



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-05316
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Robert S. Poydasheff, Esquire

February 16, 2011

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on March 9, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 29, 2010, detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 6, 2010. He answered the SOR in writing on July 19, 2010 and requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on July 29, 2010. I initially received the case assignment on August 17, 2010. DOHA issued a notice of hearing on August 30, 2010, and I convened the hearing as scheduled on September 16, 2010. At the beginning of the hearing, Applicant was advised of his right to have counsel. He requested an opportunity to retain counsel. I continued the hearing. DOHA received the transcript of this hearing on September 23, 2010.

DOHA reassigned this case to another administrative judge on October 8, 2010 for workload reasons. DOHA issued a second notice of hearing on October 15, 2010, scheduling the hearing for November 3, 2010. On October 26, 2010, counsel entered an appearance on behalf of Applicant and requested a continuance to prepare for the hearing. For good cause, the assigned administrative judge granted the continuance in an Order dated October 26, 2010.<sup>1</sup>

DOHA reassigned this case to me on November 3, 2010 based on workload. DOHA issued a third notice of hearing on November 12, 2010, and I convened the hearing as scheduled on December 16, 2010. The Government offered six exhibits, which were marked as Government Exhibits (GE) 1 through 6, and which were received and admitted into evidence without objection. Applicant and one witness testified. His counsel submitted eight exhibits, which were marked as Applicant Exhibits (AE) A through H, and which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on December 28, 2010. I held the record open until December 31, 2010, for Applicant to submit additional matters. Applicant timely submitted AE I - AE O, without objection. The record closed on December 31, 2010.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 27 years old, works as an electronic technician for a Department of Defense contractor. He began his employment with this contractor in July 2010. He previously worked for another Department of Defense contractor from January 2009 until July 2010.<sup>2</sup>

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<sup>1</sup>The Order shows a date of October 25, 2010, one day before the request for continuance was received by facsimile. The administrative judge noted his decision in a written note dated October 26, 2010.

<sup>2</sup>GE 1; Tr. 26.

Applicant left high school in 2001. He attended a technical college from July 2003 to June 2004. He received his general equivalency diploma (GED) in March 2006. He returned to a technical school for no more than two months in 2007. He is currently enrolled in school to learn management, with a goal of becoming a team leader.<sup>3</sup>

After leaving high school, Applicant worked numerous jobs, including lawn maintenance, pizza delivery, labor, stock boy, store delivery man, assembly line, installer, painter, cook at donut store, kennel tech, and fast food. Many of these jobs did not pay well and many involved temporary employment. In between jobs, he received unemployment benefits. He began working in his current career field in January 2009.<sup>4</sup>

Applicant is currently engaged. In February 2007, he married his long-time girlfriend. They had no children. They separated in July 2007 and divorced in September 2007. During the marriage, he provided the primary household income. His wife worked sporadically, including as a grocery store cashier. As part of their divorce settlement, Applicant was to keep a 2006 Honda Civic car and make the monthly payments. After many arguments, Applicant relinquished control of the car to his former wife. He lost his job and could not continue with the car payments. His wife also did not pay the monthly payment, which resulted in a car repossession. He acknowledged a continuing obligation to pay his loan on the car.<sup>5</sup>

Applicant sustained injuries in a motorcycle accident and received medical treatment. He did not have health insurance or income to pay his bills. With the assistance of his family, he attempted to obtain help with payment of these bills through the medical provider. He was denied any assistance, although a program to help pay medical bills for the indigent existed. In the summer of 2007, Applicant injured his toe while working. He sought medical treatment, but still lacked health insurance to pay his bills. He has medical insurance with his present employer.<sup>6</sup>

Applicant currently earns \$1,638 in straight salary bi-weekly and an additional \$268 in income bi-weekly. His bi-weekly net pay totals \$1,409. His total net monthly pay is \$2,819. His fiancée lives with him and contributes to the household income. Her net monthly pay totals \$956. Their monthly expenses total \$2,608, leaving approximately \$1,166 a month for savings, emergencies, and unanticipated expenses. His current expenses are paid.<sup>7</sup>

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<sup>3</sup>GE 1; Tr. 27.

<sup>4</sup>GE 1.

<sup>5</sup>GE 1; Tr. 20-25.

<sup>6</sup>GE 3; Tr. 21, 25, 35.

<sup>7</sup>AE I - AE M.

In July 2010, Applicant filed a petition for bankruptcy under Chapter 7 of the Bankruptcy Code after saving the \$1,600 filing fee. He completed a personal financial management course required by the bankruptcy court on August 20, 2010. The bankruptcy court discharged his debts on October 21, 2010.<sup>8</sup>

The debts listed in SOR ¶¶ 1.a - 1.h, 1.j, 1.k, and 1.m are included in Applicant's bankruptcy debts. Prior to the issuance of the SOR, Applicant developed a payment plan with the collection creditor for the debts identified in SOR ¶¶ 1.a and 1.l. He made the payments as agreed throughout 2006. His payment resolved the debt in SOR ¶ 1.l. The debts in SOR ¶¶ 1.i (\$91) and 1.n (\$461) are not listed in his bankruptcy schedule of creditors. He did not provide any evidence showing that he paid or resolved these two debts. All other SOR debts are resolved.

Applicant acknowledged that he made some poor decisions about his finances in the past. More recently, he has started saving money for emergencies. He does not use credit cards. He currently drives a 2008 truck, which is titled in his mother's name and covered under her insurance policy. His car payment is made to his mother each month. Applicant acknowledged that the debts listed in the SOR are his. He files his federal and state tax returns each year.<sup>9</sup>

Applicant's parents signed an affidavit, accepting responsibility for any of Applicant's debts that are not part of his bankruptcy. Applicant's immediate supervisor and his manager describe him as honest and a person of integrity. They praise his hard work. His friends describe him as honest, reliable, and dependable. All recommend him for a security clearance.<sup>10</sup>

## **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 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, 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,

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<sup>8</sup>AE A; AE O; Tr. 28-29.

<sup>9</sup>Tr. 20-21, 30-31.

<sup>10</sup>AE B - AE H; Tr. 34.

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, 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. . . .” An applicant has the ultimate burden of persuasion for 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. 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.” 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 relating to the guideline 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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

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

Appellant developed significant financial problems when he and his first wife separated, and he injured himself in two accidents. He was unable to pay his debts. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

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

Applicant's debts occurred several years ago, when he did not have medical insurance and was unemployed. When he and his wife divorced, his former wife initially agreed that he should have the Honda Civic and make the payments. Eventually, she took possession of the car. When Applicant lost his job and could no longer make the car payments, his former wife failed to make the monthly car payment. In 2006, Applicant negotiated a payment plan for a bank debt and a broken lease debt. He made small payments for a year, but did not complete his payment plan. He filed for bankruptcy in July 2010, and completed the required financial counseling program. He has resolved all but \$550 of the debts listed in the SOR. He pays his monthly bills and does not incur unnecessary expenses. AG ¶¶ 20(a) and 20(c) apply. AG ¶ 20(b) is partially applicable, and AG ¶ 20(d) applies to SOR ¶ 1.1 only.

## 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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems first began when he sustained injuries in a motorcycle accident, and he lacked medical insurance to pay his bills. At this time, Applicant worked in seasonal and temporary jobs, which did not provide him with health insurance or a steady income. Although he did not have long periods of unemployment, he did not have steady income or health insurance for several years. When he lost his job in the summer of 2007, he lacked sufficient income to make his car payment, and his former wife declined to make the payment, even though she drove the car. Given the level of his debt, Applicant decided to file for Chapter 7 bankruptcy. Once he had saved the required filing costs, he proceed with his bankruptcy filing. Most of his SOR debts were included in his bankruptcy and discharged in October 2010. Applicant has not spent money excessively and does not have new unpaid debts. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns, and he lives within his monthly income. He has not provided proof that he paid or resolved two small bills, totaling \$550. These two small debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his

debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While two small debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) Applicant has taken responsibility for his debts and has changed his approach to his financial management.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

### **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
Subparagraph 1.a- 1.n:	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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MARY E. HENRY  
Administrative Judge