



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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XXXXXXXXXXXX, XXXXX ) ISCR Case No. 10-03552  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

03/19/2012

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (Financial Considerations). Clearance is granted.

**Statement of the Case**

On November 17, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on September 20, 2011, and DOHA received his answer on September 23, 2011. Department Counsel was prepared to proceed on November 17, 2011. The case was assigned to me on November 29, 2011. DOHA

issued a notice of hearing on December 2, 2011, scheduling the hearing for December 14, 2011. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 5, which were received into evidence without objection. Applicant offered Applicant Exhibits (AE) A through F, which were received into evidence without objection, and he testified on his own behalf.

I held the record open until December 23, 2011, to afford the Applicant the opportunity to submit additional documents. Applicant indicated by e-mail dated December 21, 2011, that he did not intent to submit additional documents. DOHA received the hearing transcript (Tr.) on December 22, 2011.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. His admissions are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 46-year-old senior proposal specialist, who has worked for a defense contractor since March 2007. He is a first-time applicant for a security clearance. Applicant seeks a clearance to enhance his position within his company. (Tr. 46-47, 49-50, GE 1.)

Applicant was awarded a Bachelor of Arts degree in political science in May 1988, and was awarded a Master's Degree in marketing in November 1996. He has not served in the armed forces. (Tr. 47-49, GE 1.)

Applicant has been married two times. His first marriage (W1) was from April 1991 to June 1995, and his second marriage (W2) was from April 1996 to July 2005. Both marriages ended by divorce. Applicant has three sons – a 17-year-old who lives with W1 and a 14-year-old and a 10-year-old who live with W2. (Tr. 50-52, GE 1.)

### **Financial Considerations**

The Government's Exhibits included Applicant's November 2009 e-QIP, his responses to DOHA interrogatories in November 2010 and July 2011, as well as his December 2009 and March 2011 credit reports. Applicant's SOR alleges five debts delinquent debts. (SOR ¶¶ 1a – 1e.)

Applicant attributes his financial problems to: (1) costs associated with his separation and divorce from W2; (2) real estate loss associated with a condominium he owned; and (3) cost of relocating following an employment-related move. (Tr. 53-57, 70.)

The following is a summary of Applicant's SOR debts and their status:

SOR ¶¶ 1a, 1d, and 1e relate to the condominium referred to above. Specifically, the debts are a November 2010 \$35,049 judgment filed by the second mortgage holder, a \$13,678.78 collection account owed to the condominium association, and a \$3,762.68 past-due debt owed to the local property taxing authority for tax years 2008 and 2009, respectively. Applicant purchased the condominium for \$89,900 and it sold for \$54,000 in foreclosure. Following foreclosure and on the advice of his attorney, Applicant is in a "wait and see mode" pending the final accounting of the foreclosure sale. None of these three creditors have approached Applicant since foreclosure. After receipt of the final accounting, Applicant's attorney will make a recommendation whether to settle or file for bankruptcy. At present, Applicant is following his attorney's advice. (Tr. 57-59, GE 2.)

As soon as Applicant realized that he was having difficulty remaining current on the condominium payments and association fees, he tried the following options to avoid foreclosure: (1) offered to sign a deed in lieu of foreclosure, (2) attempted to secure a loan modification, and (3) attempted to sell the condominium by short sale. All of his efforts were unsuccessful. Applicant provided ample documentation of the foregoing options as well as his diligent and persistent efforts to deal with his creditors. (Tr. 73-75, GE 2, AE A - E.)

SOR ¶¶ 1b and 1c are credit card debts -- a \$6,496 charged-off account and an \$814 past-due account, respectively. As in the debts above, Applicant attempted to work with his creditors, but was unsuccessful. Since then, Applicant's attorney counseled him to cease making payments on these accounts and to provide the creditors with the attorney's contact information. Again, Applicant's attorney will make a recommendation to Applicant whether to settle the debts or file for bankruptcy as soon as the foreclosure action is settled. (Tr. 59-61, GE 2.)

Apart from these debts, Applicant has an excellent credit record. He owns two other properties and is current on the payments, taxes, and association fees for those properties. Additionally, he is current on his car payment, student loan, child support, and monthly living expenses. Applicant's budget reflects a modest lifestyle and demonstrates that he lives within his means. (Tr. 61, 73-75, GE 4 – 5.) Apart from the advice he received from his attorney, Applicant did not seek formal financial counseling. He has money in the bank, owns a condominium near his place of employment, and has a net monthly remainder after all of his bills are paid exceeding \$700. Applicant's plan with regard to the debts alleged is to follow the advice of his attorney.

### **Character Evidence**

Applicant submitted a letter from his current employer indicating that he had received three recognition program awards in 2007, 2009, and 2011. His supervisor provided a very favorable recommendation letter that referenced Applicant's above

average work performance and impeccable character. His supervisor strongly recommended Applicant for a security clearance. Lastly, Applicant submitted three years of employee performance appraisals that reflect sustained superior performance and document Applicant's potential for future service as a defense contractor. (Tr. 75-76, AE F.) Applicant is actively involved in the day-to-day lives of his two younger sons. He maintains a stable relationship with his fiancée and is an active runner and enjoys fishing. (Tr. 77-78.)

Applicant's former wife (W2) testified on his behalf. W2 stated that Applicant is an excellent father, pays for their two sons' health insurance, and has never missed a child support payment. W2 noted that Applicant provided financial support for their children during difficult times, even to his detriment. She confirmed that their divorce was expensive for both of them and set them back financially. W2 stated that Applicant is "very conservative" with his finances. She also confirmed Applicant's efforts to avoid foreclosure and deal with his debts. (Tr. 21-38.)

### **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 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, 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 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 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**

AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and the evidence presented. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20 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;

(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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant merits full credit under AG ¶ 20(b) because his separation and divorce and financial fallout were circumstances beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds to remain current on his debts, he remained in contact with his creditors and took reasonable steps to resolve his debts.<sup>1</sup>

AG ¶ 20(c) is partially applicable even though Applicant did not seek formal financial counseling, apart from the financial counseling he received from his attorney. He has, however, produced evidence that reflects he is living within his means and has regained financial responsibility. His plan to await the final settlement of his condominium foreclosure is reasonable and based on the advice of his attorney. There are clear indications that his financial problems are in the process of being resolved. Furthermore, there is sufficient information to establish partial if not full mitigation under AG ¶ 20(d).<sup>2</sup> Applicant attempted to work with his creditors

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<sup>1</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

<sup>2</sup>The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

throughout the process, but his efforts were unsuccessful. Given his financial situation, Applicant has acted responsibly under the circumstances. AG ¶ 20(e) is not applicable.

### **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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's service as a defense contractor employee and excellent employment record weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been addressed insofar as he is following the advice of his attorney. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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In order to qualify for application of [the "good-faith" mitigating condition], 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 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 [the "good-faith" mitigating condition].

(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. June 4, 2001)).

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

The record is replete with Applicant’s good-faith efforts to work with his creditors throughout the entire process. Unfortunately for Applicant, his efforts were not successful. He is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. Due to circumstances beyond his control, his debts became delinquent. Despite Applicant’s recent financial setback, it is clear from his actions that he has a plan to achieve full financial recovery. Apart from the debts alleged, Applicant is current on all of his other debts and lives within his means. During this entire process, he never fell behind on his other debts, his child support payments, and he never failed to meet the needs of his children. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant’s service as a defense contractor. I considered his years of financial responsibility before falling into debt. I considered his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his adverse situation, his responsibility to his children, his work performance evidence, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.



Applicant has fully mitigated the financial considerations security concerns. For the reasons stated, I conclude he is eligible for 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 1a – 1e:                   For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge