



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 09-03384  
SSN:----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: Alan V. Edmunds, Esq.

December 8, 2010

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**DECISION**  
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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on February 13, 2009. (Government Exhibit 1.) On October 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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 November 17, 2009, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on December 20, 2009. This case was assigned to me on January 11, 2010. DOHA issued a notice of hearing on February 4, 2010. I convened the hearing as scheduled on March 17, 2010. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, called

two additional witness, and submitted Applicant Exhibits A through R, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit S on March 23, 2010, and it was admitted without objection. DOHA received the transcript of the hearing on March 24, 2010, and the record closed. 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, divorced and has three children. He is employed by a defense contractor and seeks to retain 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 all the factual allegations in the SOR. Those admissions are hereby deemed findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant's financial problems began in 2008. At that time, after several years of increasing turmoil, Applicant separated from his wife and began divorce proceedings. The record shows that the wife has a history of mental illness, including several suicide attempts and subsequent hospitalizations. Applicant has been awarded legal and physical custody of his two minor children. (Transcript at 41-45, 56; Answer; Applicant Exhibits K, L and M.)

Before Applicant filed for divorce, he was not delinquent on his bills. This is confirmed by the full data credit report from February 2009. (Government Exhibit 4.) Once Applicant filed for divorce in 2008, his wife took several of their joint credit cards and ran up excessive debts, which subsequently became allegations in the SOR. (Transcript at 43, 50, 58-59; Government Exhibits 2 and 3.) At that time (2008), the Applicant did not work for the defense industry. He began his current work in February 2009. Because of his wife's conduct, his original divorce attorney advised Applicant not to pay any of the credit card bills, since these debts would be part of any divorce property settlement. (Transcript at 45, 60-61.) He has since replaced his divorce lawyer, and also was represented before DOHA. Based on the advice of his new counsel, he has begun making payment arrangements regarding his debts, as set forth below. The payments will continue for at least six months. As of the date the record closed, no settlement regarding marital debts had been reached. Applicant realizes that he may still have a responsibility to pay all of the marital debts, even if the court orders his wife to pay part of the debts. (Transcript at 70-72.) His current financial situation, other than these debts, is stable. He is able to pay his normal expenses, and has taken several financial management courses. (Transcript at 64-65; Applicant Exhibit J.)

Credit reports in the record show that Applicant owes approximately \$60,000 in past due debt. (Government Exhibits 3 through 7.) The current status of the debts in the SOR is as follows:

1.a. Applicant admitted owing this medical debt in the amount of \$2,262. (Transcript at 43.) He sent this creditor a check to begin payments while the property settlement was being resolved. (Applicant Exhibit E.) The creditor returned the check to the Applicant, indicating they could not identify the account number as their patient. (Applicant Exhibit P.) Applicant has sent an additional check to the collection agency. (Applicant Exhibit S at 5.)

1.b. Applicant submitted documentary evidence confirming that he paid this \$54 debt in November 2009. (Transcript at 44; Applicant Exhibit S at 3-4.)

1.c. Applicant admitted owing this credit card debt in the amount of \$16,277. (Transcript at 45.) He has sent this creditor two checks to show good faith while the property settlement is being resolved. (Applicant Exhibits H, and S at 5.)

1.d. Applicant admitted owing this credit card debt in the amount of \$8,575. (Transcript at 46-47.) He submitted documentary evidence showing that his wife maliciously ran up the amount on this credit card, including using this card to pay a \$5,000 retainer to her divorce lawyer in February 2008. (Applicant Exhibit S at 6-8.) He has sent this creditor two checks to show good faith while the property settlement is being resolved. (Applicant Exhibits G, and S at 5.)

1.e. Applicant admitted owing this credit card debt in the amount of \$15,790. This credit card was used to pay for an expensive, court-ordered, psychological examination of the Applicant's wife. (Transcript at 47-48.) He has sent this creditor two checks to show good faith while the property settlement is being resolved. (Applicant Exhibits F, and S at 5.)

1.f. Applicant admitted owing this repossessed automobile debt in the amount of \$17,070. Applicant's wife took this automobile, refused to return it to Applicant, and it was repossessed while in her possession. (Transcript at 48, 63.) He has sent this creditor two checks to show good faith while the property settlement is being resolved. (Applicant Exhibits D, and S at 5.)

## **Mitigation**

A former supervisor of Applicant, who has known him over 14 years, testified on his behalf. He has worked with the Applicant at four different companies, but not currently, and in fact recruited Applicant for past jobs. Witness is a senior executive at his current employer, and has held similar positions in the past. He highly recommended Applicant for a position of trust, stating, "He [Applicant] just does everything right." (Transcript at 22-29.)

Applicant's current supervisor also testified. In recommending the Applicant for a position of trust she stated, "He [Applicant] is one of the most trustworthy people I have working for me." (Transcript at 34.)

A current work associate also submitted a letter on Applicant's behalf. He has known Applicant for ten years. Applicant was recruited by this person to work at his current employment. In recommending Applicant for a position of trust he states, "He [Applicant] is intelligent, results driven, thoughtful, and respectful toward others and patiently works to help those around him succeed." (Applicant Exhibit C.)

Applicant also submitted his latest performance review. They show that he is an "Outstanding" employee, who exceeds performance requirements. (Applicant Exhibits I and O.)

## **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 adjudicative guidelines. 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 or her own common sense, as well as 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 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, had substantial past-due debts. 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.” In addition, 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.” Applicant’s financial difficulties arose primarily because of his wife’s mental and emotional difficulties, which resulted in a divorce. As shown, his wife maliciously ran up debts, and he followed legal advice in not paying his debts earlier. He now is engaged in serious attempts to resolve his past due debts. At all times he has acted responsibly. These two mitigating conditions apply.

Applicant has received financial counselling. His current financial situation is stable. I find that “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,” as required by AG ¶ 20(c).

Applicant has followed legal advice and, during pendency of the property settlement, begun paying his past due debts. Under the particular circumstances of this case, I find that Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). As the Appeal Board ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has ‘taken significant actions to implement that plan.’” ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

### **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, not of his making, but his current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant’s debt history. As stated at

length above, much of this was brought about because of his divorce and related financial issues. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, 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