



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



In the matter of: )  
)  
) ISCR Case No. 10-02939  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

November 4, 2011

**Decision**

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CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

On October 2, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued interrogatories to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated May 31, 2011, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were 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 (AG) effective within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on June 6, 2011.

Applicant answered the SOR in an undated response. He denied one allegation (SOR 1.d) and admitted the other seven allegations. He provided detailed explanations for his answers and a document showing the completion of payment of arrears for child support. Department Counsel was prepared to proceed on July 19, 2011, and the case was assigned to me on July 25, 2011. DOHA issued a Notice of Hearing on August 4, 2011, scheduling a hearing for August 23, 2011. I convened the hearing as scheduled. The Government offered five exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified on his behalf and offered one exhibit that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A. I left the record open for Applicant to submit additional documents. Applicant timely submitted two documents which I marked and admitted to the record as App. Ex. B and C. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 6, e-mail, dated September 8, 2011) DOHA received the transcript of the hearing (Tr.) on September 8, 2011.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 45 years old and has been a project manager for a defense contractor since March 2009. He married in 1998 and divorced in 2003. He married again in 2004 and is still married. He has four children. He served two years on active duty in the Army from January 1985 until March 1987. He has three years college credit. Applicant initially worked construction and his annual salary fluctuated from approximately \$25,000 to \$30,000. In later years, as a project manager in 2005 to 2007, his annual salary was approximately \$55,000 to \$60,000. His present annual salary with the defense contractor is now \$85,000 or \$7,085 monthly. His wife works for the same defense contractor and her yearly salary is \$44,000. Their monthly expenses are approximately \$6,500, leaving over \$585 in discretionary fund from his salary only. (Tr. 10-12, 22-25, 29-31; Gov. Ex. 1, e-QIP, dated October 2, 2009)

Applicant is highly regarded by his employer. He was initially employed as a construction manager. Through training and effort, he received certifications as a project manager and he now manages some of the most important projects for his employer. His performance is excellent and professional. His employer, who is also the facility security officer, believes Applicant to be an extraordinary individual who is trustworthy and reliable. (App. Ex. A, Letter, dated August 19, 2011)

Credit reports (Gov. Ex. 4, dated December 2, 2009, and Gov. Ex. 5, dated April 4, 2011) and Applicant's response to an interrogatory (Gov. Ex. 2 and 3, dated May 18, 2011) show the following delinquent debts for Applicant: a State tax lien from 2003 for

\$2,209 (SOR 1.a); another State tax lien from the same State for \$1,809 (SOR 1.b); a student loan account in collection for \$14,285 (SOR 1.c); a \$2,989 judgment in 2003 filed by a State Department of Social Services for child support (SOR 1.d); a 2002 State tax lien from the same state for \$1,670 (SOR 1.e); a judgment for \$931 (SOR 1.f); a medical account in collection for \$163 (SOR 1.g); and a utility debt in collection for \$48 (SOR 1.h). The total amount of the debt listed on the SOR is approximately \$24,000. Most of the debt is from student loans. The tax liens and the Department of Social Services judgment are the same debts from past-due child support.

When Applicant and his first wife divorced, he was ordered to pay monthly child support of \$500. The support payments were later increased to \$570. He and his first wife were awarded joint custody of their children. Applicant could not make his child support payments at times because of his student loan debts that were due. At other times, his wife refused his visitation rights, so in retaliation, he withheld child support payments. The State child service office entered a judgment and tax lien for the child support payments Applicant could not or would not pay. In addition, when his oldest son was injured in 2007, his former wife had let their medical insurance lapse. He had to pay a \$12,000 medical bill which was added to the delinquent support payments. Applicant increased his monthly support payments to cover the delinquent account and paid most of the child support arrears. Applicant recently made a \$5,000 payment to Child Support Services to complete the payments on the arrears. The judgment and tax liens at SOR 1.a, SOR 1.b, SOR 1.d, and SOR 1.e have been released by the State. He is current with child support payments which he pays monthly by check to the State child support office. (Tr.17-20, 38-31; Response to SOR, Letter, dated June 16, 2011)

Applicant used student loans to pay for his college education. The total amount of the loans still outstanding is approximately \$28,000. Applicant made inconsistent payments on the loans until October 2009 when he started consistent payments. He now has a payroll deduction for student loans of \$350 monthly. He is current with his payments. The debt listed on the credit report and at SOR 1.c is a duplicate of the student loans that he is paying as agreed. Applicant is working with the creditor and the credit reporting agency to have the loan listed correctly and the duplicate removed from his credit report. (Tr. 25-27)

The debt at SOR 1.f is for furniture Applicant purchased for a friend. The friend was supposed to pay for the furniture but did not. Applicant tried to contact the creditor to make payment arrangements but learned the creditor is no longer in business and there is no means for him to pay the debt. He contacted the creditor reporting agency to have the debt removed from his credit report. The credit reporting agency acknowledged receipt of the dispute. The dispute has not been resolved. (Tr. 27; App. Ex. B, e-mail, dated September 6, 2011; App. Ex. C, e-mail, dated September 7, 2011)

The debts at SOR 1.g and SOR 1.h are not Applicant's debts. He contacted the creditors for both debts and determined that the debts belong to a person with his name but a different social security number and an address in another state. He disputed the debts with the credit reporting agency to have the debts removed from his credit report.

The credit reporting agency acknowledged receipt of the dispute, but has not yet resolved the dispute. (Tr. 27-29; App. Ex. B, e-mail, dated September 6, 2011; App. Ex. C, e-mail, dated September 7, 2011)

### **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, which must be considered 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 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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

### Financial Considerations:

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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts established by credit reports and Applicant's admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant's testimony concerning his finances was candid and forthright. He provided information concerning his efforts to resolve his financial obligations.

I considered Financial Considerations Mitigating Conditions AG ¶ 20(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) and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions have some application to Applicant's financial situation. Applicant incurred delinquent debt from child support payments he did not make when he was denied visitation rights by his former wife and when he could not afford to make the payments because of payment on other debts. When he was informed he had to make the payments even if denied visitation rights, he increased his monthly payments to cover arrears. These were not unusual circumstances or conditions beyond his control. But Applicant acted reasonably and responsibly towards his finances under the circumstances. He made the proper payment of the arrears and recently a one-time payment to satisfying the liens and judgment. He is now current with his child support payments. He is current with his student loans paying them by payroll deduction. He tried to pay another past-due obligation but the creditor is not known. The two remaining debts are not Applicant's debts. Applicant and his wife have sufficient income and are

current with their present debts, and his finances are under control. He is not likely to incur additional debts since he is employed and living within his means.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant paid four of the SOR debts in full. He pays his student loans by payroll deduction and is current with his payments. He tried to make contact with one of his other creditors but the creditor is no longer in business and he cannot make payments on the debt. The remaining two debts are not his debts but belong to another individual with the same name but a different address and social security number. Applicant's payment of most of his debts and his efforts to pay the remaining debts provide significant and credible information to establish a meaningful track record of debt payment. His actions are reasonable and prudent under his financial circumstances and show honesty and an adherence to his financial duties and obligations. He established his good-faith efforts to repay his creditors and resolve debt. His reasonable and responsible efforts indicate that his past delinquent debts do not now reflect adversely on his trustworthiness, honesty, and good judgment.

I also considered AG ¶ 20(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 disputed the debt at SOR 1.f, SOR 1.g, and SOR 1.h. He has not been advised of the result of his disputes. He has mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's excellent performance of duty and his reputation for trustworthiness and reliability. Applicant established a "meaningful track record" of resolution or payment of his delinquent debts. He paid the four SOR allegations concerning his child support obligation and his child support obligation is current. His student loans are paid by payroll deduction and are current. Two other debts are not his debts and the remaining debt cannot be paid because the creditor is no longer in business. Applicant's actions to pay his past financial obligations and resolve his debts while maintaining a good current financial status indicate he will be concerned, responsible, and careful regarding classified information. 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 mitigated security concerns arising from financial considerations. He is granted access to classified information.

### **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.h:  | 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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THOMAS M. CREAN  
Administrative Judge