



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 09-04409  
)  
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Applicant for Security Clearance )

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: *Pro se*

April 27, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On March 27, 2009, Applicant submitted a Questionnaire for National Security Positions (SF 86). On September 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 29, 2009, and requested a hearing before an administrative judge. On January 22, 2010, DOHA assigned the case

to me. On February 3, 2010, DOHA issued a Notice of Hearing, setting the case for February 23, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and called one witness. He offered Applicant Exhibits (AE) A through D into evidence without objection. DOHA received the hearing transcript on March 3, 2010. The record remained open until March 12, 2010, to give Applicant an opportunity to submit information. He timely submitted four additional documents that I marked as AE E through H and admitted into the record without objection from Department Counsel.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all allegations contained in ¶ 1, except those contained in ¶¶ 1.e, 1.l, and 1.o. His admissions are incorporated into the findings below. He provided extensive explanations for each debt and some documentation pertinent to specific debts.

Applicant is 33 years old and married. He and his wife have three children, ages 7, 4 and 3. At the time of the hearing, his wife was pregnant with their fourth child. He has two children, ages 13 and 11, from a previous marriage for whom he pays child support. He earned a bachelor's degree in mechanical engineering technology in May 2003. He completed a master's degree in information technology management in May 2009 through an on-line program. In February 2007, he began a position as an engineer with a defense contractor.

In his Answer, Applicant explained in detail the history of his financial difficulties and delinquent debts, which began in January 2002 and continue to the present. From January 2002 to July 2003, he and his wife were college students with limited income and medical coverage when their first child was born. In August 2003, they moved to another state and lived with their families to save money. In December 2003, they rented an apartment that became too expensive for them. In July 2004, his wife quit her position and they moved to another state to live with her mother. For the next three months, neither he nor his wife found employment, further exacerbating their financial situation. They subsequently received food stamps and public aid. In September 2004, his wife found a job and in October 2004, he found work installing cable systems. His wife gave birth to their second child during this time frame and stopped working.

In August 2005, Applicant was involved in a serious car accident and was placed on disability. In November 2005, his wife was offered a position in another state and they decided to relocate. In February 2006, his wife resigned from her position because of family issues. A few months later, she found a part-time position. In May 2006, they relocated again to live with her mother. He remained unemployed until June 2007, when he obtained a position with his current employer, which was located approximately 360 miles away from his home. His wife found a part-time position while he commuted on weekends between his job and the family's residence. Their third child was born during this time. In April 2008, he was laid off and received unemployment benefits for a few months until he found an internship with a city department. In December 2008, his

previous employer offered him another position. He acknowledged that his delinquent debts accumulate over this period of time, as a result of a lack of stable employment and his need to maintain two residences while working away from home for almost two years. (Answer.)

Based on credit bureau reports dated April 2009 and August 2009, the SOR alleged that Applicant accumulated 29 delinquent debts totaling over \$38,000, of which he admitted to owing about \$23,000. A summary of status of the debts is listed below:

- (1) Applicant is making monthly payments of \$80 on the \$6,046 judgment alleged in ¶ 1.a. The debt is owed to the same credit card company listed in ¶ 1.j for expenses he incurred during the above stated time frame. He started making payments in July 2009. The balance is \$5,996, as interest continues to accrue on the debt. (AE H; Tr. at 36.)
- (2) Applicant paid the \$66 debt alleged in ¶ 1.h. (AE A.)
- (3) Applicant paid the \$21 debt alleged in ¶ 1.cc. (AE A.)
- (4) Applicant is not responsible for the \$15,717 debt alleged in ¶ 1.o. The credit card charges were fraudulently placed on the account by his brother, who gained access to Applicant's personal information and opened the account. The matter is being resolved through the credit card company's fraud division. His brother accepted responsibility for the debt. (AE D; Answer.)
- (5) Ten of the alleged delinquent debts are unpaid medical bills totaling \$4,205. Applicant admitted owing the debts and will pay them as money becomes available. They arose during periods that he and his wife did not have medical insurance or sufficient monies to make the payments. (SOR ¶¶ 1.c, 1.k, 1.r, 1.s, 1.t, 1.v, 1.w, 1.y, 1.aa, and 1.bb.)
- (6) In August 2009, Applicant disputed the \$432 debt listed in ¶ 1.e. The telephone company validated the debt, but he continues to dispute it, claiming he never had a telephone with the creditor. (Tr. 41.)
- (7) Applicant admitted owing the debts alleged in ¶¶ 1.b, 1.d, 1.f, 1.g, 1.i, 1.m, 1.n, 1.p, 1.q, 1.u, 1.x, and 1.z, which total \$13,058. The larger debts are owed to credit card companies for expenses he charged while he was unemployed. He wrote letters to these creditors in August 2009, requesting verification and/or authorization to begin making minimal monthly payments on some of them. He heard from one credit card company that wanted a large settlement payment, which he cannot afford. (AE B.) To-date they remain unpaid or unresolved because he does not have sufficient income.

In August 2009, Applicant began attending a 13-week financial counseling course offered through his church. He completed the course in December. (Answer; Tr.

at 43.) He submitted a copy of his budget. His net monthly income is approximately \$3,427. His expenses are \$2,800 and include a \$926 child support payment of which \$100 is for arrears. After making the \$80 payment on the outstanding judgment alleged in ¶ 1.a, he has about \$500 remaining for other expenditures. (AE G.) At the end of March 2009, his wife started a federal position with an annual salary of \$47,448. (AE F.) In May 2010, he will begin making \$350 monthly payments on his outstanding student loans.<sup>1</sup> He no longer uses credit cards. (Tr. at 56.)

Applicant's co-worker testified on his behalf. The co-worker, a liaison engineer, has known Applicant since spring of 2007. He considers Applicant to be a good worker and representative for the company. Over the course of working with Applicant, he has never observed Applicant engaging in behavior that would lead him to believe that Applicant poses a security risk. (Tr. at 24-29.)

Applicant testified candidly about his financial situation. He accepted his responsibility to pay the delinquent debts, which total approximately \$23,000, and expressed a willingness to do so when money becomes available. His wife, who attended the hearing, is clearly aware of the situation and his financial obligations to address his delinquent debts.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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.

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.

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<sup>1</sup> Applicant's outstanding student loans total \$93,631. His wife's loans total \$23,630.

According to 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an 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.

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.”

## **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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying:

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

Applicant admitted that he began accruing debt in January 2002, which he has been unable to pay or resolve until late 2009. The evidence supports the application of the above disqualifications.

AG ¶ 20 provides four conditions that could mitigate security concerns arising under this guideline:

(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 started accumulating debt in January 2002 while he was in college. He continued accumulating debts that he could not pay until 2009, as a result of unemployment, underemployment, lack of medical insurance, relocations for employment purposes, and a period of disability. Some of these circumstances were beyond his control. However, there is no evidence to indicate that over the course of those seven years, Applicant took steps to responsibly manage the accumulating delinquent debts. Hence, AG ¶ 20(b) has limited application.

Applicant presented evidence that he obtained financial counseling, established a budget, and subsequently contacted all of his creditors to either verify the debts or work out minimal payments. Recently, his wife began a well-paying position that will provide additional income to the family budget and assist in the resolution of Applicant's delinquent debts. The evidence indicates that his financial obligations are slowly being addressed. AG ¶ 20(c) has some application.

Applicant paid two small debts and is making monthly payments on a large judgment. He also contacted other creditors and offered to resolve some of the debts through small monthly payments. His attitude and actions demonstrate a good-faith effort to resolve his debts and warrant a partial application of AG ¶ 20(d).

AG ¶ 20(e) is applicable in this case. Applicant successfully disputed the largest debt alleged in the SOR after his brother fraudulently used his identity to open the account. He continues to dispute another debt because he never had an account with the company.

## 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). They include the following:

- (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 include 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 is a 33-year-old married man with six children. Until he obtained his current position, he and his wife experienced long periods of inadequate income due to multiple factors, some of which included immaturity. At this juncture in his life, he is becoming financially solvent and capable of resolving his delinquent debts, for which he repeatedly expressed responsibility. He has matured over the past couple years and acknowledged the importance of maintaining sound financial practices and good credit. He stated his willingness to continue paying some of the small debts alleged in the SOR, and then begin resolving the larger ones as money becomes available. Given his wife's new position and the additional income, he should be able to slowly resolve his delinquent debts and pay current obligations. Based on the evidence and his testimony, it is unlikely that similar financial problems will recur, as he is clearly aware of the negative effect that future delinquencies will have on his eligibility to maintain a security clearance and retain his employment.

After weighing the disqualifying and mitigating conditions, and all facts and circumstances in the context of the whole person, I conclude that Applicant mitigated the security concerns pertaining to financial considerations. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability 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.cc: 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.

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SHARI DAM  
Administrative Judge