



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



In the matter of: )  
)  
) ISCR Case No. 09-06496  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

June 14, 2010

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On January 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 March 15, 2010, and requested a hearing before an administrative judge. The case was assigned to me on April 5, 2010. DOHA issued a Notice of Hearing on April 9, 2010. I convened the hearing as scheduled on May 26, 2010. The Government offered Exhibits (GE) 1 through 8.

Applicant did not object and they were admitted. The Government also offered Hearing Exhibit I for demonstrative purposes. Applicant testified and offered Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 4, 2010.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 34 years old. He has worked for a federal contractor since May 2009. He served in the Navy from 1995 to 2001, and was honorably discharged. He earned an associate's degree. He married in 1998 and divorced in 2001. He has no children from the marriage. He and his girlfriend lived together from approximately 2003 until November 2009, when they terminated their relationship. They have a son, born in October 2007. She has an eight-year-old son, whom Applicant supports as his own son.<sup>1</sup>

Applicant stated that he attended college and obtained student loans from 2003 to 2004. He applied for a five-year deferment through his school when he completed his courses. He believed he was granted the deferment, but never followed up on it. He was unaware that the loans were not in a deferred status. He admitted that he moved several times and provided a forwarding address, but never received any documents from the loan company. Later, when he learned he did not have a deferment, he attempted to contact the school at the location where he submitted the original paperwork for the deferment. The branch office where he had attended school was closed and he was unable to locate the people who helped him apply for the loan. Applicant was unemployed from April 2006 to May 2007 and from June 2008 to May 2009. During these long periods of unemployment Applicant was unable to pay the loans and other bills. He waited until he found employment and worked for approximately a year before he contacted the student loan creditor. He explained that he wanted to ensure that he had a stable job before setting up a payment plan. He contacted the collection company for the student loans in October 2009, and set up a rehabilitation plan. He made an initial payment of \$400 to begin the plan. He then paid \$800 for three months. Once he completed these payments, he paid \$200 a month. He will continue to make these payments until August 2010. At that time, the rehabilitation plan will be completed and the interest and penalties on the debt will be reduced. The student loan debts are listed in SOR ¶¶ 1.d, 1.e, 1.f, and 1.g. The SOR current balance owed is \$11,734.<sup>2</sup>

Applicant anticipates receiving a pay raise in a few weeks. In addition, he also anticipates that in the next three months, he will be working on a different contract, which will increase his salary by \$20,000 to \$25,000, allowing him to reduce his debts

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<sup>1</sup> Tr. 31, 71-74, 83-84, 95.

<sup>2</sup> Tr. 23-30, 53-61, 99-100.

significantly. He has four car payments remaining, after which he will have more money to devote toward reducing his debts. He has reduced his expenses by changing his residence, whereby he lives closer to his work and uses less gas. He is no longer living in an apartment. He has moved in with a friend and sleeps on the couch.<sup>3</sup>

The debt in SOR ¶ 1.a (\$487) is a joint debt with Applicant's ex-girlfriend for unpaid utilities. He stated that because his name was on the lease, he was also responsible for the debt. The debt is owed from 2006. He contacted the creditor, and anticipates paying this debt in the next two months.<sup>4</sup>

The debt in SOR ¶ 1.b (\$725) is a final fee owed to the school that Applicant attended. He was unaware of the debt, but agrees he owes it. He stated he never received a bill from the school. He acknowledged that he moved around. He intends to pay the debt in the next six months. He has owed the debt since 2005.<sup>5</sup>

The debt in SOR ¶ 1.c (\$100) is for telephone services. Applicant stated he was unaware of the debt. He paid the debt.<sup>6</sup>

The debt in SOR ¶ 1.h (\$3,911) is for a deficiency amount owed on a car loan, which Applicant incurred in 2001 or 2002. Applicant could no longer pay the loan, returned the vehicle in 2001 to the creditor, and owed the deficiency balance after the car was sold. Applicant was attending school and working part-time, and could not afford to pay the deficiency. His wife agreed to pay the balance, as part of their divorce settlement agreement, but she did not. The car was in Applicant's name. He recently contacted the creditor and advised them that he will setup a payment plan to resolve the debt. The creditor is sending him documents regarding the debt.<sup>7</sup>

The debt in SOR ¶ 1.i (\$1,424) is for an electric bill that was incurred by both Applicant and his former girlfriend. She was to pay the final electric bill and did not. Applicant has not paid the debt.<sup>8</sup>

Applicant provided a character letter from his facilities security officer (FSO). He is considered to be a hard-working conscientious employee. Applicant notified the FSO

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<sup>3</sup> Tr. 37-41, 45, 78.

<sup>4</sup> Tr. 32-37.

<sup>5</sup> Tr. 37-38.

<sup>6</sup> Tr. 30-31; AE D.

<sup>7</sup> Tr. 46-51, 61-66.

<sup>8</sup> Tr. 51-52.

about his financial issues and confirmed his commitment to reduce and eliminate his debt. The FSO does not consider Applicant a threat to security.<sup>9</sup>

Applicant volunteers his time repairing computer equipment for a school that would not otherwise be able to afford it. He provided a letter from one of the grandparents of a student, extending his thanks for Applicant's unselfish efforts in helping the school.<sup>10</sup>

Applicant is employed and living within his means. He is aware he remains responsible for four debts totaling \$5,335, and his student loans. He pays his child support and also provides support for his former girlfriend's eight-year-old son whom he feels emotionally responsible for. Applicant experienced periods of unemployment from April 2006 to May 2007 and from June 2008 to May 2009. He understands he has delinquent debts he owes. He is attempting to create a better financial situation for himself and his son. Applicant is confident now that he is employed that he will be able to satisfy his past debts in the next 18 months. He has established a track record of paying his student loans and will have additional money to use to pay other debts, once he finishes the rehabilitation program in August 2010. Applicant feels that he has a job that offers financial growth, which will allow him to pay his past bills and stay current with his present expenses. He is finally at a place in his life where he can make progress with his financial responsibilities. Based on his efforts to resolve the debts, I find Applicant's testimony regarding his intentions to resolve the remaining debts in the near future credible.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions 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

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<sup>9</sup> AE A.

<sup>10</sup> *Id.*

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.

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 and has the ultimate burden of persuasion as to 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 the 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 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 conditions that could raise security concerns. I have considered the following disqualifying conditions under AG ¶ 19:

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

Appellant has a history of being unwilling or unable to meet his financial obligations. He has debts that remain unpaid and delinquent. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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 behavior is recent because he has delinquent debts that are not paid. He experienced lengthy periods of unemployment and was left with a debt that his ex-wife was going to pay and did not. Applicant has paid one delinquent debt, is consistently making payments towards resolving his student loans, and intends on resolving the remaining debts in the near future. Applicant is steadily employed and meeting his financial obligations. I find the circumstances that caused his financial problems are unlikely to recur and do not cast doubt on his reliability, trustworthiness, or good judgment. I find mitigating condition (a) applies.

After Applicant's discharge from military service, he incurred student loan debt. He believed the loans were deferred, but did not follow up on their status. The loans are now in a rehabilitation program. Applicant was responsible for monitoring his student loans, a matter within his control. His ex-wife agreed to pay the deficiency owed on a repossessed vehicle. She reneged and Applicant remains responsible for that debt. Applicant experienced two long periods of unemployment that severely affected his finances. Those circumstances were beyond his control and raise the application of mitigating condition AG ¶ 20(b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. In this case, Applicant is in a repayment plan to rehabilitate his student loans and he has paid one debt. He contacted creditors and intends to pay his other debts. He has not paid the

remaining debts because he is managing his money to meet his expenses. I find mitigating condition (b) only partially applies.

There is no evidence that Applicant has received financial counseling, although there is evidence that the matters are being resolved and coming under control. Applicant credibly testified that he waited until he had a secure job before addressing his debts. He ensures that his child support payments are current, in order to provide for his son and his son's brother. He is not incurring additional debts. He has the financial means to pay his debts, but needs additional time. Based on his actions to date, I find he was credible when he stated that he intends to pay the remaining debts in the next 18 months. I find mitigating condition AG ¶ 20(c) applies. I also find that AG ¶ 20(d) partially applies because Applicant is making a good-effort to pay his student loan debts and paid another 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 the 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. Applicant served honorably in the military for six years. He incurred student loan debt and other delinquent debts. Both his divorce and long periods of unemployment were beyond his control and negatively affected his finances. He has been paying child support for his son and his son's brother. During periods of limited income, Applicant made a decision to stay current on his living expenses and child support. He waited until he had a stable job and additional money before resolving his remaining debts. He has a rehabilitation repayment plan for his student loans and has consistently made payments on it since October 2009. I considered Applicant's testimony, demeanor, and credibility. He was forthright and honest about his past actions and convinced me that he was not living beyond his means when he accumulated some delinquent debts. He presented himself as a young

man who is devoted to his son and was confronted with difficult financial decisions. He chose to care for his children first. He has a secure job with the prospect of career advancement and an increased salary, which will further assist in the maintenance of his budget and repayment plan. He has the strong support of his FSO. I am convinced that he will follow through with his intention to resolve the remaining debt and avoid future delinquent debt. There is no other adverse information in the record that would lead me to disbelieve him or determine that his finances create a security risk. Overall, the record evidence leaves me with no 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 under the guideline for Financial Considerations.

### **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.i:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge