



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 09-03622  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

July 14, 2010

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Clearance is granted.

**Statement of the Case**

On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 in the Department of Defense as of September 1, 2006.

Applicant answered the SOR on January 22, 2010, denying SOR subparagraphs 1.a and 1.b, and admitting SOR subparagraph 1.c. He requested a hearing. The case

was assigned to me on March 12, 2010. On March 24, 2010, a notice of hearing was issued scheduling the case for April 21, 2010. At the hearing, I received three Government exhibits, 21 Applicant exhibits, and the testimony of Applicant. The transcript was received on April 30, 2010.

### **Findings of Fact**

Applicant is a 51-year-old married man. Two previous marriages ended in divorce. He has been married to his current wife since January 2009. (Tr. 19) They have a five-month old child. Applicant has one other child, a six-year-old, from his second marriage.

Applicant has a master's degree in linguistics earned in 1988. (GE 1 at 11) He earned a bachelor's degree in the same discipline.

In 1993, Applicant enlisted in the Army. (Tr. 20) He served honorably through his discharge in 1998. Since leaving the Army, Applicant has worked as an intelligence analyst and translator for various defense contractors. (Tr. 21) He has worked for his current employer for the past three years. (Tr. 22) He worked for his previous employer in the six years preceding his current employment.

Applicant is highly respected on the job. He speaks three foreign languages fluently. (AE N) His superior skills as a translator enable him to respond quickly to client requests, and "resolve threat information on-the-fly." (*Id.*)

In 2007, the IRS audited Applicant's tax returns for tax years 2004 through 2006. (Tr. 27) The audit revealed that Applicant and his then-wife, with whom he had filed jointly, miscalculated these tax returns, and owed approximately \$16,000. (AE Q) The miscalculation was not in bad faith; rather, it stemmed from Applicant's status as an independent contractor. Specifically, the company with whom he worked from 2000 to 2006 did not withhold income taxes from its contract employees. Consequently, Applicant was responsible for setting aside money for his income taxes. Despite filing his income taxes with the help of a certified public accountant, he failed to calculate the amount due correctly. (Tr. 25-27, 58-59)

Because Applicant's then-wife was unemployed at or about the time of the audit, they struggled to repay the delinquency. Also, they were unable to timely pay their income tax for tax year 2007. (AE Q)

Applicant's marriage began deteriorating in 2007, in part, because of his then-wife's inability to manage the family finances.<sup>1</sup> (GE 2 at 17-18) In October 2007, he and his wife separated. (Tr. 44) Before they separated, they had negotiated an installment agreement with the IRS. (Tr. 34) After their separation, they stopped complying with the

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<sup>1</sup>Applicant's wife managed the finances because he worked overseas approximately 10 months per year. (Tr. 25)

agreement because they could not agree on how to apportion the responsibility. (Tr. 34, 41) Also, Applicant moved into an apartment after the separation, incurring rental expenses while retaining responsibility to pay the home mortgage where his estranged wife continued to reside. (GE 2 at 17) These developments further hampered his ability to make any progress toward eliminating his tax delinquency.

Applicant's divorce was finalized in November 2008. (Tr. 44) In December 2008, Applicant's father, who lived abroad, became fatally ill. Applicant then left the country to visit him. (Tr. 75) The trip was costly, and it further impeded Applicant's ability to satisfy the tax delinquency.

Applicant's father died approximately a week after Applicant arrived at his home. Applicant then returned to the United States. In March 2009, Applicant suffered a heart attack, and was disabled for approximately one month. (Tr. 76)

By June 2009, Applicant's tax delinquency had accrued to \$46,500. (AE Q) That month, Applicant negotiated a payment agreement under which he was to pay the IRS \$2,733 monthly. (AE D) Since then, he has adhered to the agreement. By January 2010, Applicant had satisfied approximately \$22,900 of the delinquency. (AE D) He continues to make the monthly payments, and anticipates satisfying the delinquency in the next five months. (Tr. 30)

During Applicant's separation from his wife, he also struggled to pay his mortgage, as alleged in SOR subparagraph 1.b. (Tr. 51) Applicant attempted to sell the house in May 2008 after his estranged wife moved; however, his efforts were initially unsuccessful. (Tr. 51) By November 2008, Applicant had begun to fall behind on his mortgage payments.

In February 2009, Applicant contacted the bank and requested a deed-in-lieu of foreclosure arrangement. (AE S) The bank declined his request. Applicant then attempted to structure a short-sale package with a potential buyer. (AE T) The deal failed when the bank rejected it. (AE T)

In October 2009, the bank filed for foreclosure. The following month, while the foreclosure process was pending, Applicant sold the home. (AE C) Using the proceeds from the sale, Applicant satisfied the home mortgage. (AE C)

The SOR lists another debt that became delinquent after Applicant and his wife separated. It is a credit card with a balance of \$5,548. Applicant's monthly payment was allegedly more than 120 days late as of the date of the SOR's issuance. In January 2010, Applicant negotiated a settlement for \$2,000 and paid it in full. (AE B)

Since 2004, Applicant's annual salary has ranged between \$88,000 and \$114,000. (AE I - O) He does not have any credit cards, and has \$600 of monthly after-expense income. (Tr. 70, 81) Also, he has \$9,000 in savings. (GE 2 at 19) The company where Applicant has worked since 2007 withholds income taxes from his bi-monthly

pay. Since working for this company, he has not had any trouble satisfying his income taxes.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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."

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.

## **Analysis**

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

Under this guideline, "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" (AG ¶ 18). Applicant's income tax delinquency, his troubles paying his home mortgage, and his delinquent credit card debt trigger the application of AG ¶ 19(a), "inability or unwillingness to satisfy debts."

The following mitigating conditions set forth in AG ¶ 20 are potentially applicable:

(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 counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not accrue his income tax delinquency in bad faith. Instead, he underestimated how much money he should set aside for income taxes, then was unable to pay the deficiency upon being audited. Applicant's current company withholds income taxes from his pay. Since working for his new employer, Applicant has not had any problems paying his income taxes.

Once Applicant was audited, his ability to adhere to a payment plan was disrupted by his separation and subsequent divorce, the costs related to his father's death, and Applicant's heart attack that disabled him for one month. These circumstances also contributed to his inability to keep current with his mortgage payments, as listed in SOR subparagraph 1.b, and his credit card payments, as listed in SOR subparagraph 1.a.

Throughout Applicant's financial struggles, he worked proactively to overcome them, negotiating with the mortgagee to prevent foreclosure and attempting to arrange payment plans with the IRS. In the past year, he has eliminated his mortgage by selling his home, satisfied his credit card bill, and reduced the income tax delinquency by more than \$20,000.

Applicant has ample savings and after-expense income. I conclude that all of the mitigating conditions listed above apply.

### **Whole-Person Concept**

Under 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.

In the past year, Applicant has reduced his income tax delinquency by approximately \$20,000, satisfied the credit card delinquency, and eliminated his mortgage through the sale of his home. Evaluating the cause of his financial problems,

and the manner in which he overcame them, I conclude Applicant has mitigated the security concern.

**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.c:	For Applicant

**Conclusion**

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

MARC E. CURRY  
Administrative Judge