



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-00973
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

October 29, 2010

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 3, 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 (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 30, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 4, 2010. DOHA issued a notice of hearing on August 18, 2010, as amended on August 19, 2010. The

hearing was convened as scheduled on September 14, 2010. The Government offered Exhibits (GE) 1 through 7, which were received without objection. Applicant testified and submitted Exhibits (AE) A through DD, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE EE through GG and admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 21, 2010.

### **Findings of Fact**

Applicant is a 44-year-old employee of a defense contractor. He served on active duty in the United States military from 1984 until he was honorably discharged in the pay grade E-4 in 1987. He served in the inactive reserves from 1987 through 1990. He seeks to retain a security clearance he has held since about 1989. He attended college for a period but did not earn a degree. He was married and divorced four times. He has been separated from his common-law wife since 2006. He is unclear if he is required to go through a divorce to end that marriage. He has two children, ages 25 and 17.<sup>1</sup>

Applicant was laid off from his job in about November 2002. He was unemployed until he was rehired by his employer in about July 2003, but at a different geographic location and at a smaller salary. A number of debts became delinquent. He was able to transfer back to his original location in 2006, with a promotion and a higher salary.<sup>2</sup>

DOHA issued an SOR to Applicant in January 2007, detailing Financial Considerations security concerns. Applicant had a hearing before an administrative judge in April 2007. He explained his financial situation and testified about his delinquent debts. He stated that he had contracted with a credit counseling service to pay three large debts of \$8,284, \$5,530, and \$4,439. He also received financial counseling from the company. He agreed to pay the credit counseling service \$434 a month until the debts were satisfied. There were two additional debts of about \$6,700 and \$5,700 that were incurred in the mid-1990s. These debts were not legally enforceable due to his state's statute of limitations. The administrative judge granted Applicant's continued eligibility for a security clearance in May 2007.<sup>3</sup>

Applicant did not continue with the credit counseling service after his hearing. Instead, he borrowed from his parents and paid or settled his debts in a lump sum. He settled the \$8,284 debt for \$4,971 in May 2007. He settled the \$5,530 debt with three payments of \$1,335 in July through September 2009. Applicant thought he was settling the \$4,439 debt from the original SOR. Instead, he mistakenly settled one of the debts from the original SOR that was barred from collection by his state's statute of limitations. He settled that debt with a \$4,007 payment in May 2007.<sup>4</sup>

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<sup>1</sup> Tr. at 14, 38, 43, 46-50; GE 1.

<sup>2</sup> Tr. at 43-44, Applicant's response to SOR; GE 1, 3.

<sup>3</sup> Applicant's response to SOR; GE 6, 7.

<sup>4</sup> Tr. at 14, 53-56; Applicant's response to SOR; AE GG.

SOR ¶ 1.c alleges a \$4,439 debt to a bank. This is the debt from the original SOR that Applicant thought he settled, but did not. Applicant settled this debt for \$2,200 in July 2010.<sup>5</sup>

The Internal Revenue Service (IRS) filed a \$34,827 tax lien against Applicant and his common-law wife in 2009 for unpaid taxes from tax year 2006. His wife received a large sum of money. She decided she no longer wanted to be married, and they separated in mid-2006. She earned a large income from the money but did not tell Applicant. When they filed joint tax returns for 2006, they did not report the income. The IRS determined they owed more than \$34,000 in tax, interest, and penalties. Applicant filed an IRS Form 8857, Request for Innocent Spouse Relief. The IRS granted his petition, relieved him of a tax liability of \$30,426, and determined that he still owed \$881. Applicant paid his part of the IRS debt. In August 2010, the IRS released the tax lien as to him, but not his former common-law spouse. The IRS certified that Applicant “had satisfied the taxes listed below and all statutory additions.”<sup>6</sup>

The current SOR alleges an additional seven delinquent debts totaling about \$1,392. Applicant submitted documentary proof that he has satisfied all the debts. The \$568 debt and the \$162 debt, alleged in SOR ¶¶ 1.a and 1.f, were paid in 2007.<sup>7</sup> The \$42 debt alleged in SOR ¶ 1.i was paid in 2009.<sup>8</sup> The remaining debts were paid in July and August 2010.<sup>9</sup>

Applicant’s other debts are current. He earns a good salary and has assets in excess of \$100,000. He has a modest lifestyle, and he earns more than he spends each month. He owns an older car and a motorcycle outright. He bought his house more than 20 years ago. The mortgage is less than \$30,000, and the mortgage payment is less than \$400 a month. In March 2008, Applicant notified his facility security officer that he discovered two additional delinquent debts on his credit report. Both debts have been resolved.<sup>10</sup>

Applicant submitted several letters attesting to his outstanding job performance, impeccable character, strong work ethic, honesty, reliability, dedication, responsibility, honor, leadership, loyalty, and integrity.<sup>11</sup>

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<sup>5</sup> Tr. at 53-58; Applicant’s response to SOR; GE 6, 7; AE G-I.

<sup>6</sup> Tr. at 14, 37-42, 46; Applicant’s response to SOR; GE 3; AE A, C, D.

<sup>7</sup> Tr. at 59-60; Applicant’s response to SOR; AE E, F, O, P, GG.

<sup>8</sup> Tr. at 51-53; Applicant’s response to SOR; AE B, W-Z.

<sup>9</sup> Tr. at 51, 58-62; Applicant’s response to SOR; AE J-N, Q-V.

<sup>10</sup> Tr. at 16-18, 37, 50-51, 62-70; Applicant’s response to SOR; GE 3; AE AA, DD.

<sup>11</sup> AE BB.

## 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 to be used 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant 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 EO 10865 provides that adverse 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 financial issues started when he was laid off from his job in about November 2002. He was unemployed until he was rehired by his employer in about July 2003, but at a different geographic location and at a smaller salary. Those events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. The IRS absolved him of his tax liability, and he paid or settled the remaining debts alleged in the SOR. He acted responsibly under the circumstances by making a good-faith effort to repay his overdue creditors. He has received financial counseling, and his financial problems have been resolved. His past financial problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are all applicable. AG ¶ 20(e) is also applicable to the IRS debt.

### **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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's strong character evidence. Applicant's finances suffered when he was unemployed and when he accepted a position at another geographic location for less pay. It has taken time, but he has resolved all his financial problems. He is currently living within his means and not accruing new delinquent debt. His finances do not constitute a security concern.

