



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



In the matter of: )  
)  
) ISCR Case No. 09-03269  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

September 28, 2010

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On March 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 17, 2010. DOHA issued a Notice of Hearing on July 19, 2010. On August 10, 2010, the

Government amended the SOR. Applicant did not object.<sup>1</sup> I convened the hearing as scheduled on August 25, 2010. The Government offered Exhibits (GE) 1 through 7. Applicant did not object and they were admitted. The Government also offered a demonstrative exhibit, which was marked as Hearing Exhibit II. Applicant and two witnesses testified on his behalf. Applicant offered Exhibits (AE) A through Q, which were admitted without objections. DOHA received the hearing transcript (Tr.) on September 1, 2010.

### **Findings of Fact**

Applicant admitted the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old. He enlisted in the Navy in 1977 and rose to the rank of First Class Petty Officer (E-6). He earned his bachelor's and master's degrees. He was commissioned as a Naval Officer in 1990 and retired in the rank of Lieutenant Commander (O-4) in 2008, after 30 years of service. Applicant married in 1981 and divorced in 2007. He has two daughters, ages 27 and 25. He has held a Secret security clearance for 23 years.<sup>2</sup>

From 1985 to 1990, while serving on active duty, Applicant attended college at night. He was also working part-time to help pay his college expenses. He was a Second Class Petty Officer at the time. Although he received tuition assistance from the Government, he was required to pay 25% of his expenses and he was not earning enough income at the time to cover all of his expenses. He used credit cards to help pay his expenses. He made payments on the cards and was not delinquent, but he did not pay the whole balance each month. After the terrorist attacks of September 11, 2001, he was required to work extra hours and could not maintain his part-time job. He credibly testified that although he was not paying off his credit cards, he and his wife maintained a budget and were diligent in adhering to it. He stated that during their marriage he did not have any reason to question his wife managing their finances.<sup>3</sup>

In March 2002, Applicant received a telephone call from his landlord advising him that his check for the rent had bounced. Aware that he carried a \$3,000 overdraft protection on his account, Applicant believed it was a mistake. He went to the bank and learned that the overdraft protection had been depleted and he also learned his wife was writing checks to casinos and was gambling. He closed their joint accounts so she could not write any more checks on them. He further learned his wife was using their credit cards to obtain cash advances after she could no longer write checks. By the time

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<sup>1</sup> Tr. 9-10. Department Counsel's Memorandum was marked Hearing Exhibit I.

<sup>2</sup> Tr. 9, 22, 62-63.

<sup>3</sup> Tr. 23-26.

he found out, it was too late, because she reached the limit on all of their credits cards. He destroyed the cards so she could not use them again.<sup>4</sup>

In June 2002, Applicant transferred overseas. He and his wife were separated with the understanding they would be seeking a divorce. At the same time, his daughter was starting college. He and his wife had a college fund for their daughter which was held jointly. There was \$9,000 in it. Her tuition was \$8,000. To release the funds, the account required signatures from both Applicant and his wife. She refused to sign. Applicant requested and was granted advance pay to pay for his daughter's tuition.<sup>5</sup>

Applicant was attached to a ship while stationed overseas. Because there were limited quarters on the ship, he was permitted to live on shore. The regulations at the time provided him an allowance for his rent. He signed a two-year lease. Six months later the regulation changed and his housing allowance was cancelled. He kept the apartment he had leased because he had already shipped his household goods overseas and he had no place to store them if he terminated his lease. During this time, he was still married to his wife and was required to support her. He sent her \$2,000 monthly support until they divorced. Applicant had limited expendable income to pay all of his delinquent debts, but he continued to make monthly payments on some of them.<sup>6</sup>

In May 2004, Applicant took emergency leave from his overseas duty station because his sister passed away, leaving two children, ages 13 and 20. He incurred some expenses to help with the cost of the funeral.<sup>7</sup>

During Applicant's daughter's second year of college she became pregnant. She dropped out of college in June 2004 and Applicant paid her rent. She worked part-time until the baby was born. Applicant subsidized her income by giving her \$450 to \$500 a month, until she moved in with him in October 2005. His daughter wanted to attend cosmetology school. It cost \$7,000. Applicant paid for it in installments. This limited his ability to pay other debts. She attended school from February 2006 to November 2006. Applicant paid for childcare while his daughter attended school. He continued to pay spousal support during this period. His daughter continued to live with him until March 2008. He continues to provide his daughter support, but is gradually reducing the amount, so she can become self-sufficient. He also helps support his other daughter because she is also a single parent.<sup>8</sup>

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<sup>4</sup> Tr. 26-31.

<sup>5</sup> Tr. 31-35.

<sup>6</sup> Tr. 36-44.

<sup>7</sup> Tr. 44-45.

<sup>8</sup> Tr. 45-51, 64.

In July 2007, Applicant and his wife were divorced. He was required to pay her \$2,500 a month until he retired. He retired on January 1, 2008. She receives 40% of his retirement pay as part of the divorce settlement, which is approximately \$24,000 a year. He was also required to pay all of their delinquent debts.<sup>9</sup>

After Applicant retired he moved to an area where the job market was more lucrative. He lived with two friends over a six-month period. He continued to help his daughter who was working, but not earning enough to cover her rent and expenses. He gave her all of his household goods to help her get settled.<sup>10</sup>

Applicant explained that all of these family responsibilities limited his ability to repay his creditors. In September 2008, he got a job and began earning about \$90,000, in addition to his retirement pay. His current salary is \$94,000. He anticipates a pay raise of approximately \$5,000 on October 1, 2010. He will use this income to reduce his debt. Applicant stated he has reduced his delinquent debts by \$39,000 in the past year.<sup>11</sup>

The following is the status of each SOR debt:

SOR ¶ 1.a is a credit card debt (\$5,948). It is not paid. Applicant has a settlement offer and intends to begin making payments on the debt in the next month.<sup>12</sup>

SOR ¶ 1.b is a credit card debt (\$23,948). This credit card was one that his ex-wife used. Applicant paid \$200 a month for a year and then the creditor agreed to a lump sum settlement payment of \$4,200. The debt is resolved.<sup>13</sup>

SOR ¶ 1.c is a credit card debt (\$12,163). Applicant intends to begin payments in September 2010. He anticipates paying \$100 a month. Department Counsel noted that this debt may be a duplicate. Applicant will investigate the debt and if it is still valid will adhere to his plan.<sup>14</sup>

SOR ¶ 1.d is a credit card debt (\$9,112). Applicant has been making monthly payments of \$200 through an automatic withdrawal from his account. He has been

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<sup>9</sup> Tr. 21-22, 53-55.

<sup>10</sup> Tr. 55-57.

<sup>11</sup> Tr. 57-60.

<sup>12</sup> Tr. 21, 66-74; GE 6 page 5; AE E.

<sup>13</sup> Tr. 74-82; AE C page 1-2.

<sup>14</sup> Tr. 83-86.

making payments since July 2009, and the balance owed is approximately \$6,800. He hopes to negotiate a settlement in the near future.<sup>15</sup>

SOR ¶ 1.e is a credit card debt (\$8,426). Applicant has not paid this debt, but anticipates beginning \$100 monthly payments in September 2010. It is part of his payment plan.<sup>16</sup>

SOR ¶ 1.f is a debt for a utility bill (\$212). Applicant explained that when his ex-wife moved from their residence, she did not pay the final bill. Applicant intended to pay the bill on September 1, 2010. It is part of his payment plan.<sup>17</sup>

SOR ¶ 1.g is credit card debt (\$4,404). Applicant has been making automatic monthly payments.<sup>18</sup>

SOR ¶ 1.h is a credit card debt (\$4,229). Applicant has been making \$100 monthly payments since September 2009. He anticipates increasing his monthly payments as more of his resources become available.<sup>19</sup>

SOR ¶ 1.i (\$6,418) is a revolving account that Applicant originally believed was a car debt. He was mistaken and intends to add this debt to his budget to repay it.<sup>20</sup>

SOR ¶ 1.j is a credit card debt (\$5,027). Applicant settled and paid the debt in July 2010.<sup>21</sup> He liquidated his Individual Retirement Account to pay the debt.<sup>22</sup>

SOR ¶ 1.k is a credit card debt (\$5,323). Applicant intends to pay \$100 a month as part of his payment plan.<sup>23</sup>

SOR ¶ 1.l (\$2,054) is a debt to an apartment complex. Applicant's daughter vacated an apartment and there were damage and cleaning charges. Applicant had co-

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<sup>15</sup> Tr. 82, 86-87; AE D.

<sup>16</sup> Tr. 87-88.

<sup>17</sup> Tr. 88-89.

<sup>18</sup> Tr. 90-92; AE D.

<sup>19</sup> Tr. 92-94; AE D page 3-4.

<sup>20</sup> Tr. 95-100.

<sup>21</sup> AE C page 3.

<sup>22</sup> Tr. 100-104.

<sup>23</sup> Tr. 104-106.

signed on the apartment. He has not paid the debt, but intended to begin in September 2010.<sup>24</sup>

A character witness testified on behalf of Applicant. The witness has known Applicant since 1999. He recommended Applicant for a job. Their families have been close for many years. He considers Applicant to have the highest level of integrity. He opened his home to Applicant for months and gave him a place to live. He trusted him in his home and with his family. He is aware of Applicant's ex-wife's gambling problem and is aware that it was a reason for their marriage dissolution.<sup>25</sup>

Another character witness testified on behalf of Applicant. He has known Applicant since 1981. He considers Applicant to be honest and truthful. He is aware that Applicant helps support his daughter. He trusts Applicant in his home and with his family. He was aware that Applicant's ex-wife did not manage their funds well and it caused him to go into debt.<sup>26</sup>

Applicant paid his bills from 1980 to 2001. When his finances got out of control due to his wife's gambling and other intervening events, he could not pay his bills. During the past year, he has become financially able to pay some of his debts and has created a debt resolution plan to systematically pay off all of his delinquent debts. He is concentrating on resolving certain debts and when they are paid, he plans to begin paying others.<sup>27</sup> Applicant does not have any active credit cards. He has been saving and managing his money to repay his debts.<sup>28</sup>

Applicant provided numerous documents supporting his outstanding naval service, including his fitness reports and awards. He also provided letters of appreciation for his volunteer service.<sup>29</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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<sup>24</sup> Tr. 106-110.

<sup>25</sup> Tr. 120-127.

<sup>26</sup> Tr. 128-134.

<sup>27</sup> AE F.

<sup>28</sup> Tr. 111.

<sup>29</sup> AE G, H, I, J, K.

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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by an applicant or proven by Department Counsel and has the ultimate burden of persuasion 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 of 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**

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

The security concern 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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has many delinquent debts that he accumulated over years that are unpaid and unresolved. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 has paid some of his delinquent debts, but many remain to be resolved. I cannot find that AG ¶ 20(a) applies because some debts remain delinquent and although he has made a considerable effort to reduce the amount of delinquent debt he has, some delinquent debts are unresolved.



Applicant was unaware of his wife's gambling issues, which started his financial problems. He managed to stay current with his bills while attending school, but admitted that when he had to give up his part-time job in 2001, it adversely impacted his finances. He could not have anticipated that his adult daughter, who was attending college, would become pregnant, drop out, and need his assistance. He could not anticipate that the regulations for ship's personnel to live onboard would change after he signed a two-year lease. Applicant's finances were tight before all of these events intervened. His attendance at college at night and earning two degrees so he could better himself and receive a commission in the Navy shows he has self-discipline and can accomplish long-term goals. It is obvious he looked at the long-term benefits of an education and the potential increase in income verses the financial austerity he chose during the years he was pursuing his education. Applicant had a series of events that he could not control. Once he retired and began receiving his retirement pay and civilian pay, he began to address his debts. Although he could not pay all of them at one time, he has made significant strides. I find the conditions that resulted in Applicant's financial problems were largely beyond his control. Once he became established and was earning a good income, he addressed many of his delinquent debts. I find AG ¶ 20(b) applies.

There is no evidence Applicant has received financial counseling. However, there are clear indications that the problem is being resolved and is under control. Applicant has a detailed budget and plan for resolving all of his delinquent debts. He chose not to file for bankruptcy, but rather systematically is paying off his debt. Some debts are paid, others he is making payments, and others he has not begun to pay, but intends to. He has initiated good-faith payments on many of his debts, but not all of them. I find AG ¶ 20(c) applies. I find AG ¶ 20(d) partially applies. One of Applicant's alleged debts may be a duplicate. However, he has not provided documentation disputing the legitimacy of the debt. Therefore, AG ¶ 20(e) does not apply.

### **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 relevant 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 served 31 years in the Navy and rose from the rank of Seaman Recruit (E-1) to Lieutenant Commander (O-4). He went to school at night, worked a part-time job, and took care of his family. He was forced to give up his part-time job when his Navy responsibilities increased. He provided many documents to support his honorable service to our country. Applicant began having financial problems when his wife developed a gambling problem. He was unaware of the problem until it was too late. She incurred significant debt by using their joint accounts and credit cards. He did the responsible thing and closed or canceled them all. His daughter needed help when she dropped out of school due to her pregnancy. He acted as a responsible father and helped her during a difficult time. He continued to support his wife, as required by the Navy, until they divorced and is now required to provide her with 40% of his retirement pay. He also was awarded all of the marital debts. His overseas tour also impacted his ability to repay his creditors, when a regulation was changed and he no longer received a housing allowance. Applicant has had a series of unfortunate financial issues that impacted his ability to repay his creditors. 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 reasonable 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.<sup>30</sup>

Applicant is finally in a position to address his delinquent debts and he has aggressively done so. He has a very detailed budget and repayment plan. He has

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<sup>30</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

settled and paid two large SOR debts (\$23,948 and \$5,027), others he is making monthly payments, and others he has budgeted to pay in the future. Although he has not paid every debt, his plan is realistic and he has acted consistently by lowering his delinquent debt. Applicant must complete the process of paying his overdue creditors, but he has shown he has the initiative to stay the course. He has proven that once he was in a position to address his delinquent debt, he did so. Those who testified on his behalf speak highly of his integrity and trustworthiness. I find he has addressed and is continuing to address his financial problems so that they are no longer a security concern. This is not to say that they are all resolved, but rather, I have considered his distinguished career, his commitment to his children, and his dedication to resolving his debts systematically. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Financial Considerations.

### **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.l:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge