



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



In the matter of: )  
)  
) ISCR Case No. 09-08104  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

March 31, 2011

**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 September 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 19, 2010, and requested a hearing before an administrative judge. The case was assigned to me on November 2, 2010. DOHA issued a notice of hearing on November 16, 2010, and the hearing was convened as scheduled on November 30, 2010. The Government offered exhibits (GE)

1 through 5, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called a witness, and offered exhibits (AE) A through C that were admitted into evidence. I held the record open after the hearing to allow Applicant to submit additional documents. Applicant submitted two sets of documents, AE D-1 through D-31 and AE E-1 through E-2. Government Counsel's transmittal letters, posing no objection to Applicant's documents, are marked HE II and III. All post-hearing documents were admitted into evidence. DOHA received the hearing transcript (Tr.) on December 8, 2010.

### **Findings of Fact**

Applicant is a 47-year-old deputy program manager employed by a defense contractor. He has worked for his current employer since March 2008. He is a high school graduate. He is married and has five children, four of whom live at home. He retired from the Navy in February 2008, after serving for 22 years. He was a limited duty officer (LDO) and served at the rank of lieutenant. Because he only had eight total commissioned years in the Navy, he retired at the pay grade of E-8. He has held a security clearance since 1984.<sup>1</sup>

The SOR alleges five delinquent debts for about \$107,201. The debts were listed on credit reports obtained on June 17, 2009, July 28, 2009, and August 17, 2007.

Applicant's financial difficulties came to the forefront during the last year of his Navy career and carried on into his post-Navy employment. He was forced to retire from the Navy earlier than he intended when a Navy review board determined he could not meet the Navy's weight standards. Prior to meeting the review board, Applicant was stationed overseas in a deployed area from October 2004 to August 2007. When he was deployed, he earned about \$1,000 more a month in overseas entitlements. He met the review board while stationed overseas. Once the review board issued its decision, he was sent back to the United States in August 2007. He received \$1,000 less income from August 2007 until his retirement in February 2008.<sup>2</sup>

Applicant's retirement pay was also affected by the forced retirement. Another two years of active duty service would have allowed him to retire as an officer and result in more retirement pay. Shortly after his retirement, Applicant's father passed away which caused an unexpected large family expense. He had to expend funds to fly his whole family to the west coast for the funeral. Applicant was unemployed for about three weeks before he started his defense contractor job. That job paid less than his Navy position.

The first debt listed in the SOR (§ 1.a) is described as a delinquent medical account, but it was actually a homeowner's association judgment against Applicant.

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<sup>1</sup> GE 1; Tr. at 36-37, 45.

<sup>2</sup> GE 5 (personal subject interview at 2); Tr. at 39-44.

Applicant provided documentation showing the judgment was satisfied in October 2008. This debt is resolved.<sup>3</sup>

The second debt listed in the SOR (¶ 1.b) is a charged-off account for a consumer loan in the amount of \$9,156. Applicant set up a payment plan beginning in June 2010. He provided documentation showing he made the monthly payments of \$329 through December 2010. This debt is under control.<sup>4</sup>

The third debt listed in the SOR (¶ 1.c) is a collection account in the amount of \$484 for a consumer debt. Applicant provided documentation showing the debt was satisfied in May 2010. This debt is resolved.<sup>5</sup>

The fourth debt listed in the SOR (¶ 1.d) is charged-off account on a second mortgage in the amount of \$96,000. The loan was originally for \$80,000, but increased due to accrued interest and penalties for non-payment. Applicant provided documentation that he settled this debt with a lump-sum payment of \$15,000 in January 2011. This debt is resolved.<sup>6</sup>

The last debt listed in the SOR (¶ 1.e) is a charged-off consumer account in the amount of \$1,331. Applicant set up a payment plan beginning in December 2009. He provided documentation showing he made the required payments to date. This debt is under control.<sup>7</sup>

Although not alleged in the SOR, Applicant testified that he had gotten behind on his first mortgage and it was in a foreclosure status. He further stated that he worked out a repayment arrangement with the mortgage holder. He provided documentation showing steady mortgage payments from March 2010 through December 2010. He also testified that he had not filed his 2009 state income tax return at that time. He later provided documentation showing that he filed and paid his 2009 state taxes.<sup>8</sup>

Applicant's current financial situation is stable, although he admits that they often live paycheck-to-paycheck. He does not use credit cards. He recently paid off two car loans so he will have about \$800 more disposable income per month. Applicant's friends and family members attest to his honesty, trustworthiness and overall integrity.<sup>9</sup>

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<sup>3</sup> GE 5; Tr. at 50.

<sup>4</sup> AE D-13, D-14; Tr. at 51-52.

<sup>5</sup> AE D-11, D-12; Tr. at 53.

<sup>6</sup> AE D-5, E-1; Tr. at 54-56.

<sup>7</sup> AE D-3, D-4; Tr. at 60.

<sup>8</sup> AE D-3, D-4; Tr. at 60.

<sup>9</sup> AE A-C; Tr. 30-35, 61-62, 70.

## 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, 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 had five delinquent debts that he was unable or unwilling to satisfy that are documented by the credit reports in evidence. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 payments to satisfy the debts listed at SOR ¶¶ 1.a, 1.c, and 1.d demonstrate clear indications that the problem is being resolved. They also amount to good-faith efforts to repay overdue creditors. Additionally, by setting up payment plans for the remaining two debts (SOR ¶¶ 1.b and 1.e) and establishing a track record of payment, he has shown good faith toward resolving those debts.<sup>10</sup> Applicant met his

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<sup>10</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

burden to establish sufficient mitigation evidence under AG ¶¶ 20(c) and 20(d) on the debts listed in the SOR.

### **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.

I considered Applicant's 22 years of honorable service to this country, his character references, and his family situation. Applicant paid or settled three of the debts, including the largest, and he set up reasonable payment plans to resolve the remaining two debts. Applicant convinced me that he now has a grasp on his finances, after going through his involuntary retirement, and that his finances no longer pose a security concern.

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.

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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.

(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.e:                      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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Robert E. Coacher  
Administrative Judge