



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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Applicant for Security Clearance )

ISCR Case No. 10-04090

**Appearances**

For Government: Richard A. Stevens, Esquire, Department Counsel  
For Applicant: Latitia Graham, Personal Representative

February 10, 2012

**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 December 16, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued interrogatories to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated June 20, 2011, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and

the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on July 15, 2011.

Applicant answered the SOR on August 2, 2011. He admitted 12 of the 14 allegations. Department Counsel was prepared to proceed on September 6, 2011, and the case was assigned to me on September 28, 2011. DOHA issued a Notice of Hearing on October 20, 2011, scheduling a hearing for November 9, 2011. Department Counsel notified Applicant of the hearing date on October 2, 2011. I convened the hearing as scheduled. The Government offered seven exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 7. Applicant and one witness testified. He offered one exhibit that I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A. I left the record open for Applicant to submit additional documents. Applicant timely submitted seven additional documents that I marked and admitted into the record as App. Ex. B through H. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 8, E-mail, dated December 7, 2011; Gov. Ex. 9, E-mail dated February 6, 2012) DOHA received the transcript of the hearing (Tr.) on November 21, 2011.

### **Findings of Fact**

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

Applicant is 34 years old. He has been a certified class A welder and fabricator for a defense contractor since November 2009. He served briefly on active duty in the Army before being medically discharged. He married in August 2010 and helps to support four children. His yearly salary is approximately \$42,000. His monthly net income is \$3,560. His monthly required child support payments of \$1,070 are taken from his pay. He has arrears in child support based on a late determination of paternity for one of the children. His net monthly pay is approximately \$1,800. His wife's monthly salary is \$1,600, for a combined monthly net income of approximately \$3,400. They have recurring monthly expenses of approximately \$2,911, leaving approximately \$500 in monthly discretionary funds. At times, their daughter has major school expenses leaving little discretionary funds, so they live basically paycheck to paycheck. Applicant's 401(k) plan has a balance of approximately \$2,800, and his wife's plan has a balance of approximately \$15,000. Applicant is highly regarded by his employer. His latest performance rating was "exceeds expectations" and "outstanding." (Tr. 12-15; 24-32, 40-48; Gov. Ex. 2, Answer to Interrogatory, dated August 3, 2010, at 123; App. Ex. A, Annual Performance Review, dated November 8, 2011; App. Ex. C, W-2 Wage and Tax Statement, undated)

Credit reports (Gov. Ex. 6, dated December 24, 2009, Gov. Ex. 7, dated May 6, 2011) and Applicant's responses to the interrogatory (Gov. Ex. 2, dated August 3, 2010; Gov. Ex. 3, dated July 17, 2010) show the following delinquent debts for Applicant: medical debts of \$133 (SOR 1.a), \$145 (SOR 1.b), \$84 (SOR 1.c), and \$190 (SOR 1.d); a judgment for \$9,546 (SOR 1.e); a past due debt for \$7,000 (SOR 1.f); a credit card debt in collection for \$455 (SOR 1.g); two charges in collection for the same bank for \$141 (SOR 1.h) and \$134 (SOR 1.i); three medical debts in collection by the same

company for \$109 (SOR 1.j), \$128 (SOR 1.k), and \$103 (SOR 1.l); a Chapter 13 filed on June 9, 2009, and dismissed on September 8, 2009 (SOR 1.m); and failure to file state and federal tax returns for 2006 and 2007 (SOR 1.n). Applicant admitted all of the SOR allegations except SOR 1.h and 1.i. Some of the debts are duplicates. The total amount of alleged delinquent debt is approximately \$12,000.

Applicant and his wife filed a Chapter 13 bankruptcy petition on August 2, 2011. On the advice of his attorney, the petition was converted to a Chapter 7 bankruptcy on August 16, 2011. All of the debts listed on the credit reports for Applicant and his wife were included in the petition. These included medical debts for both of them. The petition was granted and their debts were discharged on November 29, 2011. (Tr. 48-52; Gov. Ex. 5, Bankruptcy Petition, dated August 2, 2011; App. Ex. H, Bankruptcy Discharge, dated November 29, 2011)

When Applicant started working for his previous employer in 2004, he was a full-time employee with benefits. Later, the company changed his employment status to be a subcontractor. The company did not fully explain to him how the status change affected his employment situation. One of the changes he later learned was that he lost his employer's provided health insurance. SOR debts 1.a to 1.d are medical debts for Applicant resulting from medical treatment for injuries Applicant sustained. The debts are the actual bills and not co-pays. These debts have not been paid. The debts are no longer on his credit report, so they were not included on the Chapter 7 bankruptcy petition. (Tr. 30-33, 50-53)

SOR debts 1.e and 1.f are duplicates and result from the repossession of a vehicle. Applicant initially paid \$9,500 for the vehicle and paid his loan for approximately two years. He believed the balance on the account was approximately \$4,000. The car was repossessed in early 2008. Applicant initially borrowed \$3,000 from his employer to bring his car loan payments current, but nevertheless the car was repossessed. He did not make any additional payments on this debt after the repossession. He was not advised if the car was sold and for how much. He does not believe he owes as much as listed on the credit report, believing most of the listed debt is for interest and fees. In addition, when the car was repossessed, there were personal items in the car that were not returned. This debt is included in the Chapter 7 bankruptcy and has been discharged. (Tr. 33-36, 53-55)

Applicant has no knowledge of the credit card debt at SOR 1.g. He and his wife do not now have a credit card. However, he remembers having a credit card in his name in the past with his then girlfriend. He believes the credit card was paid in full by his girlfriend. It is included on his Chapter 7 bankruptcy since it is on his credit report. The debt has been discharged in the bankruptcy. (Tr. 36-37, 55)

SOR debts 1.h and 1.i are overdraft fees to a bank. Applicant stated he paid these fees in 2009 and 2010. He does not have a receipt for his payments. However, he has an active checking account with another bank. He would not have been able to get the account if he owed a bank fee. These debts were included in his bankruptcy since they are on his credit report. (Tr. 36-37, 55-56)

SOR debts 1.j, 1.k, and 1.l are medical debts to a hospital for Applicant's care. These debts have not been paid. They were included in the Chapter 7 bankruptcy since they are listed on Applicant's credit report. (Tr. 37-38, 56)

SOR debt 1.m is for a Chapter 13 bankruptcy Applicant filed in June 2009. At the time the bankruptcy was filed, Applicant was employed. On July 9, 2009, he was laid off from his job. He was unemployed until November 2009 when he started work with his present employer. He received unemployment compensation but not enough to pay his living expenses and make the required Chapter 13 bankruptcy payments. On September 8, 2009, the petition was dismissed for failure to make the payments. (Tr. 23-24, 56; Gov. Ex. 4, Bankruptcy Documents, dated June 9, 2009; App. Ex. F, Unemployment Tax documents, undated)

SOR 1.n pertains to the failure to file tax returns for 2006 and 2007. When Applicant was changed to be a subcontract employee, his employer stopped withholding federal or state taxes from his pay. Applicant was unaware that the taxes were not being withheld. When he had to pay taxes, he did not have the funds to pay, so he did not file state and federal tax returns for those years. As a requirement to file the 2009 Chapter 13 bankruptcy petition, he had to be current with filing tax returns. He had an accountant prepare his tax returns and he is current with filing state and federal tax returns. He believes he owed approximately \$800 to \$1,000 in federal taxes, and approximately \$70 in state taxes. He paid the state taxes and has a payment plan for the federal taxes. He is paying his taxes. (Tr. 56-61; App. Ex. B, Federal Wage and Tax Transcripts, 2007-2010; dated December 1, 2011; App. Ex. D, Tax statement, undated; App. Ex. E, State Tax Refund, 2007, undated; App. Ex. G, state Tax status, undated)

### **Policy**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Considerations:**

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant’s delinquent debts established by credit reports and Applicant’s admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(g) (failure to file annual Federal, state, and local tax returns as required or the fraudulent filing of the same). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems from a change in employment status, unemployment, and lack of health insurance.

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 was employed as a normal hourly wage employee. His employer switched him to a sub-contractor position without fully explaining to him the impact the change had on his benefits and taxes. As a contract employee, his employer no longer provided health insurance and did not withhold state and federal taxes from his income. Applicant incurred medical expenses not covered by health insurance. He did not file his state and federal taxes on time because he did not have the funds to pay the taxes. He has since filed the returns and is current with the payment of his taxes. He filed a Chapter 13 bankruptcy petition in August 2011 which was converted to a Chapter 7 bankruptcy. All of Applicant's and his wife's debts on the latest credit report have been discharged.

Applicant acted reasonably and responsibly towards his finances under the circumstances. He filed a bankruptcy action to resolve his debts. Bankruptcy is a legal and permissible means of resolving debt. Even though the action is legal and permissible, the circumstances surrounding the bankruptcy action should be examined to determine if that action resolves the issues of security worthiness. Applicant did not incur his delinquent debt because he overextended himself financially or was reckless and irresponsible in using credit. His financial problems were caused partially by conditions beyond his control and by his lack of understanding of financial matters. Applicant has gained an understanding of the status of his finances. He and his wife have sufficient income to pay their debts, and they are current with the present debts. He has steady and good employment and is well regarded by his employer. He is living within his means, and not likely to incur additional debts. Applicant's finances are under control because the bankruptcy discharged all the debts listed on his credit reports. Applicant established responsible action 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 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 must demonstrate an established plan to resolve his financial problems and show he has taken significant actions to implement that plan.

Applicant incurred financial issues when his position was changed from a employee to a subcontractor which impacted his health insurance and tax withholding. The impact of the changes on his finances was not fully explained to him. He filed a legal and permissible bankruptcy petition to resolve his debts. The bankruptcy action discharged his debts and he has no more debt. The bankruptcy action and resolution of debts are significant and credible information to show a desire to resolve debt. It establishes a meaningful track record of debt resolution. His effort to resolve his

delinquent debts shows a reasonable and prudent adherence to financial obligations and establishes a good-faith effort to resolve and pay debts. His past delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment.

### **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 that Applicant is a good employee and highly regarded by his employer. Applicant's financial problems were caused by circumstances beyond his control. His employer changed his status affecting health insurance and taxes withheld. The changes caused by the status change were not fully explained to Applicant. He filed a Chapter 7 bankruptcy petition to resolve his debts and all of his debts on his credit report have been resolved. As of November 29, 2011, Applicant was debt free. He lives within his means and is not incurring additional delinquent debts. Applicant established a good-faith effort to resolve his delinquent debts. His bankruptcy actions to 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 and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations. He is granted access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.n:	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