



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



In the matter of: )  
)  
) ISCR Case No. 10-06465  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro se*

August 22, 2011

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on March 31, 2010. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on March 16, 2011, detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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*

*For Determining Eligibility for Access to Classified Information (AG) implemented on September 1, 2006.*

Applicant received the SOR on March 23, 2011. He answered the SOR on April 4, 2011 and requested a hearing before an administrative judge. DOHA received the request on April 6, 2011. Department Counsel was prepared to proceed on April 28, 2011, and I received the case assignment on May 5, 2011. DOHA issued a notice of hearing on May 20, 2011, and I convened the hearing as scheduled on June 14, 2011. The Government offered exhibits marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 22, 2011. I held the record open for Applicant to submit additional matters. Applicant timely submitted AE F-AE Z. The record closed on July 5, 2011. Applicant submitted three additional documents after the close of the record, which are marked as AE AA through AE CC. Department Counsel did not object to the admission of these documents, which are admitted into the record.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 42 years old, works for a Department of Defense contractor as an electronics technician. He began his current employment in February 2010. His employer's human resource department advised that his company will transfer him to a field service engineer position later this year. With this transfer, he would be assigned to work periodically in Iraq or Afghanistan and will receive additional compensation for his assignment. This assignment requires a security clearance.<sup>1</sup>

Applicant married in September 1996. He and his wife have two sons, ages 12 and 8. He and his wife are in the process of obtaining a divorce. Applicant received an associate of arts degree in electronics and is now working towards a bachelors degree in business management through his employer's tuition assistance program.<sup>2</sup>

In August 2000, Applicant accepted a position as a senior technician with a laser manufacturing company. The company promoted him to supervisor. In 2005, the

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<sup>1</sup>GE 1; AE A; Tr. 17, 20, 37-38.

<sup>2</sup>GE 1; Tr. 20-21, 59.

company transferred its manufacturing work overseas and laid-off 300 employees, including Applicant. He received a severance package.<sup>3</sup>

After his 2005 layoff, he and his wife decided to travel east with their sons to visit her family. He used his severance money to purchase a 1999 recreational vehicle (RV). Applicant states that he “optimistically” anticipated finding work in the east. They took several weeks to travel east. During this time, he continued to pay his mortgage on his home and other expenses related to his unoccupied home. He tried unsuccessfully to sell his home. He and his wife incurred more expenses than they anticipated, and he was unable to find full-time work, although he worked part-time in the construction industry and as a handyman. His wife did not work.<sup>4</sup>

As his debts began to increase, Applicant and his wife contacted an attorney to discuss their options. The attorney advised them that they could file a bankruptcy action or walk away from their debts. Applicant stated that the attorney seemed to stress walking away from their debts as their best option. For four months, Applicant ignored his debts. He also voluntarily returned the RV to the bank, because he could not afford his payments or the cost of driving it.<sup>5</sup>

Six months after he drove east, Applicant and his family returned to their home, as he was unable to find permanent and stable employment. He worked part-time as a cable box installer for two months, then in February 2006, Applicant started working full-time as a screen installer. In September 2007, he began working as a product marketing specialist for a marketing company. This job ended in June 2009. He was unemployed for three months, until he began working as a commission salesman in September 2009. During this time, his wife did not work. In addition to his current job, Applicant occasionally works part-time as a handyman and screen installer, as well as occasional overtime work at his job.<sup>6</sup>

In 2006, Applicant hired a debt settlement company to help resolve his debt issues. He paid approximately \$500 a month to this company for one year. His relationship with this company ended when he could not continue with the monthly payments. The company paid two or three of his debts during this time. The two credit reports of record show at least one credit card debt settled for less than the full balance. In 2010, Applicant established a working relationship with his bank. Every two months, he talks with his financial advisor at the bank about his financial issues and debt resolution. He developed a budget, which he follows.<sup>7</sup>

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<sup>3</sup>GE 1; Tr. 22.

<sup>4</sup>GE 2; Tr. 22-23, 91-92.

<sup>5</sup>GE 2; Tr. 24-25, 91, 94-96.

<sup>6</sup>GE 1; Tr. 24, 28-29.

<sup>7</sup>GE 3; GE 4; Tr. 25-26, 64-65, 100.

Applicant received unemployment benefits in the summer of 2009, after his job ended in June 2009. He started working as a commissioned salesman in September 2009 and continued to receive unemployment benefits for a few weeks until he received his first paycheck. The state unemployment agency filed a garnishment action against him to collect these benefits to which he was not entitled.<sup>8</sup>

The long-term financial issues created by the decision to purchase a RV and drive east in 2005 seriously impacted Applicant's marriage. In 2010, he and his wife decided to end their marriage. They started the divorce process. In 2011, they resolved their issues through mediation; however, their divorce is not final. Currently, Applicant provides the primary support for two households. His wife works two part-time jobs, but is looking for a full-time job with benefits such as health insurance. Because she does not have health insurance, he continues to provide her with insurance through his job and has not pressed for a final divorce decree. He and his wife share custody of their sons.<sup>9</sup>

Applicant currently earns \$4,450 in gross monthly income and \$3,163 in net monthly income from his employer. He also earns approximately \$175 a month from his part-time work for a total net monthly income of \$3,338. Based on his budget, his current monthly expenses total \$3,280, leaving a net monthly remainder of \$58. His monthly expenses include \$255 for school loans, \$125 for debt reduction, and \$1,683 for alimony and child support. He pays \$274 on the monthly mortgage on his home, which is one-half of \$548 monthly payment. He and his wife have listed their marital property for sale.<sup>10</sup>

Applicant lives with his parents in a house owned by his brother. He currently does not pay rent, but when he sells his house and his finances improve, he plans to pay one-half of the \$2,000 a month rent. His family has also provided him with financial assistance to pay his bills. He plans to repay them in the future.<sup>11</sup>

The SOR lists five debts, totaling \$41,906. The \$2,804 judgment in allegation 1.a concerns Applicant's unemployment benefit overpayment. He developed a repayment plan, which he initiated in April 2010. Over the next year, he made periodic payments, totaling \$396. Part of his income tax refund due in 2011 was applied to this debt and in June 2011, he made a \$2,000 payment and a final payment of \$996 on this debt. The state agency released its garnishment on June 21, 2011.<sup>12</sup>

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<sup>8</sup>Tr. 72-74.

<sup>9</sup>*Id.* 26, 47-48.

<sup>10</sup>AE I; Tr. 106.

<sup>11</sup>Tr. 30, 54-58.

<sup>12</sup>SOR; GE 2; AE C; AE D; AE H; AE M; AE N.

SOR allegation 1.b concerns a \$6,836 judgment obtained by a creditor in 2007. This debt is not paid. SOR allegation 1.c relates to a \$11,039 debt held by a collection agency. He negotiated a settlement of this debt after the hearing and made the \$3,000 payment in July 2011.<sup>13</sup>

Applicant developed a repayment plan with the creditor listed in SOR allegation 1.d (\$3,704) in the summer of 2010. Since then, he has regularly paid \$25 a month on this debt for a total of \$350. He has not paid or developed a payment plan for the RV debt listed in SOR allegation 1.e (\$17,523).

Applicant has resolved other debts not listed in the SOR. He paid a \$7,165 judgment in 2008. Between April 2010 and April 2011, he regularly paid a state tax board on a debt owed for total payment of \$1,175. He continues to pay \$25 a month on this debt, which has around a \$200 balance. His divorce mediation cost \$7,970 for the mediator. He paid the mediator \$4,940 between November 2010 and June 2011. His family members paid the remaining balance. He also pays \$25 a month to a creditor for a credit card debt and has since July 2010. He paid a \$255 county tax debt in March 2011.<sup>14</sup>

He pays his alimony and child support, which totals \$1,683, a reduction from his 2010 payments of \$2,800 a month. He anticipates that these payments will change in the future when his wife is employed full-time. In 2008, he gave his wife a check for an income tax payment. She did not make the payment; she has accepted full responsibility for the debt; and she is paying the debt. Funds from his tax return were applied to the debt.<sup>15</sup>

Applicant served in the United States Navy from 1988 and 1992. During his years of service, he received a Good Conduct Medal, a National Defense Service Medal, a Southwest Asia Service Medal with two Bronze Stars, and other awards and ribbons. He completed a local fire academy training program in 1999. Applicant seeks a security clearance to work in Iraq or Afghanistan. The additional income from this employment will enable him to repay his debts sooner. He acknowledged financial problems and listed his debts in his e-QIP.<sup>16</sup>

## **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

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<sup>13</sup>GE 2; AE AA - AE CC; Tr. 39-41, 77-83.

<sup>14</sup>GE 2; AE E; AE H; AE M - AE U; AE W - AE Z.

<sup>15</sup>AE H; AE L; AE V; Tr. 33, 50, 89, 92-93.

<sup>16</sup>GE 1; AE J; Tr. 37-38.

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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining 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 an 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**

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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Appellant developed significant financial problems when he and his wife decided to use his severance pay to purchase a RV and travel east. Many of the debts incurred on the trip have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and the following 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.

In 2005, Applicant's employer laid him off, a circumstance beyond his control. He worked a number of jobs over the next five years, as permanent, stable employment remained difficult to find. He experienced a second period of unemployment in the summer of 2009, again a factor not within his control. In 2010, he and his wife separated and are in the process of completing their divorce, which has placed a financial strain on him. However, the decision to purchase an RV and travel east was within his control and is the reason for much of his debt, but not all. Since 2006,

Applicant has taken many steps to pay off his debts after an initial decision to walk away from his debts. AG ¶ 20(b) is partially applicable.

Applicant hired a debt consolidation company in 2006, but within a year, he was unable to continue the high monthly payments. This company paid at least one debt and possibly two more debts. Applicant regularly meets with his banker to discuss his finances and his debts. He has a budget and lives within his monthly income. He initiated a good-faith effort to resolve and has resolved two SOR debts. He has an ongoing payment plan for a third SOR debt. He paid several other debts not listed in the SOR. AG ¶¶ 20(c) applies and 20(d) partially applies.

### **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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In 2005, after he lost his job, Applicant and his wife decided to purchase an RV with his severance pay and travel east to visit her family. At the time, they believed their decision to be a reasonable one as he anticipated finding a job and selling their house. He admits that he overestimated his ability to find a job. He did not find work and his house did not sell, resulting in significant financial problems. He and his wife met with an attorney to discuss their financial issues. Based on the advice given by the attorney, they decided to walk away from their debts and voluntarily return the RV to the bank. When he returned home, he re-thought this decision and decided to repay his debts. Since 2006, Applicant has slowly worked to the resolution of his old debts, initially with the help of a debt collection company and then on his own. He has repaid the unemployment benefits he should not have received and acknowledged he was not entitled to the money.

Applicant’s efforts to repay his debts have been slowed by financial setbacks, including low income, unemployment, and divorce. Applicant is not ignoring his debts; rather, he is paying his debts one at a time until resolved. He recently made two large payments, after saving his money and possibly with the help of his family. He has established a track record of debt payment for the last five years. His statements that he plans to repay his debts are credible and supported by his past conduct. Should he travel overseas for work, he will earn a greater income and will be able to resolve his debts faster. He has not lived beyond his monthly income since 2005, despite recurring problems with steady employment and his divorce.

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 the security concerns arising from his finances under Guideline F.

### **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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MARY E. HENRY  
Administrative Judge