



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



In the matter of: )  
)  
) ISCR Case No. 09-07795  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: Joseph Testan, Esq.

October 13, 2010

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 43-year-old employee of a defense contractor. He is alleged to be indebted to 10 creditors in the approximate amount of \$24,971. Applicant has mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 30, 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) effective for cases after September 1, 2006.

Applicant answered the SOR on April 23, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 28, 2010. DOHA issued

a notice of hearing on June 7, 2010, scheduling the hearing for July 21, 2010. Applicant, through his counsel, requested a continuance, and on July 20, 2010, the hearing was rescheduled for August 30, 2010, based upon good cause. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibit (AE) A through LL, which were all admitted despite Department Counsel's objection to AE Z and AE JJ. Applicant called two witnesses, and testified on his own behalf. Applicant also presented California Code of Civil Procedure § 580, for administrative notice. DOHA received the transcript of the hearing (Tr.) on September 21, 2010.

### **Findings of Fact**

Applicant admitted the SOR allegations ¶¶ 1.a., 1.b., 1.c., 1.e., 1.f., 1.h., 1.i., and 1.j. He denies allegations 1.d. and 1.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 43-year-old employee of a defense contractor. He served in the Marine Corps for 21 years and achieved the rank of Gunnery Sergeant (E-7). He was married from 1996-2009, divorcing in December 2009. He has one biological child, age 13. (GE 1; Tr. 73-74.)

As stated in the SOR, Applicant is alleged to be indebted to 10 creditors in the approximate amount of \$24,971. He attributes his financial problems to his ex-wife mishandling their bills while he was deployed to Iraq in approximately 2005, and their subsequent divorce in 2009. On July 13, 2010, Applicant hired Century Negotiations, Inc. (Century) to handle some of his delinquent accounts. Century is a debt management company that will negotiate Applicant's delinquent accounts. Applicant will pay Century \$200 per month and eventually, Century will pay off Applicant's creditors in lump sum payments. Applicant has made one payment, on August 15, 2010, of \$200 to Century under this agreement. (GE 2-5, 7; AE J; Tr. 76-83, 94-98, 150-151.) His debts are as follows:

Applicant is indebted on a medical account in the approximate amount of \$275, as alleged in allegation 1.a. Applicant presented a letter from the collections agent for this creditor, with the same account number, which showed Applicant has made payments of \$412.50 on this debt. According to the statement, he still owes \$137.50 on this debt; however, he also presented a printout of a canceled check from his banking account that showed on August 17, 2010, the remainder of \$137.50 had been paid. This debt is now satisfied. (AE D; Tr. 94, 120.)

Applicant is indebted on a collection account in the approximate amount of \$231, as alleged in allegation 1.b. Applicant presented documentation from this creditor establishing that Applicant paid \$211.78 to settle this debt. This debt is now satisfied. (AE E; Tr. 94-95, 125.)

Applicant is indebted on a collection account in the approximate amount of \$1,112, as alleged in allegation 1.c. Applicant has enrolled this debt with Century. (AE J; Tr. 97, 125.)

Applicant is indebted on a past due mortgage in the approximate amount of \$4,228, as alleged in allegation 1.d. Applicant purchased his house in July 2002, with his ex-wife. This mortgage represents the purchase money mortgage and Applicant has not refinanced this loan. Applicant and his ex-wife were current on their mortgage during the course of their marriage. They separated in approximately December 2008, and Applicant moved out of the house. His ex-wife remained in the home until December 2009, and his step-son occupied the house for two to three months after that. From December 2008 to approximately March 2010, Applicant would send his ex-wife money for the mortgage, however, at least one month, she failed to pay it. This put Applicant behind in payments approximately 30 days. In April 2010, Applicant's step-son moved out of the house and left it damaged. Applicant missed his April 2010 payment in order to pay for the home to be cleaned up for re-sale. He has made payments on his mortgage in May through July 2010, although he has not paid off the deficient amount. He made his August 2010 payment, but the bank returned it to him. He hired a realtor to sell the home in approximately April 2010. Currently, there is an offer on the house that would result in a short sale of the home. He tried to sell the home for more than or equal to the amount of his mortgage, but there were no offers. Applicant owes \$220,000 on the mortgage and the offer is for \$180,000. Applicant is working with the bank to complete the transaction. (AE A; Tr. 76-92, 113-116, 127-128, 151-158.)

Applicant is indebted on a collection account in the approximate amount of \$6,566, as alleged in allegation 1.e. Applicant has enrolled this debt with Century. (AE J; Tr. 97-98, 128-129.)

Applicant is indebted on a collection account in the approximate amount of \$680, as alleged in allegation 1.f. Applicant presented documentation that he has an agreement with this creditor to pay \$21.27 per month, for 24 months, in order to satisfy this debt. He presented evidence that he has made two payments under this agreement. (AE F, Tr. 99, 129.)

Applicant is indebted on a collection account in the approximate amount of \$1,713, as alleged in allegation 1.g. This account was settled with the creditor on March 23, 2010, for the amount of \$257.01. He presented documentation from this creditor as evidence that the account is now satisfied. (AE C; Tr. 103, 130.)

Applicant is indebted on a collection account in the approximate amount of \$1,382, as alleged in allegation 1.h. In August 2010, Applicant reached a written agreement to satisfy this debt with the creditor for the amount \$553.20. Applicant presented a receipt from his bank account showing that this amount had been debited from Applicant's account. (AE B; Tr. 102-103, 130.)

Applicant is indebted on a collection account in the approximate amount of \$765, as alleged in allegation 1.i. Applicant presented a letter from this creditor that shows this debt paid in full in February 2007. (AE G; Tr. 100, 130.)

Applicant is indebted on a collection account in the approximate amount of \$8,019, as alleged in allegation 1.j. Applicant credibly averred that this debt is a duplicate of allegation 1.e. and Applicant has enrolled this debt with Century. (AE H; Tr. 101-102130-131.)

In addition to the debts alleged in the SOR, Applicant is delinquent on his child-support payments and on two utility accounts. Applicant is paying off his child-support delinquency by paying extra payments of approximately \$150 per month. He credibly averred that he was unaware of the utility bill delinquencies prior to the hearing and pledged to dispute these debts as invalid debts as he had shut off the utilities to the house. (Tr. 140-143, 146.)

Applicant is well respected by his supervisors and colleagues. Applicant called two witnesses, who testified to his trustworthiness and sound judgment. He also presented letters from supervisors, colleagues, and co-workers that noted Applicant holds himself to high moral standards and recommend him for a clearance. During his 21 years of military service, Applicant has been awarded numerous medals and awards, including the Navy and Marine Corps Commendation Medal; the Naval Achievement Medal; a Combat Action Ribbon; and seven Navy and Marine Corps Good Conduct Medals. (AE K – LL.)

## **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 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, 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 concern 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 has approximately 10 delinquent accounts, which have been past due for a significant period of time. Applicant and his ex-wife accumulated these delinquent accounts and have been unable to pay these obligations. His financial problems have

been ongoing since 2005. The evidence is sufficient to raise the above disqualifying conditions.

Two Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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; and

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

Applicant's financial problems are directly attributable to his ex-wife's mismanagement of their funds while he was deployed in Iraq and their subsequent divorce. Further, he is making a good-faith effort to repay his over due creditors. Since their divorce, he has been working on restoring his credit by repaying his creditors. He has fully satisfied five of his delinquent accounts listed in allegations 1.a., 1.b., 1.g., 1.h., and 1.i. Of his remaining accounts, he reached payment agreements with the creditor in 1.f. and has made two payments under that plan. Two of his debts, 1.c. and 1.e., are being addressed through his debt management plan with Century. While he has only made one payment to date with Century, he credibly testified that he will continue to work on these delinquent accounts. Allegation 1.j. is a duplicate of 1.e. and is being addressed. Finally, Applicant is acting responsibly and in good faith with respect to his mortgage, alleged in 1.d. Applicant has done everything he could to satisfy this debt. Even though he is behind on his loan due to unforeseen circumstances, like his wife misappropriating the funds that were to be used for the mortgage and the destruction caused by his step-son, he has continued to make payments on this house. The Appeals Board has noted:

. . . an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.<sup>1</sup>

Applicant has demonstrated he has a reasonable plan for resolving each of his delinquent accounts, including those not listed in the SOR. He has acted responsibly given his limited resources by resolving the debts he could and making payments on his other debts. He enlisted the help of Century for his remaining debts. AG ¶¶ 20(b) and 20(d) apply.

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<sup>1</sup> ISCR Case No. 08-06567 at 3 (App. Bd. Dec. October 29, 2009.)

## 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 those guidelines, but some warrant additional comment.

Applicant is well respected by his supervisor and colleagues. He has served the U.S. honorably for 21 years. Those who know him best report that he has sound judgment and high moral standards. His standards are reflected in the numerous awards he received during his military service. His integrity, as attested to by his supervisor and colleagues, show that his promises to continue to pay his delinquent accounts are credible.

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

## 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.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant

Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	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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Jennifer I. Goldstein  
Administrative Judge