



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-06284

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro se*

June 23, 2011

**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 November 9, 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 January 17, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 18, 2011. DOHA issued a notice of hearing on April 4, 2011, and the hearing was convened as scheduled on May 4, 2011. The Government offered Exhibits (GE) 1 through 7, which

were admitted without objection. Applicant testified and submitted Exhibits (AE) A through G, which were admitted without objection. The record was held open until June 10, 2011, for Applicant to submit additional information. Applicant timely submitted documents that were marked AE H through N and admitted without objection. Department Counsel's memorandum forwarding Applicant's exhibits is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on May 18, 2011.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He served on active duty in the United States military from 1995 until he was honorably discharged in 2003. He seeks to retain his security clearance, which he has held since he was in the military. He has a bachelor's degree. He was married from 1996 until 1998. He married his current wife in 2003. He has two children, ages five and two.<sup>1</sup>

Applicant overextended himself financially while he was in the military. He was seriously injured in an accident in about January 2006. He was on disability for about seven months, which paid about half of what he earned while working. His company laid him off about a month after he returned to work. He was unemployed for about a month until he found a job in another state. Applicant maintained his mortgage payments when he was on disability and when he was unemployed, but he was unable to pay all his debts, and a number of debts became delinquent. In September 2006, he moved to the state where his job was located, while his family remained where they were living. In June 2007, he accepted his current job and was able to move back to where his family lived.<sup>2</sup>

Applicant started addressing his delinquent debts after his employment stabilized. He paid several accounts that are not alleged in the SOR. In March 2009, he contracted with a law firm to assist him in resolving his debts. The contract called for Applicant to pay \$7,250 the first month and \$7,000 the second month, followed by monthly payments of \$213 for approximately 38 months. Applicant paid more than \$20,000 to the law firm before the law firm declared bankruptcy. No debts were settled from the money he paid the law firm. The bankruptcy court will determine what funds, if any, are disbursed to Applicant.<sup>3</sup>

Applicant realized that the law firm was not going to settle his debts, so he decided to handle his delinquent debts on his own. He had five accounts with a credit union that were delinquent. Applicant paid or settled all the accounts. The accounts were all assigned to the same collection company. The collection company obtained judgments of \$15,350 and \$13,602 against Applicant in July 2009. Those judgments were settled for \$9,850 and \$8,950 in October 2010. A \$2,186 judgment was settled for \$1,400 in October 2010. In September 2010, Applicant and the collection company

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<sup>1</sup> Tr. at 23-24, 57-60, 66-67; GE 1.

<sup>2</sup> Tr. at 17-22; GE 1, 2.

<sup>3</sup> Tr. at 24-36, 55-56; GE 1; AE G.

entered a stipulated judgment of \$8,704, which they agreed to settle for \$4,800. The case number on the stipulation is not on the court document, but on April 21, 2011, the collection company moved to dismiss a case, noting Applicant “made payment pursuant to the agreement between Plaintiff and Defendant.” An April 2009 credit report listed the balance on one of the collection company/credit union accounts as \$18,105. An October 2010 credit report lists that account as paid, with a zero balance.<sup>4</sup>

SOR ¶¶ 1.d and 1.f allege delinquent medical debts of \$1,901 and \$1,114. The SOR does not identify the creditors; it only alleges that they are “medical account[s].” Both debts are listed on the credit reports obtained in April 2009 and September 2009, but only the \$1,901 debt is listed on the credit report obtained in October 2010. Applicant paid that account on May 12, 2011. Applicant has been unable to locate the other delinquent medical account.<sup>5</sup>

Applicant credibly testified that he has learned from his mistakes, and he will take all steps necessary to ensure that his financial problems do not recur. His current finances are sound. His annual salary is \$165,000. He can easily pay his current expenses and bills. He would have paid the last medical account sooner, but he sent \$6,000 to his wife’s father who has cancer.<sup>6</sup>

Applicant worked in special operations while he was in the military and deployed in support of the national defense.<sup>7</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 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.

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<sup>4</sup> Tr. at 34-47; GE 2, 4-6; AE A-E, H-M.

<sup>5</sup> Tr. at 47-50, 61-62, 67-68; GE 4-6; AE F, N.

<sup>6</sup> Tr. at 39, 49, 51, 63-65.

<sup>7</sup> Tr. at 57-58, 66.

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 financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 was involved in a serious accident and was on disability for about seven months. He was laid off from his job about a month after he returned to work. He was unemployed for about a month before he found a job in another state. 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. Not all of Applicant's financial problems were caused by events that were outside his control. He admitted that he was overextended before the accident.

In March 2009, Applicant contracted with a law firm to assist him in resolving his debts. Applicant paid more than \$20,000 to the law firm, but the law firm declared bankruptcy before any debts were paid. Applicant decided that he had to resolve his debts on his own. He paid or settled all the credit union debts, and he paid one of the medical debts. The SOR does not identify who holds the remaining medical debt, and it is not listed on the most recent credit report.

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. His financial problems have been resolved. They occurred under circumstances that are unlikely to recur and do not cast doubt on his

current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(e) is applicable to the unidentified medical debt that is not listed on the most recent credit report.

### **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 honorable service in the U.S. military. Applicant had financial problems while he was on disability following a serious accident and during a period of unemployment. He resolved those problems, and his finances are now in order.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations 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

## **Conclusion**

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

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Edward W. Loughran  
Administrative Judge