



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



In the matter of: )  
)  
) ISCR Case No. 10-04278  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeffrey Nagel, Esq., Department Counsel  
For Applicant: Steven A. Marczeski, Esq.

November 8, 2011

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 30-year-old employee of a defense contractor. He is alleged to be indebted to five creditors in the approximate amount of \$21,894. Applicant mitigated the Financial Considerations security concerns, because the debts were caused by unforeseen circumstances beyond his control, and he has acted responsibly with respect to his debts. He also has completed a number of financial management courses. Eligibility for access to classified information is granted.

**Statement of the Case**

On, January 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on February 10, 2011, and requested a hearing before an administrative judge. The case was assigned to me on July 14, 2011. DOHA issued a notice of hearing on July 14, 2011, scheduling the hearing for August 10, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant testified on his own behalf and called one witness. The record was left open for Applicant to submit additional exhibits and on August 11, 2011, Applicant presented AE D. Department Counsel had no objections to AE D and it was admitted. DOHA received the transcript of the hearing (Tr.) on August 16, 2011.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a through 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 30-year-old employee of a defense contractor. Applicant married in November 2008. He has one minor child, and is expecting the birth of his second child. His wife does not work because she provides child care. (GE 1; Tr. 24.)

Applicant served as an electronics technician (E-5) in the Navy from 1999 to April 2007. He held a security clearance while serving in the Navy. After leaving the Navy, he was unable to find a traditional job. He opted to work for approximately seven to eight months in a fundraising position at his church. His income was dependent on the contributions he brought in during this time. He found himself unable to make ends meet and relied on credit cards to pay for his living expenses. In August 2007, Applicant decided to take advantage of the G.I. Bill and seek more education. He attended college from August 2007 through June 2008. He was unable to find employment while he was in school. In June 2008 he was hired by his current employer. (GE 1; GE 3; Tr. 19-30.)

As stated in the SOR, Applicant is alleged to be indebted to five creditors in the approximate amount of \$21,894. Applicant admits each of these debts. His credit reports reflect that each has been past due since approximately 2007. Applicant sought financial advice from an attorney in early 2011. He was advised the best option to address his financial delinquencies would be to file Chapter 7 Bankruptcy. (Answer; GE 1-7; AE A; Tr. 26.)

Applicant addressed each of the five debts listed on the SOR in his Chapter 7 bankruptcy petition filed July 9, 2011. Applicant listed assets totaling \$14,266.72 and liabilities of \$29,782.75 in this Chapter 7 petition. A Meeting of Creditors was held on August 11, 2011, and the deadline to Object to Debtor Discharge was set for October 11, 2011. The debts have not yet been discharged. (AE A; AE D; Tr. 26, 33.)

Applicant has actively worked to educate himself on financial matters to avoid future financial problems. He took the required financial counseling for filing the bankruptcy petition. He also has taken 12 to 13 courses using CDs and books prepared by an established financial counselor. Applicant and his wife listened to the CDs and

completed the financial workbooks for these courses at a rate of two to three hours per day for three to four months. They now maintain a household budget. Applicant testified and the credit reports confirm that Applicant has no new delinquent debt. He testified he has learned not to overextend himself. He now lives within his means. (Tr. 33-40.)

Applicant's supervisor testified on Appellant's behalf. He indicated that Applicant is "truthful," "a man of integrity," and "a valuable asset" due to his unique skills. Applicant earned the Navy Good Conduct Medal, two Navy and Marine Corps Achievement Medals, the Army Achievement Medal, and numerous citations during his military career. His performance evaluations reflect he either "exceeds expectations" or is "exceptional" in all categories. (AE B; AE C; Tr. 28-29, 44-51.)

### **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 to be 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, administrative judges apply the guidelines 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 the 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 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 EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant was unable to satisfy debts owed to five creditors in the approximate amount of \$21,894, as alleged on the SOR. These debts have been past due since 2007. The Government established a case for disqualification under Guideline F.

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they occurred due to Applicant's inability to secure profitable employment after separating from the Navy. Applicant went back to school in order to help him obtain a job. He now has a skills set that is in high demand with his employer. His financial difficulties occurred due to circumstances that were largely beyond his control and are unlikely to recur based on the demand for his talents. Further, his financial delinquencies do not establish recent poor judgment. Applicant has acted responsibly by incurring no further debts since he was hired in 2008. He was unable, however, to meet the current financial needs of his family on his salary and address his delinquent debts incurred during his under-employment and unemployment in 2007. He sought the advice of an attorney who advised him the best way to address his debts was to file for Chapter 7 Bankruptcy. He has followed this attorney's advice and is going through the bankruptcy proceeding now. Under the circumstances, he is acting responsibly. Further, he has received a significant amount of education on how to avoid future debt. With no new debts showing on Applicant's credit report, it is clear that Applicant's financial problem is under control. He has a small, but significant, amount of money left over after his monthly financial obligations are met. Moreover, bankruptcy is a legally viable option to discharge debt. While Applicant's debts had not been discharge by the close of the record, he has been attempting to resolve his debts, in good faith, through this legally viable option.

Applicant has a distinguished history of acting with honor and valor. He can be trusted to monitor his finances closely and resolve his debts in the future. Applicant has acted responsibly by following the advice of his counsel and educating himself on how to avoid future debt. Applicant's financial problems are under control. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

### **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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected by his supervisor. He performs well at his job. His integrity and his military service record show Applicant is trustworthy.

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 has mitigated the Financial Considerations security concern.

### **Formal Findings**

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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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Jennifer I. Goldstein  
Administrative Judge