



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-00462  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn E. Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

June 20, 2011  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant broke his back in an industrial accident on an oil rig where he worked after serving about 11 years in the Army. He and his wife maximized their resources, but fell behind on some debts during the two and a half years he could not work. They have since resolved, or are paying in accordance with agreements to resolve, all but one debt that they legitimately dispute. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SF 86) on October 5, 2009. On July 15, 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 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on August 7, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 10, 2010, and the case was assigned to me on November 15, 2010. DOHA issued a Notice of Hearing on December 21, 2010, and I convened the hearing as scheduled on January 28, 2011. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered exhibits (AE) A through H, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until February 14, 2011, for submission of additional evidence. On February 7, 2011, Applicant submitted additional documents that were marked AE I through O, and admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 9, 2011, and the record was closed as scheduled.

### **Findings of Fact**

Applicant is a 45-year-old employee of a defense contractor, where he has worked since June 2005. He enlisted in the Army shortly after graduating from high school, and was honorably discharged as a sergeant in October 1996 after 11 years of active service. He held a top secret security clearance during his last seven and a half years in the Army, and held an interim secret clearance in his current position until he received the SOR, all without incident. He attended electronics classes at vocational/technical schools for eleven months after leaving the service. He is married for the second time. He has one adult son from his first marriage, and recently adopted a daughter as discussed below.<sup>1</sup> In his response to the SOR, Applicant admitted all but one of the factual allegations in SOR ¶¶ 1.a through 1.j.<sup>2</sup> Applicant's admissions, including his statements in response to DOHA interrogatories,<sup>3</sup> are incorporated in the following findings.

After Applicant left the Army, he worked as an oil rig equipment operator for several different companies. During his first year, he made around \$40,000 while learning the job. He then earned between \$96,000 and \$120,000 per year, depending on workload, as a Senior Equipment Operator until he was injured in October 2002. He and his current wife married in July 2000. She was also employed, and earned around \$21,000 per year. During that time, they accumulated about \$20,000 in savings.<sup>4</sup>

On October 3, 2002, Applicant broke his back in an industrial accident. He was physically unable to perform any work for a long period, and will never be able to perform the hard physical labor of an oil rig equipment operator. His wife was still working, but he went from earning \$8,000 to \$10,000 per month to about \$2,300 per

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<sup>1</sup>GE 1; Tr. 7-8, 57-59, 61-64.

<sup>2</sup>AR.

<sup>3</sup>GE 2; GE 3.

<sup>4</sup>GE 1; GE 2; Tr. 72-80.

month in Worker's Compensation Temporary Income Benefit payments. Responsibility for these payments was disputed between his direct employer and the company that owned the oil rig on which he was injured, so he had to hire an attorney to help him obtain the benefits. This attorney was reimbursed for his services out of Applicant's claim payments, at a rate of up to 25% of each weekly \$537 payment. On October 8, 2004, a doctor determined that Applicant had reached "Maximum Medical Improvement," at which point he was no longer eligible for Temporary Income Benefits. He received a 10% Impairment Rating, which made him eligible for 30 weeks of Impairment Income Benefits at a rate of \$376 per week (about \$1,630 per month). These benefits ended on May 6, 2005.<sup>5</sup>

Applicant could not work in the oil industry, so he returned to the only other thing he knew how to do, which was soldiering. In June 2005, he was hired into his current position training soldiers in the use and maintenance of the Bradley Fighting Vehicle. He started at about \$33,000 per year, and currently makes about \$46,000 per year. His wife lost her job in 2009, but has since found a new position that pays her about \$40,000 per year. They also receive \$573 per month in adoption assistance paid by the state from which they adopted their foster-child daughter. Those funds are used exclusively for her living expenses or saved for her higher education.<sup>6</sup>

Applicant had been regularly paying child support for his son, who lived with his former wife. When he was injured, he could no longer afford to make those payments. His former wife sued him, and he had to hire another attorney to defend the action. His son turned 18 in November 2008, after which he does not owe any additional support. However, during the time he was unable to work he fell behind by about \$21,000. Once he began working again, he entered into an agreement to repay this arrearage as well as current payments. Under an agreed court order entered in May 2010, he now pays \$580 per month and will have the arrearage completely paid off in June 2012.<sup>7</sup>

Applicant's wife's niece was kidnaped when she was two years old. From the time she was six years old, she was sexually molested and raped by her kidnaper. She was finally found and rescued in 2007, when she was 11 years old. Applicant and his wife were initially given custody as foster parents, and subsequently adopted her. She undergoes weekly counseling sessions to deal with the effects of her former abuse, which Applicant's insurance covers except for co-pays and deductibles. Her adoption expenses were also substantial, but have been fully paid. The \$573 per month adoption assistance payments will end in October 2013, after she turns 18.<sup>8</sup>

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<sup>5</sup>GE 2; Tr. 42-45, 47, 72-76, 82-83.

<sup>6</sup>GE 3; AE I; AE J; Tr. 46, 50, 56-57, 81-82, 111-112.

<sup>7</sup>GE 1 at 50; GE 2; AE J; Tr. 59-60.

<sup>8</sup>GE 1; Tr. 45-47, 111-112, 126-128.

Applicant's wife takes care of the family finances, since he travels extensively for work. They have paid off a number of formerly delinquent debts since he resumed working, but several remain outstanding. Except for the debt alleged in SOR ¶ 1.h, which they dispute, they have made repayment agreements with each of the remaining creditors. After extensive study of the credit reports contained in GE 3, 4, and 5, I find that the debts alleged in SOR ¶¶ 1.c and 1.g are duplicate listings of the same original debt by two different creditors. Similarly, although reflecting different balances due, Department Counsel pointed out and I concur that the debts alleged in SOR ¶¶ 1.e and 1.i are duplicate listings of the same original debt by two different creditors.<sup>9</sup>

Applicant and his wife have concluded repayment agreements with the creditors for the debts alleged in SOR ¶¶ 1.a and 1.b for monthly payments of \$50, starting in October 2010 and \$30 per month, starting in February 2010, respectively.<sup>10</sup> The debt alleged in both SOR ¶¶ 1.c and 1.g was originally disputed through Lexington Law, a firm they hired to help resolve their debts. It has since been verified, and is being paid at \$25 per month.<sup>11</sup> Applicant and his wife also entered a repayment plan for the debt alleged in SOR ¶ 1.d in September 2010, permitting the collection agency to withdraw \$50 per month from their bank account.<sup>12</sup>

The debt that is listed twice in SOR ¶¶ 1.e and 1.i is being repaid, under an agreement reached in August 2010, at the rate of \$51.45 per month that is electronically debited by the creditor.<sup>13</sup> The debts alleged in SOR ¶¶ 1.f and 1.j are being repaid by monthly payments of \$25 and \$50 respectively.<sup>14</sup> Applicant and his wife have disputed the \$16,391 debt alleged in SOR ¶ 1.h, which involves two-thirds of the total delinquent debt alleged in the SOR. Their dispute was noted in the October 2009 credit report submitted as GE 5. The account was transferred to another collection agency in February 2010, and Applicant promptly communicated his dispute to the new creditor in writing. Credit reports show the original creditor on this debt was MBNA, with a high credit amount of \$6,813. The new collection agency offered to settle this debt for \$3,262 in February 2010, but Applicant and his wife continue to dispute owing anything on this debt, which arose in connection with the purchase of a computer that never worked and was returned to the manufacturer with the assurance that they would not have to pay for it. They continue to actively dispute this debt.<sup>15</sup>

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<sup>9</sup>GE 3; GE 4; GE 5; AE H; Tr. 32-35, 90-93, 132-133.

<sup>10</sup>GE 3 at 29-31; AE E; Tr. 39, 119.

<sup>11</sup>GE 2; AE F; Tr. 102-103.

<sup>12</sup>AE C; AE F; AE G; Tr. 102-103.

<sup>13</sup>AE B; AE D; AE H at 4; AE K.

<sup>14</sup>AE A; AE F.

<sup>15</sup>GE 3 at 13, 27, 28, 30; GE 5 at 9; Tr. 66-71.

After his hearing, Applicant and his wife compiled and submitted an updated family budget. It reflects \$5,223 in net income per month, and \$4,376 in monthly living expenses and debt repayments. Applicant expressed his intention to apply about \$600 of the monthly \$847 surplus to accelerate repayment of their delinquent debts. Although Applicant has not undergone financial counseling, his wife is an experienced money manager who has actively undertaken to resolve their delinquent debts that accrued while he was recovering from his broken back.<sup>16</sup>

While in the Army, Applicant earned two Army Commendation Medals, Four Army Achievement Medals, three Good Conduct Medals, and numerous expeditionary and service medals. He also received a number of certificates of achievement, and his performance evaluations reflected successful performance and superior potential.<sup>17</sup> His demeanor during the hearing was pleasant, open, sincere, and straightforward. He expressed passion for the importance of his work in training young soldiers to ensure they can accomplish their missions and return home safely.<sup>18</sup>

### **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

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<sup>16</sup>GE 3 at 2; AE I; AE J; Tr.36, 91, 108-109, 123-125.

<sup>17</sup>AE L; AE M; AE N; AE O.

<sup>18</sup>Tr. 45-50, 129-130.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) “inability or unwillingness to satisfy debts”; and ¶ 19(c) “a history of not meeting financial obligations.” There is no evidence of frivolous or irresponsible spending, deceptive or illegal financial practices, or financial issues caused by any misconduct on Applicant’s part. His history of financial problems began after he broke his back and was disabled in an industrial accident on an oil rig in October 2002. He and his wife economized and paid their bills as long as they could using her income, their savings accumulated while he was earning around \$100,000 per year in the dangerous oil industry, and his Worker’s Compensation payments. Eventually, their savings were spent and they began falling behind on his child support payments and some consumer debts. Once his back healed to the point that he could work, he obtained his current job and they began repaying their delinquent debts. They became foster parents for his wife’s formerly-abused niece, and eventually adopted her. He incurred substantial legal

costs for representation in court actions concerning his delinquent child support and the adoption, all of which were paid on time but prevented quicker resolution of other delinquent debts. About \$8,000 in SOR-listed delinquent debts remain outstanding but are under agreed repayment plans. One alleged debt of about \$16,000, consisting mostly of fees and interest, which the creditor is willing to settle for \$3,262, remains the subject of dispute. The evidence establishes Applicant's temporary inability to satisfy his debts, and his brief history of not meeting financial obligations, thereby shifting the burden to him to prove mitigation.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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 incurred a relatively modest amount of delinquent debt when, while employed in a very well-paying job, he broke his back in an industrial accident and was unable to work for about two and a half years. He and his wife stretched her income, their savings, and his Workman's Compensation payments as far as they could, but they fell behind on his child support and some other debts, in part due to legal costs he had to incur to obtain just compensation for his injury. When he resumed working, they paid off debts as soon as they could, but were forced to incur substantial additional legal costs to negotiate resolution of his child support arrearage and the adoption of his wife's formerly-abused niece. Only about \$8,000 of legitimate delinquent debts remain outstanding at present, and they have repayment agreements and a debt resolution law firm working to resolve each of them. Applicant's present employment is stable and relatively safe, and he demonstrated that his current financial situation makes such

problems unlikely to recur. His former financial problems do not cast doubt on his current reliability, trustworthiness, and good judgment. The evidence establishes significant mitigation under AG ¶ 20(a).

Mitigation under AG ¶ 20(b) was also established. Applicant's financial problems were caused by an industrial accident for which he was, ultimately, fully compensated and not found to be at fault. He and his wife managed their sharply-reduced income and the savings they had accumulated to the best of their ability. Once he resumed working, they repaid a number of debts. Their ability to continue doing so was limited by their laudable decision to undertake responsibility and care for his wife's niece who had suffered horrible abuse. It would be very difficult, even in hindsight, to craft a more responsible set of choices Applicant and his wife could have made under the circumstances with which they were confronted.

Applicant has not undergone personal financial counseling, but he and his wife have retained the Lexington Law legal firm to help them resolve their delinquencies. He entrusts their family finances to his wife, who is better suited by training and experience to manage them. There is no evidence to suggest this is a bad arrangement. Many of their formerly delinquent debts were resolved before Applicant submitted his most recent security clearance application, and they have agreements with the creditors to repay all of their remaining SOR-listed debts except the one that they legitimately dispute. Thus, substantial mitigation was also established under AG ¶¶ 20(c) and (d).

Applicant produced documentation and evidence of his of his ongoing efforts to dispute the debt alleged in SOR ¶ 1.h, and the reasonable basis for disputing it. Given his family's current solvency and committed efforts to repay their legitimate debts, there is every reason to believe that he will be able and willing to repay this debt as well, should the creditor be able to establish the validity of the debt. I find this allegation to be mitigated under AG ¶ 20(e).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'"<sup>19</sup> This applicant, and his wife, demonstrated a very reasonable plan to continue resolving their debts within their means, and have been implementing that plan very successfully since he recovered from his injuries and regained employment in June 2005.

### **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

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<sup>19</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).



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 pertinent facts and circumstances surrounding this case. Applicant is a hard-working and dedicated employee. He suffered a significant work-related injury that prevented him from working for about two and a half years. He and his wife minimized expenses and stretched their savings as far as they could to meet their financial obligations. Once he was able to resume working, they began repaying debts that had become delinquent. They incurred substantial legal expenses to obtain just compensation for his injuries, to resolve the unavoidable child support arrearage, and to adopt his wife's niece who badly needed a safe and loving home. They have established a budget that will facilitate continued resolution of their few remaining delinquent debts, without the risk of incurring additional debt.

Applicant is a mature and experienced individual, who is fully accountable for his situation and intends to continue resolving his obligations. The potential for pressure, coercion, exploitation, or duress is minimal, and he has demonstrated a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

Overall, the record evidence creates substantial confidence as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge