



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



In the matter of: )  
)  
) ISCR Case No. 10-03688  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William T. O'Neil, Esquire, Department Counsel  
For Applicant: *Pro se*

June 9, 2011  
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**Decision**  
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CREAN, Thomas M., Administrative Judge:

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

On February 5, 2010, Applicant submitted a Questionnaire for Investigations Processing (e-QIP) as a requirement 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 a Statement of Reasons (SOR), dated November 22, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. 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 on September 1, 2006. Applicant acknowledged receipt of the SOR on December 2, 2010.

Applicant answered the SOR on December 20, 2010, admitting 16 and denying 8 allegations. Department Counsel was prepared to proceed on January 24, 2011, and

the case was assigned to me on February 23, 2011. DOHA issued a Notice of Hearing on March 18, 2011, scheduling a hearing for April 5, 2011. I convened the hearing as scheduled. The Government offered six exhibits, which I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant testified, and did not offer any exhibits. The record was held open for Applicant to submit documents. Applicant timely submitted 11 documents marked and admitted as Applicant Exhibit (App. Ex.) A through K. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 7, Memorandum, dated April 29, 2011; and Gov. Ex. 8, Memorandum dated May 5, 2011). DOHA received the transcript of the hearing (Tr.) on April 22, 2011.

### **Procedural Issues**

Applicant did not receive the Notice of Hearing until March 22, 2010. He discussed the hearing date with Department Counsel prior to the mailing of the Notice of Hearing on March 18, 2011. Applicant is entitled to 15 days advanced notice of a hearing. (Directive E3.1.8.). Applicant was ready to proceed at the hearing on April 5, 2011, and he had sufficient time to prepare. He waived the 15 day notice requirement. (Tr. 4-7)

### **Findings of Fact**

In his response to the SOR, Applicant denied some allegations and admitted others. At the hearing, Applicant admitted all of factual allegations because he now had sufficient information to identify the debts as his debts. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 38-year-old aviation mechanic for a defense contractor. He has a general education diploma from high school. He served as a combat engineer in the United States Army from February 1994 until April 1998. He held a security clearance while on this tour. He served in the Army Reserve as an aviation mechanic from October 1998 until June 2004. During this time, he was activated and served in Iraq from January 2003 until discharged with an honorable discharge in June 2004.

Applicant's first child was born before he was married. He is required to pay monthly child support of \$168 for this child, which is garnished from his pay. He has been married three times. He first married in November 1996 and divorced in December 1997. His second marriage was from April 1999 until he divorced in March 2003. He married again in June 2006 and divorced in March 2008. He has two children from these marriages. One child lives with him and the other with a former wife. He does not pay child support for the child living with his former wife, but does provide her support when he can. While he is presently single, he is engaged and he and his fiancé live together and pool resources. Applicant's net monthly pay is \$2,700 and his fiancé's net pay is \$1,400 for a monthly income total of \$4,100. His monthly recurring expenses are approximately \$3,950, leaving \$150 monthly in discretionary funds. (Tr. 23-30, 44-52, 61-67; Gov. Ex. 1, e-QIP, dated February 5, 2010)

Credit reports (Gov. Ex. 4, dated August 30, 2010; Gov. Ex. 5, dated February 19, 2010; and Gov. Ex. 6, dated August 2, 2008), and Applicant's response to Interrogatories (Gov. Ex. 2 and 3, dated July 13, 2010) show medical debts for \$870 (SOR 1.a), \$683 (SOR 1.b), \$493 (SOR 1.c), \$75 (SOR 1.d), \$570 (SOR 1.e), \$468 (SOR 1.g), \$418 (SOR 1.h), and \$577 (SOR 1.u); a communication debt in collection for \$878 (SOR 1.f); cell phone accounts in collection for \$110 (SOR 1.i), \$805 (SOR 1.l), \$481 (SOR 1.n), and \$345 (SOR 1.p); a rent account in collection for \$1,361 (SOR 1.j); a credit card account in collection for \$1,270 (SOR 1.k); a credit union account in collection for \$270 (SOR 1.m); a jewelry store account in collection for \$175 (SOR 1.o); a credit account in collection for \$1,872 (SOR 1.q); a car repossession charged-off for \$9,345 (SOR 1.r); a television satellite receiver account in collection for \$872 (SOR 1.s); a debt for a newspaper for \$69 (SOR 1.t); a credit card account in collection for \$1,864 (SOR 1.v); a mortgage in foreclosure for \$110,592 (SOR 1.w); and a debt for child support arrears for \$21,211 (SOR 1.x). The total amount of debt listed is approximately \$150,000, with \$110,000 being from the mortgage and \$20,000 from the child support arrears.

Applicant attributes his financial problems to the purchase and subsequent foreclosure on a house, a divorce, the expense of a move for employment reasons to a high cost new location, the loss of employment and income because he needed to care for his mother, and the expenses of having his son live with him. (Tr. 17) Applicant was unemployed in the last ten years for a total of approximately a year. The longest period of unemployment was from July 2008 until March 2009. His mother became sick and he needed to be at home to care for her. While he cared for her he was unable to find a job where his mother lived. (Tr. 24-25, 43-44)

When Applicant returned from his tour in Iraq and was discharged from the Army Reserve, he started working for a defense contractor at a military base. He rented a house near the base in May 2004. In April 2005 at the end of the lease, he was in the process of having a house built. It would not be ready until July 2005 and he received verbal permission from the property manager to continue renting on a monthly basis. When he made his final payment in July 2005, the manager informed him he did not provide the appropriate timely notice that he was leaving and he owed more rent. Applicant is disputing the debt at SOR 1.j because he believes the appropriate notice was provided. He did not present information that he filed a dispute. However, he intends to pay the debt in the future since it would be more costly for him to contest the debt than pay it. (Tr. 37-40)

Applicant started to work for defense contractors in 2000 shortly after leaving active duty. He continued to work for defense contractors while he was a drilling member of the Army Reserve. Most of his work was as an aviation mechanic but he took whatever job was available. After his honorable discharge in 2004, Applicant continued to work as an aviation mechanic for a defense contractor on a military base. He purchased a house in June 2005 near the base using a Veteran's Administration (VA) guaranteed loan. In November 2005, Applicant's job was uncertain because the contract was changing, so he accepted a new position with a defense contractor in a

high cost area of another state which required an expensive move for him. He tried to sell the house or in the alternative to rent it. He hired a property manager, but they did not work to either sell or rent the house. He was unable to either sell or rent the house because of the downturn in the housing market. Applicant could not afford to pay the mortgage and rent at his new location. The house was foreclosed. (SOR 1.w) Prior to the hearing, his last contact with the creditor or the VA was in May 2006. Applicant has not received information concerning any debt from either the lender of the Veteran's Administration. After the hearing, he contacted the lender and the Veteran's Administration and neither has any information concerning a debt he owes to them. He learned that the house had been sold and the lender has a new owner listed for the property. Since the loan was a VA guaranteed loan, there is no debt owed. (Tr. 15-16, 22-24, 30-36 App. Ex A, Letter, dated April 26, 2011)

Applicant's 13-year-old son, who has asthma, came to live with him in April 2010. This increased his household expenses about \$250 monthly. These expenses used his limited discretionary funds. His fiancé just recently found full-time employment and is able to assist with paying their debts. (Tr. 17-19, 28-30) He is not required to provide support to a child living with his former wife, but he does provide some support when requested. (Tr. 28-30) Applicant is under court order to pay child support for his oldest child. He was unable to make the support payments because of unemployment and lack of funds in maintaining his own household. The child support arrears are in now in excess of \$20,000. (SOR 1.x) His pay has been garnished for over two years to pay the child support. The garnishment was initially for \$400 monthly but has been reduced to \$168 monthly. His pay is still being garnished. Even though Applicant's pay has been garnished for a few years, he is now aware of the actual balance owed. He is no longer required to provide child support and his debt is just for the arrears. (Tr. 26-28)

Applicant initially denied the medical debts because he had not seen his credit report and could not identify the debts. After receiving a credit report and researching the debts, Applicant now believes the medical debts are his responsibility. He believes most of them are for treatment of his son's asthma. (Tr. 20-21)

Prior to the hearing, Applicant filed his tax return for 2010 and expects a refund of approximately \$4,600. He will use these funds to pay some of his debts. For the remaining debts, he will attempt to negotiate settlements and pay approximately \$75 monthly on the debts until paid. If his financial situation improves, he will pay more towards his debts. His goal is to improve his credit rating to enable him to purchase a house. (Tr. 20-21) He also believes after research that the other debts are his valid debts. (Tr. 36-37) He talked to financial counselors but did not use their services because of the costs. (Tr. 40-41)

Applicant received his tax refund after the hearing. He contacted all of his creditors. He requested payment information from the creditors for medical debts at SOR 1.a and 1.b, but they have not returned his call. He paid in full the \$493 medical debt at SOR 1.c (App. Ex. A, Letter, dated April 26, 2011; App. Ex. B, Money Transactions, dated April 26, 2011) He paid in full the \$75 medical debt at SOR 1.d. and

the \$577 medical debt at 1.u. (App. Ex. A, Letter, dated April 26, 2011; App. Ex. C, Money Transactions, dated April 22, 2011; App. Ex. H, Receipt, dated April 26, 2011; App. Ex. K, Receipt, dated April 27, 2011) He paid in full the medical debt at SOR 1.e (App. Ex. A, Letter, dated April 26, 2011; App. Ex. B, Money Transactions, dated April 26, 2011)

Applicant contacted the collection agency holding the debts at SOR 1. f, 1.g, 1.h, and 1.i. He paid the debts at SOR 1.g, 1.h, and 1.i in full. He plans to pay in full the debt at SOR 1.f when the collection agency can provide him with appropriate payment information. (App. Ex. A, Letter, dated April 26, 2011; App. Ex. C, Transactions, dated April 22, 2011; App. Ex. C, Receipt, dated April 19, 2011)

Applicant also paid in full the cell phone debts at SOR 1.l, 1.n, and 1.p. (App. Ex. A, Letter, dated April 26, 2011; App. Ex. F, Letter, dated April 22, 2011; App. Ex. G, Letter, dated April 17, 2011) He paid in full the loan account at SOR 1.m. He also paid in full the debts listed at SOR 1.o, 1.q, and 1.t. (App. Ex. A, Letter, dated April 26, 2011; App. Ex. C, Transactions, dated April 22, 2011; App. Ex. E, Receipt, dated April 18, 2011) These debt payments total approximately \$5,600. He agreed to a settlement plan for the debt at SOR 1.k but has not yet made any payments. (App. Ex. A, Letter, dated April 26, 2011)

Applicant has attempted, but has not been successful, in contacting the creditors to establish payment plans for the debts at SOR 1.r, 1.s, and 1.v. His intent is to continue attempts to contact creditors, reach settlement agreements and payment plans, and pay all of the debts, (App. Ex. A, Letter, dated April 26, 2011) Applicant admits that a car was repossessed in 2004 and he has a debt of approximately \$9,345. (Tr. 41-42) He has attempted to contact the creditor to arrange a payment plan. The creditor has not returned his calls. He is trying to contact them by mail to establish a payment plan. (App. Ex. A, Letter, dated April 26, 2011)

Applicant is highly regarded by his employer. His program manager writes that Applicant has worked for him for over 15 months. Applicant has proven he is an extremely dedicated, trustworthy, and motivated employee. His work is exemplary and the customers have recognized the excellence of his work. (App. Ex. I, Letter, dated April 25, 2011) Applicant's immediate supervisor notes that Applicant is dedicated to his work and is willing to go the extra mile to provide a good work product for the government. Applicant's work ethic leads his supervisor to believe that Applicant will be successful in managing his finances and following his financial recovery plan. Applicant has shown he is honest and trustworthy. (App. Ex. J, Letter, dated April 25, 2011)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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 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 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. Credit reports show and Applicant admitted at the hearing that he had over \$150,000 in delinquent debts, including a mortgage foreclosure of \$110,000, and child support arrears of over \$20,000. The credit reports and Applicant's admissions at hearing are sufficient to raise a security concern and consideration of Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). This is a circumstance of an inability and not an unwillingness to satisfy debt.

The Government produced sufficient evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government. Applicant raised conditions that may mitigate the security concern.

I considered Financial Considerations Mitigating Condition (FC MC) 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 FC MC 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 apply. Applicant incurred the delinquent debt when he moved to a new location for a job, could not sell or rent his house, and it was foreclosed. At the new location, he incurred delinquent debt because of the costs. He also was unemployed from July 2008 until March 2009 while he was caring for his mother. He incurred additional costs when his son came to live with him. The debts were incurred in the past, but have not been resolved and are current. The circumstances causing the debts were beyond his control since they were caused by a housing market downturn affecting his ability to sell or rent his house, his move to find better employment, periods of unemployment, and medical expenses for his son. Applicant has taken the steps to resolve the debts. He contacted all his creditors to arrange payment plans. He used his tax refund to make debt payments of over \$5,600. His mortgage foreclosure was resolved by a VA guaranteed loan. He disputed one of his debts. Applicant's financial history shows he has taken the necessary steps to resolve his debts. Applicant established that he acted responsibly under the circumstances to resolve his debts.

I considered FC MC ¶ 20(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). This mitigating condition does not apply. Applicant consulted some debt counselors but never employed them because of the cost. However, the information presented shows his financial problems are being resolved and are under control.

I considered FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). For FC MC 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. 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 does not have a mortgage debt since his house was purchased using a VA guaranteed loan. When the house was foreclosed because Applicant could not sell or rent it when he moved to a new location for a new position, the loan was covered by the VA. Applicant's child support arrears are being paid by garnishment. He no longer has a child support requirement so he is only paying the arrears. Applicant's plan was to use a tax refund to pay off some of his debts. He received the tax refund and presented adequate information to establish he paid over \$5,600 on his debts resolving 14 of the debts. He is attempting to locate other creditors to establish payment plans and is waiting for contact or payment information on six debts. A debt will be paid under a recently agreed payment plan. Applicant's action to resolve debts show that he was responsible towards his finances. He provided significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay his creditors or resolve debt through debt payment. The past delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment.

I considered FC MC ¶ 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 a rent payment debt. He has a reasonable basis for the dispute but he does not have documentation to establish that he has filed a dispute.

### **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 prior service in the Army. I considered that he served in Iraq, received an honorable discharge, and successfully held a security clearance. I also considered that he is an excellent employee. His supervisors consider him to be honest and trustworthy and recommend he be granted access to classified information.

Applicant presented sufficient information to show he has taken reasonable and responsible action to resolve his financial issues. He paid over \$5,600 of his debt using a recently received tax refund. He presented information that his mortgage was resolved using his VA guaranteed loan and his child support arrears are paid by garnishment. He has debts to resolve but he contacted the creditors and is awaiting payment and contact information. His recent financial history indicates he will pay his remaining debt when he has adequate information and funds. Applicant's payment of his debts and attempts to resolve his remaining debts indicate he will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on his finances. Overall, on balance 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 and he should be 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

Subparagraph 1.a-1.x: 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