



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



In the matter of: )  
)  
) ISCR Case No. 10-03301  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Jamiel Allen, Esquire

02/29/2012

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 20, 2006 and Questionnaire for National Security Positions (Form G7185) on July 20, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on August 23, 2011, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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* (AG) implemented on September 1, 2006.

Applicant received the SOR on August 6, 2011 and retained counsel. He answered the SOR on October 14, 2011, and he requested a hearing before an administrative judge. DOHA received the request, and Department Counsel was prepared to proceed on December 1, 2011. I received the case assignment on December 12, 2011. DOHA issued a Notice of Hearing on December 30, 2011, and I convened the hearing as scheduled on January 24, 2012. The Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE O, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 2, 2012. I held the record open until February 8, 2012, for Applicant to submit additional matters. Applicant timely submitted AE P - AE S, without objection. The record closed on February 8, 2012.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted in part and denied in part the factual allegation in ¶ 1.a of the SOR. His partial admission is incorporated herein as a finding of fact. He denied the factual allegation in ¶ 2.a of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 40 years old, works as a systems engineer for a Department of Defense contractor. He began his current employment in July 2010. In his last evaluation, his supervisor described him as a top-tier technical engineer, who brings much needed skills to the workplace. He praised Applicant's leadership abilities and noted that Applicant takes on the toughest problems, works well with his peers, and is well-respected by his peers and the customer.<sup>2</sup>

After high school graduation, Applicant enlisted in the United States Army at age 20. He served on active duty from 1991 through 1996, and he served three years in the reserves. The Army honorably discharged him from duty. While in the Army, Applicant received two Army Commendation Medals, three Army Achievement Medals, a Good Conduct Medal, and several ribbons or other honors. The Army provided him with extensive computer skills. He continues to routinely update his computer skills and

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<sup>1</sup>When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>2</sup>AE D; AE K; Tr. 43.

knowledge through programs offered at work. He completed his bachelor's degree in 2000. As a civilian, he received a Golden Eagle Award from the Air Force in 1998, and he received the Commander's Award for Civilian Service from the Army in 2005 for his computer work in support of the military mission.<sup>3</sup>

Applicant married in March 2003. He and his wife divorced in September 2008. He is now single, and he does not have any children. During his marriage, Applicant provided the primary financial support for him and his wife. She worked initially, but she was laid off. In 2007, she began a home-based business selling natural-made products. He helped her business get started by withdrawing approximately \$20,000 from his retirement account, which they used for her business and living expenses. He also quit his job to help her with her business.<sup>4</sup>

When the court entered Applicant's divorce decree in 2008, the court determined that his wife was not entitled to spousal support; that Applicant's 401k account in the amount of \$6,640 was community property; that a \$3,000 business credit card was community debt; and that their joint checking account had \$3,000. The court divided their property, then awarded Applicant's wife \$3,320, one-half the value of his retirement account, \$3,000 as an offset for the community interest in the properties retained by and awarded to Applicant, and attorney fees in the amount of \$4,702 plus other costs of \$500 and \$357. Applicant did not appeal the decision of the court.<sup>5</sup>

The court ordered Applicant to pay the attorney fees and costs within 365 days of the date of the decision. Five months later, Applicant's former wife filed a motion with the court, asking the court to enforce its September 2008 order. Applicant did not respond. On March 30, 2009, the court entered judgment in favor of Applicant's former wife and against him in the amount of \$11,022.33 plus interest of 10% per year. Applicant did not appeal the judgment. He and his wife have not been in contact since their divorce.<sup>6</sup>

Applicant disagreed with the September 2008 financial award of the court, because he felt that he had paid his former wife enough money during their marriage. He decided not to pay the judgment. When he met with the Office of Personnel Management (OPM) investigator in October 2009, Applicant advised of his intent not to pay the judgment because of the monies previously provided to his wife or used to pay their marital debts. He reaffirmed his intention in his responses to interrogatories from

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<sup>3</sup>AE A - AE C; AE E; Tr. 28-30.

<sup>4</sup>GE 4; GE 5; AE F; Tr. 33-34.

<sup>5</sup>Response to SOR; GE 5; AE F.

<sup>6</sup>*Id.*; Tr. 50.

DOHA on August 3, 2010. Applicant stated that his former wife had told him she did not want anything from him, which is another reason he did not pay the judgment.<sup>7</sup>

After he received the SOR, Applicant contacted his former wife by e-mail twice in September 2011, indicating that he needed to talk with her, but provided no additional information on the reason for a conversation. The record does not reflect that his wife responded to his e-mails.<sup>8</sup>

In October 2011, he hired counsel to represent him. His attorney spoke with Applicant's former wife's divorce attorney, requesting confirmation of the monies owed by Applicant under his divorce decree. His attorney also sought to establish a method for payment of this money. After the telephone conversation, Applicant's attorney mailed a letter, dated October 12, 2011, to his wife's attorney, summarizing their conversation and asking the attorney to contact Applicant's former wife. On October 19, 2011, Applicant's former wife contacted Applicant's attorney by e-mail. She reiterated information about the division of financial assets in the divorce and provided information about a bank account into which Applicant could deposit the money he owed her. In early November 2011, Applicant's counsel requested his former wife to meet with them to discuss payment options. Applicant's former wife refused to meet with them.<sup>9</sup>

Over the next four to six weeks, Applicant and his attorney worked with Applicant's bank to establish a money transfer of funds between Applicant's bank and his wife's bank. Applicant's attorney regularly communicated by e-mail with Applicant's former wife. On December 20, 2011, Applicant's counsel wrote to Applicant's former wife and advised her on the steps she needed to take before Applicant's bank would transfer funds to her. Three weeks later, counsel wrote to Applicant's former wife, asking if she had received the earlier e-mail. She then responded "yes" and then proceeded to ask other questions. In early January 2012, Applicant drove to his wife's bank and deposited \$400 in his former wife's account. He also personally deposited an additional \$200 in her account later in January 2012. By the hearing, the automatic transfer from his bank account to his former wife's bank account had been established. He will pay her \$200 a month until the debt is paid.<sup>10</sup>

In November 2011, Applicant enrolled in a personal debt management program. He received financial counseling through this program and has developed a budget. While he is not past due on three credit card debts, he is working with this company to pay the debts in full within three years. At the time of his divorce, Applicant earned approximately \$58,000 a year. He currently earns \$105,000 a year. Applicant's net monthly income totals \$4,800 and his monthly fixed expenses, which are rent and two

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<sup>7</sup>GE 3; GE 4; Tr. 34-35, 39.

<sup>8</sup>AE S.

<sup>9</sup>*Id.*; AE G; Response to SOR.

<sup>10</sup>AE J; AE L; AE N-AE P; AE R; AE S; Tr. 37, 42.

car payments, total \$2,490. His monthly variable expenses average \$1,670. Applicant has sufficient remaining income each month to pay \$200 a month on the judgment and his monthly payment to the debt management company.<sup>11</sup>

At the hearing, Applicant acknowledged his previous refusal to pay his former wife the money owed her under their divorce decree. He explained his reasons for not paying, which were, as outlined earlier, that he felt that he had paid enough to her during their marriage and that she had said she did not want anything from him. He admitted that the fact she did not want anything from him was not a reason to ignore paying her. As for his reasons to pay it now, Applicant explained that he was “taking care of” all his debts, and that this particular debt impacted his livelihood. He also stated that the debt needed to be paid and that his initial decision not to pay the debt was a “bad” decision.<sup>12</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, which are 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 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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An

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<sup>11</sup>AE H; AE P; AE Q; Tr. 40, 43, 46, 52, 55.

<sup>12</sup>Tr. 38-39, 46.

applicant has the ultimate burden of persuasion for obtaining 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 an 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 Executive Order 10865 provides that 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 relating to the guideline for Financial Considerations is 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

When Appellant and his wife divorced, the court directed that he pay her some money and her attorney fees. He refused to pay this debt, which has been reduced to a judgment. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following 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.

Applicant's only debt is a judgment arising out of his divorce in 2008. There is little likelihood that another judgment will arise from his divorce. His initial decision not to pay the judgment reflected poor judgment, which he acknowledged at the hearing. He made no effort to resolve this debt until he received the SOR. He then realized that the Government had a concern about the unpaid judgment. He initiated contact with his former wife in an attempt to resolve the debt. She refused to respond to him. She eventually responded to contacts from his attorney and provided information necessary to arrange monthly deposits into her bank account. With the assistance of his attorney, Applicant completed these arrangements in January 2012, after five months of effort. He has started payments to his wife. Future payments are to be automatically withdrawn from his bank account and deposited into her bank account each month.

While he has no other outstanding debts, Applicant contacted a debt payment company, which helped him with a budget and set up a plan to resolve his credit card debt within three years. Applicant understands that he is obligated to pay the judgment, even if he believes he had paid enough money to his wife during their marriage. AG ¶¶ 20(a) and 20(b) are only partially applicable as Applicant did not act responsibly and exercised poor decision-making when he refused to pay the judgment until recently. AG ¶ 20(c) applies as Applicant received financial counseling and he is resolving the debt to his former wife. AG ¶ 20(d) is not applicable because his recent efforts to resolve this debt are not "good faith" efforts, since he waited three years to pay the monies owed to his former wife. He has mitigated financial considerations security concerns.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern. I have considered disqualifying conditions AG ¶ 16(a) through 16(g), and the following are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's refusal to pay the judgment entered against him as a result of his divorce raises concerns that he is vulnerable to exploitation or manipulation by someone seeking classified information. His refusal to follow a court order also raises a security concern. AG ¶¶ 16(d)(3) and 16(e) are applicable.



AG ¶ 17 provides conditions that could mitigate security concerns. I have considered mitigating factors AG ¶ 17(a) through 17(g), and the following are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant acknowledged at the hearing that his decision not to pay the monies ordered by the court was a “bad” decision. He attempted to contact his former wife to make arrangements to pay his debt, but she did not respond to him. With the assistance of his attorney, he was able to develop a method to pay his debt. Through the security clearance process, Applicant has learned that he cannot refuse to pay a judgment entered by the court, just because he did not disagree with it. His finances are otherwise stable and his debt payments are current. By acknowledging his mistake and taking steps to pay the judgment, Applicant has reduced or eliminated his vulnerability to exploitation and manipulation.<sup>13</sup> AG ¶¶ 17(d) and 17(e).

### **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 an applicant’s conduct and all relevant circumstances. The administrative judge should consider the

(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

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<sup>13</sup>At the hearing, Department Counsel argued that Applicant’s security clearance should be denied because he did not pay his wife’s attorney fees and cited ISCR No. 06-22727, a decision I issued on September 26, 2008. The facts in these two cases are significantly different. ISCR No. 06-22727 involved multiple allegations of misconduct and violation of the rules of society and of the court, not simply a refusal to pay attorney fees ordered by the court. The denial of the clearance was based on multiple incidents of rules violation. Unlike the present case, Applicant in ISCR No. 06-22727 never acknowledged that he made a mistake in his decision not to pay the attorney fees ordered by the court.

consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's one unpaid debt arose out of his divorce and his refusal to pay his former wife the money the court ordered him to pay. Except for this debt, he lives within his monthly income and pays all his living expenses, including his debts. He refused to pay the judgment, not for financial reasons, but based on his feelings that he had done enough for his wife during their marriage. With the receipt of the SOR, he realized he needed to take action on this debt. He accepted responsibility for the debt and acknowledged that his decision not to pay it showed poor judgment by him. He has finally assumed responsibility for the debt and is paying it. This debt cannot be a source of improper pressure or duress nor does his initial decision reflect negatively on his reliability and trustworthiness. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While he has only begun to pay his one debt, this debt is insufficient to raise security concerns. His conduct during this time reflects that Applicant is not an individual who would betray the Government's secrets. He based his decision not to pay the judgment on his personal belief and feelings about his marriage, not because he lived beyond his monthly income. No security concern is raised by this conduct. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F and his conduct under Guideline E.

### **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

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

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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MARY E. HENRY  
Administrative Judge