



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-07078
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

June 21, 2010

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations and Personal Conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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).

Applicant answered the SOR on April 21, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 11, 2010. DOHA issued a notice of hearing on May 18, 2010, and the hearing was convened as scheduled on June 8, 2010. The Government offered Exhibits (GE) 1 through 5, which were received

without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through E, which were admitted without objection. The Government called Applicant's wife in rebuttal. DOHA received the hearing transcript (Tr.) on June 16, 2010.

### **Findings of Fact**

Applicant is a 40-year-old employee of a defense contractor. He is applying for a security clearance. He has an associate's degree. He married in 1990 and divorced in 1996. He married again in 2008. He has two children with his first wife, ages 20 and 16. He and his current wife have an infant, and he has two stepchildren, ages four and three.<sup>1</sup>

The SOR alleges two delinquent debts for \$11,257 and \$7,920. The debts became delinquent in about 2003. Applicant traveled extensively for months at a time for work. He also had some periods of unemployment. His mother handled his finances while he traveled. He submitted documentation showing that both debts were paid. He stated that his mother paid the debts on his behalf. The documentation for the \$7,920 debt shows the debt was paid in October 2004. The documentation for the \$11,257 debt does not show when the debt was paid. Applicant and his wife credibly testified the two debts were paid at the same time.<sup>2</sup>

Applicant has not received financial counseling. His current financial situation is stable. He is living within his means and not accruing new delinquent debt.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) on June 2, 2009. Section 26 requested Applicant to "answer for the last 7 years, unless otherwise specified in the question." He answered "No" to Questions 26m and 26n, which asked "Have you been over 180 days delinquent on any debt(s)?" and "Are you currently over 90 days delinquent on any debt(s)?" The answer to Question 26n was accurate because Applicant was not then delinquent on any debts. He should have answered "Yes" to Question 26m because the two debts became delinquent in 2003 and were not paid until October 2004, which was within the seven-year window. Applicant credibly denied intentionally falsifying the SF 86. He stated that he did not think about the two debts because they were paid a number of years before the SF 86 was completed. He also indicated that he misunderstood the question. Applicant submitted derogatory information under a different question (Section 22).<sup>4</sup> After considering all the evidence, I find that Applicant did not intentionally falsify his SF 86.

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<sup>1</sup> Tr. at 25-30, 33; Applicant's response to SOR; GE 1.

<sup>2</sup> Tr. at 19-24, 34-36; Applicant's response to SOR; GE 2-5; AE B-D.

<sup>3</sup> Tr. at 24, 36; Applicant's response to SOR; GE 5; AE E.

<sup>4</sup> Tr. at 18-19, 26; Applicant's response to SOR; GE 1.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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.

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.

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 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 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, as follows:

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 two delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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's two delinquent debts were paid in 2004. There is no evidence of any current problems. The debts do not cast doubt on his current reliability, trustworthiness, or good judgment. He has not received financial counseling, but the problem has been resolved and is under control. AG ¶¶ 20(a), 20(c), and 20(d) are applicable. Financial Considerations security concerns are mitigated.

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

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant provided inaccurate information on his SF 86, but, as addressed above, it was not intentional. AG ¶ 16(a) is not applicable. Personal Conduct security concerns are concluded for Applicant.

### **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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant resolved the two delinquent debts alleged in the SOR in 2004. His finances are currently in good order. He did not intentionally falsify his SF 86.

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 has mitigated Financial Considerations and Personal Conduct 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.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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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Edward W. Loughran  
Administrative Judge