



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



In the matter of: )  
 )  
XXXXXXXXXXXX, XXXXX ) ISCR Case No. 10-07533  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

02/24/2012

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On April 30, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). 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 for SORs after September 1, 2006.

Applicant answered the SOR by an undated response, and DOHA received his answer on September 6, 2011. Department Counsel was prepared to proceed on September 28, 2011. The case was assigned to me on October 14, 2011. DOHA

issued a notice of hearing on October 17, 2011, scheduling the hearing for November 1, 2011. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 5, which were received into evidence without objection. Applicant offered Applicant Exhibits (AE) A and B, which were received into evidence without objection, and he testified on his own behalf.

I held the record open until November 18, 2011, to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE C through I, which were received into evidence without objection. DOHA received the hearing transcript (Tr.) on November 10, 2011. The record closed on November 18, 2012.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1a and 1c, and denied the remaining SOR allegations. His answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

### **Background Information**

Applicant is a 42-year-old electronics technician, who has worked for a defense contractor since January 2010. He seeks a security clearance in conjunction with his employment. (Tr. 18-21, GE 1, AE G.)

Applicant was awarded his GED in July 1990. He served in the U.S. Air Force from February 1991 to May 1992, and was discharged as an airman basic (pay grade E-1) with an other than honorable discharge. Applicant has never married, but has a 19-year-old daughter from a previous relationship. He was responsible for paying child support until his daughter reached age 18. (Tr. 19-23, GE 1.)

### **Financial Considerations**

The Government's Exhibits included Applicant's April 2010 e-QIP, one set of July 2011 DOHA Interrogatories, as well as his May 2010 and May 2011 credit reports. (GE 1 – 5.) Applicant's SOR alleges five separate debts consisting of four collection accounts and one charged-off account. (SOR ¶¶ 1a – 1e.)

Applicant attributes his financial problems to: (1) his being unemployed from December 2005 to December 2006; and (2) his being unemployed from February 2008 to December 2009. (Tr. 23-24.)

At the onset of this hearing, it was established that Applicant had paid SOR debts ¶ 1a (collection account for medical care in the amount of \$100) and ¶ 1d (charged-off consumer debt in the amount of \$98). (Tr. 15, 24-25, SOR answer.) The remaining three debts are discussed below:

SOR ¶ 1b – This is a collection account for medical care in the amount of \$470. The debt goes back to May 2004 when Applicant was involved in a car accident. Applicant asserts that he had health care coverage at the time and his health care provider submitted a bill to the insurance company. In an effort to clear up his credit report, Applicant contacted the creditor in June 2011, but never received a response. He testified at his hearing that this debt was removed from his credit report after he disputed its validity. Post-hearing, Applicant submitted a copy of his credit report dated November 18, 2011, which verified that this debt no longer appeared on his credit report. (Tr. 25-28, 45-46, GE 3(p. 11), AE D – E.)

SOR ¶ 1c – This is a collection account for child support arrearages in the amount of \$16,120. Applicant fell behind on his child support payments when he was first unemployed in 2005. Since Applicant has been employed, he has been paying \$360 per month to pay down his child support arrearage. These payments are deducted from his pay check every two weeks and forwarded directly to the cognizant child support enforcement agency. Post-hearing, Applicant submitted a copy of a current child support enforcement agency printout dated November 18, 2011 that reflected he had paid down his arrearage to \$14,140. He is current on his payments and will remain current as long as he is employed. (Tr. 29-38, AE A – E.)

SOR ¶ 1e – This is a collection account for medical care in the amount of \$1,230. Again, Applicant asserts that he had health care coverage at the time and his health care provider submitted a bill to the insurance company. He contacted the creditor in June 2011, but never received a response. Post-hearing, Applicant submitted a copy of his credit report dated November 18, 2011, which indicated that this debt no longer appears on his credit report. (Tr. 38-41, GE 2(p. 3), GE 3, (p. 120), AE D – E, AE H - I.)

Applicant testified that he was current on his bills until 2007. He added that he is doing his best to pay off his debts and requested a “chance” to continue clearing his debts. (Tr. 65.) Applicant did not seek formal financial counseling. He submitted documentation that he has health care coverage, which would cover his medical expenses. Applicant’s budget reflects that he leads a modest lifestyle and lives within his means. (GE 3 (p. 123), AE H.)

### **Character Evidence**

Applicant submitted his most recent employee evaluation covering April 2010 to March 2011. His evaluation reflects: (1) that he is an above average performer; (2) that he is a valued employee; (3) that he is making a contribution to the defense industry; and (4) that he has excellent potential for future service. (AE F.)

## 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 useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 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 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

AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is established by his admissions and the evidence presented. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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;

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

(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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant merits full credit under AG ¶ 20(b) because his two periods of unemployment were circumstances beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds to remain current on his debts, he remained in contact with his creditors during this timeframe and has taken reasonable steps to resolve his debts.<sup>1</sup>

AG ¶ 20(c) is partially applicable even though Applicant did not seek formal financial counseling. He has, however, produced evidence that reflects he is living within his means and has regained financial responsibility. There are clear indications that his financial problems are being resolved. Furthermore, there is sufficient information to establish partial, if not full mitigation, under AG ¶ 20(d).<sup>2</sup> Applicant paid or is in the process of paying three of his creditors. The remaining two creditors were paid through insurance or payments from Applicant and no longer appear on Applicant's credit report. Given his financial situation, Applicant has done all that can reasonably be expected of him. AG ¶ 20(e) is partially applicable because Applicant challenged two medical bills that should have been covered by health care insurance, which no longer appear on his credit report.

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<sup>1</sup>"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

<sup>2</sup>The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

## 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 the 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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's service as a defense contractor and employment record weigh in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been addressed. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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." 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. 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." 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. 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. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Of note, Applicant remains current on his day-to-day expenses and is also current on his child support arrearages. He is making a contribution to the national defense. His company fully supports him and views him as a valuable employee. Due to circumstances beyond his control, his debts became delinquent. Despite Applicant's recent financial setback, it is clear from his actions that he is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's years of financial responsibility before falling into debt, his financial recovery and steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his situation, his performance evaluation, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the Government's case. For the reasons stated, I conclude he is eligible for 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 1a to e:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

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Robert J. Tuidor  
Administrative Judge