



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



In the matter of: )  
)  
) ISCR Case No. 09-04092  
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Applicant for Security Clearance )

**Appearances**

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

June 15, 2010

**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant has established a plan to resolve his financial problems and has taken significant actions to implement his plan. He mitigated both the financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 7, 2008, Applicant submitted a security clearance application. On November 6, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant's undated answer to the SOR was received by DOHA on December 22, 2009. He requested a hearing before an administrative judge. The case was assigned to me on February 19, 2010. DOHA issued the notice of hearing on February 26, 2010, convening a hearing on March 17, 2010. The hearing was convened as scheduled. The Government offered Government Exhibits (GE) 1 through 6, which were admitted without objections. Applicant testified, presented one witness, and submitted Applicant Exhibits (AE) 1 through 19, which were admitted without objection. AE 19 was received post-hearing. DOHA received the hearing transcript (Tr.) on March 24, 2010.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.f, 2.a, 2.c, and 2.d. He denied the allegations in SOR ¶¶ 1.c, 1.e, 1.g, and 2.b. His admissions are incorporated here as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 47-year-old physical security officer employed by a defense contractor. He finished high school in 1981, and completed approximately 40 college credits between 1982 and 1984 while serving in the U.S. Army. He served in the Army from October 1981 until October 1984. His service was characterized as honorable. From 1985 until 1997, he worked for the U.S. Postal Service. Applicant married his wife in May 1993. They have three children, ages 14, 13, and 5.

Between 1993 and 1996, Applicant and his wife were both employed and had no financial problems. From around July 1996 to July 2001, Applicant ran his own business as an independent distributor of herbal supplements. His business failed around the same time his wife gave birth to their first child and she stopped working. From July 2001 until March 2002, Applicant worked as a repair technician for a company making approximately \$10 an hour. He started working for his current employer, a government contractor, in March 2002. For his job, he has had access to classified information at the top secret level since 2004. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant filed for Chapter 13 bankruptcy protection in 1997. His filing was dismissed because he could not make the reorganization payments. He refiled for bankruptcy protection under Chapter 7, and his dischargeable debts were discharged in July 1998. His financial problems were caused by his failed business, his wife's inability

to work and provide financial assistance to the household, the expenses associated with the birth of his son, and his low earnings from July 2001 until March 2002.

While employed as a repair technician, Applicant drove a company truck and he was allowed to take it home at night. When he quit his job in 2002, he failed to return his truck to the company. He claimed he called his supervisor and told him to come and get the truck. Applicant did not return the truck for a week. The company filed a criminal complaint against Applicant for the wrongful appropriation of the truck. After a week, Applicant returned the truck to another supervisor at a different location. Applicant was not aware of the charges against him or the warrant for his arrest.

In July 2006, Applicant was arrested, served five days in jail, and was charged with unauthorized use of a vehicle for his failure to return the company truck after ending his employment in 2002. The charge was later dismissed and his record expunged. Because of the criminal charge, Applicant was suspended from his employment for approximately three months. He claimed the suspension cost him approximately \$9,000 in lost wages and legal fees, which exacerbated his financial problems.

Applicant disclosed his financial problems in his November 2008 security clearance application. In addition to the bankruptcy petitions, the SOR alleges four delinquent debts totaling approximately \$18,000. The status of Applicant debts is as follows:

1. SOR ¶ 1.c (\$139) alleged a collection account for medical services Applicant received in January 2004. He claimed he overlooked the debt. The debt was paid in October 2009 (Applicant's answer to the SOR).

2. SOR ¶ 1.d (\$7,000) concerns a delinquent debt that he settled for \$4,000 and paid in December 2009. His wife started working in 2006, and they were able to take a loan to pay it. (Applicant's answer to the SOR)

3. SOR ¶ 1.e (\$92) alleged a collection account for telephone services Applicant received in 1997. Applicant paid \$245 and believed that payment fulfilled his obligation. Later, he found he still owed \$85. He disputed the account and claimed he was told it was removed from his credit report. He was not able find documentary evidence to show the debt was deleted from his credit report. He paid \$91 to the original creditor in March 2010. (AE 19)

4. SOR ¶ 1.f (\$12,000) originates from an uninsured car Applicant owned and his wife totaled in an accident. In 2006, he was suspended from his job because of the arrest alleged in SOR ¶ 2.d, and he stopped paying the debt. Applicant elected to start paying his small delinquent debts first and then pay this debt. He contacted the creditor to settle the debt. As of his hearing date, has made three \$50 payments towards his debt. (AE 4) He is still in the process of negotiating a settlement with the creditor.

5. SOR ¶ 1.g alleges that based on Applicant's August 2009 personal financial statement he was financially overextended. At his hearing, Applicant provided updated information showing he and his wife now have a monthly net remainder in excess of \$1,000.

Applicant attributed his current financial problems to his failed business, his wife's unemployment, the expenses associated with the birth of his child, his underemployment, and his period of suspension in 2006. He was not making sufficient money to pay his delinquent debts and his family's day-to-day living expenses. His financial situation improved in 2006; however, he did not start to address his delinquent debts until 2009.

Applicant's financial situation has improved substantially since his wife started working in 2006. She is now fully employed and contributes to the household finances. Moreover, Applicant provided documentary evidence showing that, in addition to paying the above mentioned SOR debts, he has paid numerous other debts. (AE 6 through 14; GE 4) His 2009 credit report shows he has acquired no new large debts in recent years.

Applicant and his wife have a budget and they try to follow it. His plan is to pay all his small delinquent debts first and then resolve the larger debts. Applicant was forthcoming in his security clearance application, during the background investigation process, and at his hearing about his past and present financial situation. He acknowledged his prior financial mistakes and his failure to resolve his delinquent debts diligently. He expressed remorse for his financial problems and for not being more responsible addressing his debts. With his wife's assistance, he is now in a better financial position to address his past debt. He promised to make satisfactory payment arrangements with all of his creditors sometime in the future. He believes that his recent efforts paying his debt show he is trying to be financially responsible. He highlighted his good performance for his employer and that he is considered to be an honest, trustworthy, and valued employee.

In 2009, Applicant was involved in several minor disciplinary violations at work: he lost a baton, was late for work, submitted an incorrect time sheet, failed to wear his tie, and was absent from his post. He received a letter or reprimand for losing his baton. Because he had three disciplinary infractions within one year, he received a two-day suspension.

Applicant's supervisor has known him for eight years. He considers Applicant to be reliable, honest, loyal, and trustworthy. He is competent, courteous, and carries himself in a professional manner. He has a reputation for being a religious, dedicated family man. Applicant is actively involved in his church and mentors young men. In his supervisor's opinion, Applicant's disciplinary violations at work were non-intentional, minor violations for which he should not have been suspended. He stated that Applicant has never been reprimanded for any failure to follow security regulations or procedures.

## 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 required 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence."<sup>1</sup> Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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

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<sup>1</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

permissible extrapolation as to 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* Executive Order 12968 (Aug. 2, 1995), Section 3.

## **Analysis**

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

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged four delinquent debts totaling approximately \$18,000, which were delinquent for a number of years. Applicant resolved three of the alleged delinquent debts. SOR ¶ 1.f (\$12,000) remains unpaid. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and

(f) the affluence resulted from a legal source of income.

Applicant presented documentary evidence to show that he has settled and paid three of the debts. He is in negotiations with the creditor of SOR ¶ 1.f, and has made three \$50 payments towards this debt. He started addressing his delinquent debts after submitting his security clearance application when he realized that his bad credit would adversely impact his eligibility for a clearance.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because he did not act more aggressively and responsibly to resolve his delinquent debts. He established that some circumstances were beyond his control, which contributed to his inability to pay his debts, i.e., his failed business, his wife's period of unemployment, his underemployment, and the income he lost as a result of his suspension from work until he was cleared from criminal charges. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. He does not receive full mitigating credit because he did not establish that he acted with sufficient initiative and resolve to address his delinquent debts.

AG ¶ 20(c) fully applies. Although Applicant has not participated in financial counseling, he demonstrated he has the self-discipline necessary to reduce and resolve his debts. He followed a budget, settled and established payment plans with creditors, and substantially reduced his debts. He has also established partial mitigation under AG ¶ 20(d) because he showed good faith<sup>2</sup> in the resolution of his SOR debts. He receives only partial credit because he should have been more diligent addressing his debts. Based on the credit reports, Applicant properly contested the validity of some debts. AG ¶ 20(e) does apply.

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<sup>2</sup>The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Considering the evidence as a whole, there are clear indications that his financial problems are being resolved or are under control. Applicant's evidence shows he has been paying consistently on his debts. He has a viable plan to resolve his financial predicament and I believe that he will be able to avoid similar financial problems in the future. Although Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts and he still has one large unresolved debt, his past behavior and current financial situation do not raise doubts about his current reliability, trustworthiness, and judgment. Financial considerations concerns are mitigated.

### **Guideline E, Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

In 2002, Applicant misappropriated his employer's truck. In 2009, he was involved in disciplinary incidents at work all of which could be considered minor, except for his failure to submit an accurate time sheet.

Applicant's behavior triggers the applicability of disqualifying conditions AG ¶ 16(c): "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations" and AG ¶ 16(e): "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing."

AG ¶ 17 lists seven conditions that could mitigate personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made



aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find that AG ¶¶ 17(c), 17(d), 17(e), and 17(g) all apply, at least in part, to this case. The wrongful appropriation of a truck is a serious offense. However, Applicant's wrongful appropriation occurred eight years ago and there is no evidence of similar misconduct before or after 2002. His behavior was likely negligent and not criminal; he was motivated by his desire to concentrate on his new, better paying job and disregarded his obligations to his prior employer. The charge was dismissed and his record was expunged. Applicant learned an important lesson and it is unlikely his questionable behavior will recur.

Applicant's 2009 disciplinary infractions are for the most part minor, except for filing an inaccurate time card. Applicant credibly explained it was a one-time mistake. His supervisor of eight years confirmed Applicant has been an honorable, reliable, and trustworthy employee. He considers Applicant to be a competent professional. He believes Applicant's disciplinary incidents were minor, and in his opinion Applicant's behavior did not warrant a suspension. There is no evidence that Applicant has ever been involved in a breach of security or mishandled any classified information. Considering Applicant's military service, his years of good work for government contractors, and his reputation as a religious, family man, I find Applicant's disciplinary incidents do not raise a concern about his judgment or willingness to comply with rules and regulations. Applicant has acknowledged his inappropriate behavior and expressed sincere remorse for his actions. His wife, supervisors, and employer know about his inappropriate behavior. As such, he is not vulnerable to exploitation or duress.

## 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. 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.

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. AG ¶ 2(c).

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 and Guideline E in my whole-person analysis. Applicant should have been more aggressive in his efforts to establish payment plans on his delinquent debts. He had sufficient income to make greater progress in delinquent debt resolution. These factors show some financial irresponsibility and lack of judgment.

Notwithstanding, the mitigating evidence under the whole-person concept is sufficient to warrant granting Applicant's security clearance. He served honorably in the Army for three years and has worked for a government contractor since 2004. He has had access to classified information for six years. There is no evidence he has ever compromised or caused others to compromise classified information. He has a reputation as a law-abiding citizen and a religious family man. He is considered to be honest and trustworthy. His financial problems were caused, in part, by factors beyond his control. He has worked well for his employer. Moreover, he has taken control of his financial situation, and recently has made significant progress in resolving his debts. He has established a plan to resolve his financial problems and has taken significant actions to implement his plan. He now understands what is required of him to be eligible to possess a security clearance. These factors show responsibility, good judgment, and mitigation. On balance, I conclude that Applicant has mitigated both security concerns.

### **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.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge