



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



In the matter of: )  
)  
) ISCR Case No. 09-07283  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

December 17, 2010

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 31, 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. DOHA acted 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 May 18, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 29, 2010. DOHA issued a notice of hearing on July 27, 2010, and the hearing was convened as scheduled on August 16, 2010. The Government offered Exhibits (GE) 1 through 6, which were

admitted without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, called one witness, and submitted Exhibits (AE) A through T, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE U through DD and admitted without objection. Department Counsel's post-hearing memorandum was marked HE II. DOHA received the hearing transcript (Tr.) on August 23, 2010.

### **Findings of Fact**

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since 2007. He is seeking to obtain a security clearance. He has a high school diploma. He is married and has one child. This is his second marriage, his first one ended in divorce. He served in the Navy for eight years and was discharged with an honorable discharge in the pay grade of E-4.<sup>1</sup>

The SOR alleged 12 delinquent debts. The debts were listed on credit reports obtained on February 12, 2010, February 18, 2010, June 16, 2010, July 16, 2010, and August 13, 2010. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a - 1.g, and 1.i – 1.k. In his answer, he disputed the debts alleged in SOR ¶¶ 1.h and 1.l; however, he admitted those debts in his testimony at hearing.<sup>2</sup>

Applicant was in the Navy during his first marriage. He and his wife accumulated debt during their marriage, including a car that is the subject of the debt listed at SOR ¶ 1.e. In September 2005, Applicant and his wife divorced. As part of the property settlement, Applicant assumed all the marital debt, including the car payments. In September 2006, Applicant was discharged from the Navy. His pay dropped considerably at that time making it difficult to keep up with his debts. As a consequence, he was unable to make his car payments and the car was repossessed. Even though this car debt resulted in repossession, Applicant made car payments from 2001 until 2006. The car was sold at auction for \$1,400 leaving Applicant with the deficiency balance of over \$19,000.<sup>3</sup>

Applicant remarried in May 2006. His son was born in 2007 and he has struggled with medical issues since his birth, which have created a financial burden on Applicant.<sup>4</sup>

Through the assistance of his in-laws, Applicant recently paid all the debts listed in the SOR except for ¶1.e, the repossessed car debt. The supporting documentation showing payment of the debts is noted in the footnote.<sup>5</sup>

---

<sup>1</sup> Tr. at 10, 47, 49-50, 83; GE 1, 3.

<sup>2</sup> Applicant's Answer to SOR; Tr. at 64, 67-68.

<sup>3</sup> Tr. at 52-53, 68, 70-74.

<sup>4</sup> GE 1; Tr. at 40-41.

Applicant's father-in-law testified that he intends to assist Applicant with the remaining unpaid debt. He also stated that he and his wife have given Applicant and his wife financial counseling. They meet on a regular basis and go over Applicant's finances. Applicant's father-in-law does not see frivolous spending by Applicant and believes he is on the right path for financial recovery. Applicant has a written monthly budget. Additionally, Applicant's wife just finished technical school and will soon start working, which will bring in additional income for the family.<sup>6</sup>

Applicant is also supported by character letters written by coworkers, friends, and relatives. He is described as a dependable and capable employee who is reliable and possesses good ethics. He is also described as a "man of integrity" and a "team player".<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 that 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.

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,

---

<sup>5</sup> AE C shows payment of SOR ¶ 1.a; AE W shows payment of SOR ¶ 1.b; Applicant's answer shows payment of SOR ¶¶ 1.c and 1.d; AE G shows payment of SOR ¶ 1.f; Applicant's answer shows payment of SOR ¶ 1.g; AE U shows payment of SOR ¶ 1.h; Applicant's answer shows payment of SOR ¶¶ 1.i – 1.k; and AE X shows payment of SOR ¶ 1.l.

<sup>6</sup> Tr. at 28-43, 80-81; AE CC.

<sup>7</sup> AE Y, Z, AA.

or mitigate facts admitted by the Applicant or proven by Department Counsel.” The Applicant has the ultimate burden of persuasion to obtain a favorable 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 about 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* Executive Order 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 a number of delinquent debts and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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; and

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

Although Applicant's debts were old, they remained unpaid until recently. Because of the counseling and financial discipline instilled by his in-laws, it is unlikely that these type of debts will go unpaid in the future. Additionally, they are not the type of debts that cast doubt on his reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant's diminution of pay when he left the Navy and the expenses related to his son's medical needs contributed to his financial problems. These qualify as conditions that were outside of his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant acted responsibly when he sought and received counseling and assistance from his in-laws. With their help, Applicant was able to pay all but one debt and they have agreed to help him pay the unresolved debt. AG ¶ 20(b) applies.

In addition to the counseling described above, Applicant paid all the SOR debts except for the car repossession (SOR ¶ 1.e). However, he committed to pay that debt and his father-in-law committed to assist him in paying that debt. He has a budget and is meeting all his current expenses. Applicant has made a good-faith effort to pay or otherwise resolve his debts.<sup>8</sup> AG ¶¶ 20(c) and 20(d) are applicable.

---

<sup>8</sup> The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

## 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 relevant 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.

In 2005, Applicant found himself responsible for all the debts of his first marriage and struggled to make ends meet after leaving the Navy in 2006. He remarried and had a child with significant medical issues, which created more financial problems. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. With the help of his in-laws, Applicant has overcome his debt history. I also considered Applicant's favorable character evidence. I had the opportunity to evaluate the demeanor of Applicant and observe his manner and deportment. I believe he will honor his commitment to pay the remaining debt.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Financial Considerations security concerns.

---

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

## **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.l:                      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.

---

Robert E. Coacher  
Administrative Judge