Army was 88N (Transportation Management Coordinator). (GE 1, GE 4, pgs. 125-126, Tr. 30-33.)

Applicant was married from December 1991 to July 2001. That marriage ended by divorce. He remarried in March 2007. His second wife is employed as a child development specialist. (GE 1, Tr. 35-36, 42.) Applicant has three sons, from three different mothers. His oldest son, age 16, was born during his first marriage. Applicant

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<sup>1</sup> Applicant's January 2009 e-QIP reflects that he had a security clearance at the confidential level, presumably during his military service. The e-QIP does not list the dates when Applicant previously held a clearance.

pays \$430 in monthly child support directly to the state for his oldest son. He pays \$160 in monthly child support through state garnishment for his eight-year-old son. Applicant pays \$100 through an informal arrangement to his seven-year-old son's mother. He pays a cumulative amount of \$690 per month in child support. (Tr. 36-42.)

## Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his January 2009 e-QIP; his May 2009 Responses to DOHA Financial Interrogatories; as well as his May 2009, June 2009, and August 2009 credit reports. GE 1 – 6.

Applicant's SOR identified six separate debts -- one repossession, two charged-off accounts, and three collection accounts, totaling \$23,963.

Applicant has settled, paid or made a good-faith attempt to resolve the six debts alleged. A brief summary of each debt follows. The debt alleged in SOR ¶ 1.a. is a credit card charged-off account in the amount of \$1,997.<sup>2</sup> Applicant has documentation that he attempted to settle this account in good-faith going back to July 2008, and the creditor has failed to respond to him. (GE 4, p. 105, AE H, AE J, AE O, Tr. 43-49.)

The debt alleged in SOR ¶ 1.b. is a vehicle repossession debt in the amount of \$8,097. Applicant settled this debt with the creditor for a lesser amount and is making monthly payments by direct debit. (GE 4, AE C, Tr. 49-51.) The debt alleged in SOR ¶ 1.c. is a credit card charged-off account in the amount of \$1,983. Applicant has documentation that he attempted to settle this account in good-faith going back to July 2008, and the creditor has failed to respond to him. (GE 4, p. 105, AE H, AE J, AE O, Tr. 51-56.)

The debt alleged in SOR ¶ 1.d. is a credit card charged-off account in the amount of \$2,970. Applicant has settled this debt with the creditor for a lesser amount and has paid off that amount. (GE 4, AE G, AE L, AE M, Tr. 56-60). The debt alleged in SOR ¶ 1.e. is medical collection account in the amount of \$421. Applicant paid that account in full. (GE 4, AE D, Tr. 60-61.) The debt alleged in SOR ¶ 1.f. is another vehicle repossession that occurred at approximately the same time as the one in SOR ¶ 1.b., *supra*. Applicant has documentation that he attempted to settle this account in good-faith going back to July 2008, and the creditor has failed to respond to him. (GE 4, pgs. 95-99, AE K, Tr. 61-63.)

Applicant attributes his financial problems to costs associated with his divorce in 2001, which occurred shortly after he left the Army. He was required to maintain two households on a reduced income. It was during this timeframe that he fell behind with his creditors, and his two vehicles were repossessed, discussed *supra*. Furthermore,

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<sup>2</sup> The debts in SOR ¶ 1.a., 1.c., and 1.d. are three separate accounts with the same credit card company.

while struggling to maintain two households, Applicant was unemployed for six months from February 2002 to July 2002. (GE 1, pg. 155, Tr. 64-67.)

In conclusion, Applicant has paid, settled, made good-faith efforts to repay overdue creditors, or resolved all debts alleged. He sought financial counseling and when he completed his coursework was provided a Certificate of Counseling on September 23, 2009. He submitted a budget with his monthly expenses, which reflects a net remainder of \$1,005. His budget further demonstrates that he maintains a modest lifestyle and is living within his means. (AE F, AE N, AE T, Tr. 67-74.)

### **Character Evidence**

Applicant's wife testified on his behalf. She stated that since she met Applicant in 2004, his priorities have been his children and paying off his debts. She recounted the sacrifices he has made to pay down his debt to include riding a bicycle to work, and selling his DVD's, CD's, guitar, and motorcycle. She added that Applicant's credit reflects his character, and that he is dependable, responsible, and follows through on his word. (Tr. 86- 90.)

Applicant provided reference letters from his current supervisor and a former supervisor. His supervisor is a senior manager within Applicant's company. She described him as an employee who displayed qualities and skills needed to perform the highest standards and quality of work for their company. She added that Applicant served the country the better part of his life and proves each day he rises to the challenges of providing our soldiers his absolute best in his current defense contractor job. Applicant's former supervisor referred to the period of time she was his supervising teacher and recounted his dedication, and the effort he put in as a teacher assistant for special-needs children. Both individuals spoke of Applicant's honesty and integrity, and recommended him for a security clearance. (AE E, AE S.)

Applicant submitted copies of numerous awards, commendations, certificates of appreciation, certificates of achievement, academic excellence awards, and performance evaluations from his Marine Corps and Army service. Collectively, these documents reflect Applicant's favorable military service. They further reflect Applicant's sense of duty and document ten years of honorable military service. (AE Q(1-15), AE R(1-2), AE S(1-2).)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 over-arching 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 \$23,963 that have been in various states of delinquency since 2001. 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. It was not until 2008 that these debts that were paid or resolved. 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 2001 divorce and 2002 six-month period of unemployment. However, he did not provide sufficient information to establish that he acted responsibly under the circumstances.<sup>3</sup>

AG ¶ 20(c) is applicable because Applicant has sought financial counseling and there are definite signs that his counseling has netted positive results. He has produced a budget that reflects he is living within his means and regained financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).<sup>4</sup> Applicant has paid or settled three of his debts, and has presented substantial evidence documenting good-faith efforts to contact three of his creditors and for reasons unknown those creditors failed to respond to any of Applicant’s overtures. AG ¶ 20(e) is not applicable.

### **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):

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<sup>3</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.

<sup>4</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)).

(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 \$23,963 that were at one time or another in various states of delinquency. For several years, he failed to keep his accounts current or negotiate lesser payments, showing financial irresponsibility and lack of judgment. His lack of success resolving delinquent debt until recently 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. There is no evidence of any security violation during the time Applicant may have held a security clearance. 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 significant contribution to the national defense. His company fully supports him and recommends 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 adjudicative guidelines. Applicant has fully 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. Tuider  
Administrative Judge