



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-02799
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

July 27, 2010

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**Decision**

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ROSS, Wilford H., Administrative Judge:

The Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on November 18, 2009. (Government Exhibit 1.) On July 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) 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 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.

The Applicant answered the SOR in writing on August 10, 2009, and requested a decision without a hearing. Department Counsel requested a hearing before an Administrative Judge in accordance with Paragraph E3.1.7. of the Directive's Additional Procedural Guidance. Department Counsel was prepared to proceed on August 31, 2009. This case was assigned to me on September 11, 2009. DOHA issued a notice of

hearing on September 14, 2009, and I convened the hearing as scheduled on October 22, 2009. The Government offered Government Exhibits 1 through 7, which were received without objection. The Applicant testified on his own and submitted Applicant Exhibit A, which was also received without objection. The record was left open to allow the Applicant to submit additional information. On October 29, 2009, Applicant submitted Applicant Exhibit B, which was received without objection. DOHA received the transcript of the hearing, and the record closed, on November 3, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The Applicant is 50 and divorced, with four children. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

### **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 all of the allegations in the SOR. Those admissions are hereby deemed findings of fact. He also submitted additional statements supporting his request for a security clearance.

The SOR alleges, and Government exhibits substantiate, 18 delinquent debts totaling \$26,237. Some of these debts have been due and owing since 2003. (Government Exhibits 5, 6 and 7.)

Applicant states that he has been unable to pay any of these debts because of the aftermath of his divorce, which was completed in 2001. Specifically, the Applicant states that a combination of child support responsibilities, and his ex-wife's military deployments, made it impossible for him to pay any of his debts, no matter how small. (Transcript at 26-30, 65-66; Government Exhibit 2.) Applicant has spoken to a debt consolidation firm, but did not retain them. (Transcript at 38.) Applicant states that, after the hearing, he retained a bankruptcy attorney to help him file a Chapter 7 bankruptcy. (Applicant Exhibit B.) However, no evidence was submitted to show that any bankruptcy filing had been made.

### **Mitigation**

Applicant's pastor wrote a letter on his behalf. The pastor discusses how the Applicant, in the aftermath of his divorce, was forced to live in the church for two years because of an absence of funds. However, Applicant has used that experience to help others, including going to seminary school in order to help the church. Applicant is described as "a man of his word." (Applicant Exhibit A at 1.)

Applicant also submitted letters of recommendation from his program manager and supervisor. The program manager describes the Applicant as a “star performer.” His supervisor states, “I trust completely in the character and work ethic that [the Applicant] has demonstrated to me from his first day on the job forward.” (Applicant Exhibit A at 2-3.)

## **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. 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. 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.

Finally, as emphasized by President Eisenhower 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**

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has financial difficulties which may affect his ability to safeguard classified information. The Applicant, on the other hand, has not successfully mitigated the Government's case.

### **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, has over \$25,000 in past due debts, all of 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 recently, starting about 2003, and continue to the present. In addition, Applicant has failed to provide any evidence that he is paying any of his debts, or has any plan to do so. It is Applicant’s burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable 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., . . . divorce or separation), and the individual acted responsibly under the circumstances.” Applicant submits that his financial problems have been connected to his divorce and requirement to pay child support. He further states that his intention is to resolve the debts as soon as possible, possibly through a bankruptcy. I have considered those facts, but find them wanting due to a lack of forward movement. A mere statement of intent to pay or resolve his debts in the future is insufficient evidence to conclude that he has acted responsibly towards his debts.

Applicant has not initiated a good-faith effort to pay off his creditors. There is no track record of his making payments, even for the smallest debts. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$25,000 in debt, I cannot 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is under financial strain, and has been so for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8); and that there is a high likelihood of recurrence (AG ¶ 2(a)9).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. If the Applicant is able to resolve his debt situation successfully, he may be eligible for a security clearance in the future. He is not eligible now.

On balance, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a denial of 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST THE APPLICANT
Subparagraphs 1.a. through 1.t.:	Against the Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge