



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-09070
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: Walter Green, Esquire

October 28, 2011

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On May 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a June 6, 2011, response, Applicant denied the three allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on July 25, 2011. The parties proposed a hearing date of September 14, 2011. A notice setting that date for the hearing was issued on August 19, 2011. I convened the hearing as scheduled.

Applicant gave testimony and offered six documents, which were accepted into the record without objection as exhibits (Exs.) A-F. The Government introduced five documents, which were accepted into the record without objection as Exs. 1-5. The transcript (Tr.) of the proceeding was received on September 22, 2011, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find

Applicant met his burden of mitigating security concerns related to financial considerations. Clearance is granted.

### **Findings of Fact**

Applicant is a 41-year-old senior engineer who has worked for the same defense contractor since 2007.<sup>1</sup> He has earned a bachelor's degree in engineering and a master's degree in computer science. Applicant is married and has two minor children.

In 1994, after he completed his undergraduate studies, Applicant started working in the defense industry. He remained with the same employer for about 11 years, during which time he earned his master's degree. In 2005, he was given the opportunity to pursue a new career that would allow him to work with a close family member. That career was in the area of construction supply. At the time, that field was doing well financially. Applicant, his cousin, and a partner sought professional guidance and devised a business plan. The business started off well and there seemed to be a lot of room for growth. Then the local building industry collapsed in about 2006, precipitating a general downward trend in the national economy. They continued to honor their obligations, but cash flow became a problem. By 2007, Applicant and his cousin began winding the business down and were looking to sell the business as Applicant prepared to recommence his work for his former employer.

As the business was being wound down, state tax issues arose due to their lack of cash flow and their curtailing of work. Applicant hired an attorney to help the company with its financial and tax struggles. One source for revenue was in a bank. The bank, however, unexpectedly seized about \$80,000 from the company's accounts to apply to an outstanding line of credit. Applicant and his attorney were going to contest the bank's premature action, but decided instead that the company first needed to file for bankruptcy. Despite the bankruptcy, some of the business debts were eventually attributed to Applicant. This included the business' state tax liens. Applicant contemplated filing personal bankruptcy, but he preferred to handle the debts personally. He hired an attorney with expertise for financial issues to help him.

Applicant discovered that the two state tax liens at issue were imposed based on a prospective estimate of future sales. That estimate was made based on past sales years and did not take into account the diminished work and cash flow that led to the business' demise. Indeed, the business was not in existence for one period of the assessed time frame. Consequently, the estimates were highly inflated compared to the actual taxes collected by the business. The assessment needed to be adjusted to reflect actual sales and prorated for the actual time the business was in operation. At that time, Applicant was the only one of the partners who was financially able to contest the issues.<sup>2</sup> He took responsibility for the situation and requested that a hearing be held to make such alterations on the assessment. After presenting his evidence at an October 2009 hearing, the assessments were reduced to tax liens in the amounts of

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<sup>1</sup> Applicant previously worked for this employer between about 1994 and 2005.

<sup>2</sup> Tr. 25.

\$39,471 and \$2,787. After further modification over the next few months, Applicant tendered the collected sums to meet the revised lien balances through a payment of \$34,451 for the former lien and \$2,787 for the latter on the same date. Consequently, those liens were released in June 2011.<sup>3</sup>

As for the bank that prematurely seized \$80,000 of company funds as the business was winding down, Applicant pursued that resolution of the bank's claim. The \$80,000 seized was used by the bank to offset an approximately \$100,000 balance on a line of credit that the company had taken with the bank. The bank then pursued and obtained a \$20,000 judgment against Applicant for the balance. With one former partner in personal bankruptcy, Applicant and his other partner worked out a deal with the bank to satisfy the debt in September 2009. A settlement and repayment plan was devised through which the balance would be repaid through regular monthly payments of \$200. Applicant has been in timely repayment on that plan ever since.<sup>4</sup>

In the interim, after the business was appropriately wound down, Applicant returned to his former place of employment in about October 2007. He now holds a "high paid position" and maintains "exemplary" performance on the job.<sup>5</sup> Applicant has earned superior ratings at work, generally receiving ratings reflecting that he either fully meets or exceeds expectations.<sup>6</sup> He is also well regarded by his professional peers and associates.<sup>7</sup> Outside of work, Applicant is active at his church and is a coach for a local youth sports league, where he is equally well regarded.<sup>8</sup>

With regard to his personal credit, Applicant has successfully worked to regain his good status.<sup>9</sup> He is fully capable of continuing to meet his judgment obligations with the bank under the reasonable terms upon which their agreement was settled.<sup>10</sup> It is his sole remaining obligation.<sup>11</sup> Applicant is currently refinancing his home, handling his bills responsibly, and living within his means. He uses his "high paid salary" wisely and

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<sup>3</sup> Tr. 26; Ex. A (2008 lien paperwork and release) and Ex. B (Hearing schedule and 2010 lien paperwork and release).

<sup>4</sup> Tr. 27-28; Ex. C (Agreement and evidence of payments).

<sup>5</sup> Tr. 30.

<sup>6</sup> Ex. E (Employee ratings, 2008-2010).

<sup>7</sup> Ex. F (Recommendations).

<sup>8</sup> Tr. 31-32.

<sup>9</sup> Tr. 32.

<sup>10</sup> Tr. 36, 45. (As noted by the Government, "it is pretty clear that the concerns that were listed in the [SOR] initially by the Government have been mitigated . . . [Applicant] is personally capable of paying towards all of his financial debts and has had no problems making those payments towards the debts [sic] and has had no problems making those payments. . . .")

<sup>11</sup> Tr. 40, 45.

earns a stipend from his coaching duties. He currently has about \$10,000 in his personal savings account and in excess of \$200,000 in his personal retirement fund. Applicant also shares another savings account with his wife. He has never been delinquent on his personal taxes. The situation at issue represents an isolated incident, a “one-off situation of one failed business, and does not paint a picture that Applicant is financially irresponsible or that this would be a pattern of repeat conduct going forward.”<sup>12</sup> In general, Applicant’s family comfortably lives within his means. Although she is presently employed as a homemaker, Applicant’s wife is capable of returning to outside employment as an early childhood educator should financial need arise. Fully appreciating the stable employment he now enjoys, Applicant does not foresee forging out into the business world again.<sup>13</sup>

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”<sup>14</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>15</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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<sup>12</sup> Tr. 46.

<sup>13</sup> Tr. 31-32. (“Through threats of my wife...I will never do it again. So I have no plans to [again strike out on his own], I am committed to [my present employer]”).

<sup>14</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>15</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in those 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>16</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>17</sup>

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

## Analysis

### Guideline F - Financial Considerations

Under Guideline F, “failure or an 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.”<sup>18</sup> It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”<sup>19</sup> At issue are two state tax liens and one adverse judgment, originally representing approximately \$60,000. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The debts at issue are multiple in number. However, they were the result of an isolated attempt at an independent business venture that went sour. Applicant has actively worked to address these debts since they were imposed. He provided evidence

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> AG ¶ 18.

<sup>19</sup> *Id.*

that he has honored the two state tax liens. He also offered evidence that he has been in timely repayment on the adverse judgment for two years. Applicant is committed to staying in his present profession and is adamant that he will never again start a private business. Consequently, it is highly unlikely this situation will ever be repeated. Financial Considerations Mitigating Condition (FC MC) 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) applies.

The debts at issue arose as a direct result of a new business venture that began a downward spiral at the on-set of poor financial times. Despite the slow slide toward failure, Applicant worked to wind down the business, find a buyer for the business, and honor all business-related debts. FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies.

There is no evidence that Applicant sought or received traditional financial counseling. However, the debt at issue was strictly related to his failed business. There is no evidence that he has ever had any other adverse financial issues in his personal or professional life. While Applicant did not utilize counseling to address the debts at issue, he did hire attorneys with expertise in the necessary areas to successfully address both the business' downturn and the resolution of his related tax issues. Today, the two tax liens are satisfied and the adverse judgment is in timely repayment. To that extent, FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) constructively applies.

Since the time the debts at issue arose, Applicant actively worked to properly dissolve his former business and partnership, and to satisfy any related debts. Today, both the tax liens have been satisfied and released; the adverse judgment has been in timely repayment subject to a structured repayment plan for over two years. He has the financial ability and motivation to continue honoring his agreement until that debt is fully repaid. FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is a highly credible and mature man. He is well educated. Married and the father of two children, Applicant is active with both his family and his community. At work, he is a highly regarded and well compensated senior professional. He has always been timely with his own taxes, lives within his means, and is not financially frivolous.

Applicant’s sole incident of financial difficulty stems from an isolated foray into entrepreneurship, the sort of venture he has no intention of pursuing again in the future. When he entered into that partnership, it was to pursue a dream of working with a relative. They did appropriate research before starting their business and devised a plan. Unfortunately for the new entrepreneurs, their venture began shortly before the onset of financial bad times that adversely impacted their business. When it was clear the partnership was headed toward failure, Applicant led the effort to be proactive. They started to wind down the business and sought a buyer. When inflated estimated taxes were assessed, he worked with the state until appropriate assessments were made. He then satisfied the two liens at issue. With regard to a balance owed to a bank on a business-related line of credit, he entered into a repayment plan, on which he has been in timely repayment for two years. In short, Applicant devised and executed a workable, methodical plan for addressing the debts at issue.

Today, Applicant continues to live within his means. His employment is stable and he has personal cash reserves for emergencies. Applicant has both the financial ability and the commitment to satisfy his debt repayment plan for the line of credit. He firmly and credibly expressed his intention to never again pursue a personal business or a risky venture. Applicant has mitigated financial considerations security concerns. Clearance is granted.

### **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-1c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge