



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-03716  
)  
Applicant for Security Clearance )

**Appearances**

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

10/16/2012

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**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 June 5, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain 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 explain 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 22, 2012, detailing security concerns for financial considerations. 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 in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on June 4, 2012.

Applicant answered the SOR on June 19, 2012. He admitted eight and denied four of the allegations. Department Counsel was ready to proceed on July 10, 2012. The case was assigned to me on July 18, 2012, and DOHA issued a Notice of Hearing on July 19, 2012, scheduling a hearing for August 15, 2012. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 6. Applicant testified, and submitted four documents that I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through D. I left the record open for Applicant to submit additional documents. Applicant timely submitted six documents, which I marked and admitted into the record as App. Ex. E through J. The Government had no objection to admission of the documents. (Gov. Ex. 7, e-Mail, dated September 5, 2012). DOHA received the transcript of the hearing (Tr.) on September 4, 2012.

### **Findings of Fact**

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

Applicant is a 47-year-old electronics technician for a defense contractor. Applicant served on active duty in the Army from 1983 until 1987. He then served on active duty in the Marine Corps from January 1990 until May 2006. He retired as a gunnery sergeant (E-7) with an honorable discharge. During his time in the Marine Corps, he received five awards of the Good Conduct Medal, four awards of the Navy Achievement Medal, the combat action award, and four sea service deployment awards. His performance was rated as sustained superior performance. He deployed twice to Iraq while on active duty. He has been married since February 1991 and has a stepson and three grandchildren. (Tr. 8-20; Gov. Ex. 1, e-QIP, dated January 5, 2010)

Applicant's defense contractor supervisor states that Applicant has been an electronics technician for them since December 2009. He is an exemplary employee with the skills required of an experienced electronics technician. He is dependable, hard-working, and honest. He demonstrated the ability to work independently with minimal supervision. He is also a good team member. The supervisor has never had to question Applicant's integrity or character. He recommends that Applicant retain his access to classified information. (App. Ex. A, Letter, dated August 2, 2012)

Credit reports (Gov. Ex. 4, dated January 8, 2010; Gov. Ex. 5, dated November 7, 2011; and Gov. Ex. 6, dated March 7, 2012) show the following delinquent debts for Applicant: \$140 in collection for cable service (SOR 1.a); \$2,901 in collection on a car loan account (SOR 1.b); \$547 in collection for television service (SOR 1.c); \$1,377 past due on a loan (SOR 1.d); \$822 in collection on a loan (SOR 1.e); \$109 in for a city tax (SOR 1.f); \$346 in collection on an unknown account (SOR 1.g); \$240 in collection for a loan (SOR 1.h); \$165 in collection for Insurance (SOR 1.i); \$382 in collection for an electric service bill; \$951 charged-off for a home telephone account (SOR 1.k); and \$11,122 charged-off for a car loan (SOR 1.l). Applicant noted that his initial credit report showed 17 delinquent debts totaling approximately \$45,144. He paid many of the debts and his current credit report shows six delinquent debts totaling approximately \$17,957. The total of the SOR debts is \$19,000, with one debt, SOR 1.l for \$11,120, being over

60% of the debt listed. Applicant is paying a debt from the military exchange not listed in the SOR through allotment from his retired pay. (Tr. 7-8; App. Ex. B, Letter, dated August 15, 2012)

Applicant was not ready to retire from the Marine Corps in 2006 but his family wanted him to slow down and be at home more. After retiring, he immediately started working with a defense contractor. After a few years, his wife wanted to move closer to her grandchildren so he took a non-defense related position. In 2009, the defense contractor asked him to return to their employment to support training of Marines. He has worked for the defense contractor for over two years as an electronics technician supporting aircraft simulator training.

After Applicant retired from the Marine Corps, his wife had significant criminal expenses stemming from criminal and illegal drug activity starting in 2006. She also had significant medical expenses for treatment of drug addiction. He paid over \$12,000 in legal fees, fines, costs, and probation. Her medical treatment for drug addiction was not covered by his health insurance so he also incurred significant fees of over \$17,000 for her medical care. He paid the expenses from his monthly income. The legal and drug problems have been resolved and he anticipates no future expenses in these areas. Applicant's financial statements show income from his position with the defense contractor of approximately \$78,000 a year and retired pay of \$24,000 a year, for a total yearly income of over \$102,000. His personal financial statement shows a net monthly income of \$5,893.75, monthly expenses of \$3,882, leaving monthly disposable funds of approximately \$2,051. (Tr. 20-30; Gov. Ex. 3, Response to Interrogatory, dated February 13, 2012 at 3; App. Ex. D, Retired Income Statement, dated July 23, 2012)

The debt at SOR 1.a is for cable service at one of Applicant's former residence. He contacted the collection agency and was told that they no longer had the debt. He contacted the original creditor and was referred back to the collection agency. Applicant is unable to determine who he should send payment to on this debt. (Tr. 31-32; App. Ex. E, e-mail, dated September 4, 2012)

The debt listed at SOR 1.b is for the balance owed on a car that was stolen and destroyed. The amount of the debt is the difference between the amount owed on the debt and the insurance payment for the stolen car. Applicant has been unsuccessful in settling the debt with the collection agency. (Tr. 32-34; App. Ex. E, e-mail, dated September 4, 2012)

The debt at SOR 1.c is for cable service. The debt has been paid in full. (Tr. 34; App. Ex. C, Bank Transaction, dated May 25, 2012)

At the hearing, Applicant noted he had not paid the debt at SOR 1.d. After the hearing, he stated he mailed a letter to the creditor requesting a payment plan for the debt. (Tr. 34-36; App. Ex. E, e-mail, dated September 4, 2012)

Applicant does not have any information on the debt at SOR 1.e. He disputed the debt with the credit reporting agency. The debt has been removed from his credit reports. (Tr. 36-38; App. Ex. E, e-mail, September 4, 2012)

At the hearing, Applicant stated he had contacted the creditor for the debt at SOR 1.f but they were unable to provide him information concerning the debt. After the hearing, he learned the debt was for only \$71.17. He provided a bank transaction to establish he paid the debt in full. (Tr. 38, App. Ex. E, e-mail, dated September 4, 2012; App. Ex. F, bank transaction, dated August 30, 2012)

At the hearing, Applicant stated he disputed the debt at SOR 1.g with the credit reporting agencies. The debt has been removed from his credit reports. (Tr. 39; App. Ex. E, e-mail, dated September 4, 2012)

Applicant disputed the insurance company debt at SOR 1.i. He stated that his account was in good standing when he cancelled his insurance. He disputed the debt with the credit reporting agencies and it has been removed from his credit reports. (Tr. 39-40; App. Ex. E, e-mail, dated September 4, 2012)

Prior to the hearing, Applicant had not contacted the creditors for the debts at SOR 1.h, 1.j, and 1.k. (Tr. 40-43) After the hearing he presented evidence that the debt at SOR 1.h was paid in full. (App. Ex. G, bank transaction, dated August 31, 2012). He presented evidence the debt at SOR 1.j has been paid in full. (App. Ex. H, bank transaction, dated August 31, 2012). Applicant reached a settlement with the phone company for the \$951 debt at SOR 1.k. The debt was settled for \$475.83. (App. Ex. I, Settlement Letter, dated August 17, 2012) The settlement has been paid. (App. Ex. J, bank transaction, dated August 31, 2012)

At the hearing, Applicant stated that the car loan debt at SOR 1.l was for his wife's car. The car was purchased in 2006 and the loan went to default in 2008 and the car was repossessed. He believes the amount owed when it was repossessed was approximately \$8,843. Prior to the hearing, he had contacted the creditor to arrange a settlement but they could not agree on a payment plan. The creditor requested a bigger payment than Applicant could afford. (Tr. 43-44) After the hearing, Applicant again attempted to reach an agreed payment plan with the creditor. There is no agreed payment plan. (App. Ex. E, e-mail, dated September 4, 2012)

### **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 exhibits a 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 does not indicate whether there is an inability or an unwillingness to satisfy debt.

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 apply. Applicant paid his wife's significant medical and legal debts stemming from criminal conduct and drug involvement. His wife's debts were incurred under the unusual circumstance of her involvement in criminal activity fueled by drug involvement. His wife's legal debts consisted of fines, fees, and attorney's bills. She incurred medical expenses for treatment of drug addiction not covered by her husband's health insurance. He was able to pay other family debts but some became delinquent. Even though he was late in taking action on the still unpaid debts, he acted responsibly under the circumstances towards these delinquent debts by paying them or attempting to reach settlements. He disputed some debts and they have been removed from his credit reports. He paid debts not listed in the SOR. He has sufficient income to live within his means and pay his present debts. He has steady and good employment, and is not likely to incur additional debts. His wife's legal and medical issues have been resolved. His finances are under control. Applicant established that he acted responsibly towards his debts under the circumstances.

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 periodic payment to reduce debts. Applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant has an established plan to resolve his financial problems, and show he has taken significant actions to implement that plan.

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 three debts with the credit reporting agencies. The debts have been removed from his credit reports and have been resolved.

Applicant established that he has or is paying debts not included on the SOR. He paid five of the 12 debts listed in the SOR. He disputed three debts that have been removed from his credit report. He cannot find the creditor to pay on another debt. He is negotiating settlement agreements on the remaining three debts. Applicant established

that he paid or is attempting to pay the debts listed in the SOR. His efforts to pay his debts are significant and credible information to show a desire to resolve debt. His payment of debts establishes a meaningful track record of debt payment. These efforts show a reasonable and prudent adherence to financial obligations, and establish a good-faith effort to resolve and pay debts. His past delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment. His financial problems are resolved and his finances are under control. Based on all of the financial information provided by Applicant, 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 service on active duty in the Army and Marine Corps. I considered the awards he received on active duty, his two deployments to Iraq, and his continued support to Marines. I considered the opinion of his supervisor concerning his work ethic and honesty. Applicant's wife incurred significant legal and medical debt through her own criminal misconduct and drug involvement. Applicant paid these legal and medical debts, but he did not pay all of the family's other debts resulting in delinquent debts. He paid some delinquent debts not listed in the SOR. He presented evidence of payment of some of the SOR debts. He presented evidence that he disputed some of the SOR debts and they were removed from his credit reports. He presented evidence of his attempts to learn of the proper creditor or reach settlements on the remaining SOR debts. Applicant established his good-faith efforts to pay or resolve his delinquent debts. His actions to pay or resolve his past financial obligations indicate that he will be concerned, responsible, and careful regarding classified information. 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 security concerns arising from financial considerations.

### **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.l:   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