



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-00596
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esquire, Department Counsel  
For Applicant: *Pro se*

November 30, 2011

**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant’s financial problems occurred when a degenerative shoulder problem, experienced in approximately 2005, prevented him from working for approximately a year and a half. In 2006, his employer awarded him disability retirement benefits retroactive to the date he stopped working. These benefits enabled Applicant to satisfy all of his delinquent debts. Between the income earned from his current full-time job, his part-time job, and his disability retirement benefits, which he continues to receive, he has ample income to make ends meet. Clearance is granted.

**Statement of the Case**

On April 1, 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 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 revised

adjudicative guidelines (AG) implemented by the Department of Defense on December 1, 2006.

Applicant answered the SOR on May 6, 2011, admitting all of the allegations except subparagraphs 1.d, and 1.f, and requesting a hearing. The case was assigned to me on July 5, 2011, and a notice of hearing was issued on August 19, 2011, scheduling the case for September 16, 2011. On September 15, 2011, a medical emergency prompted Applicant's wife, on his behalf, to move for a continuance. Department Counsel did not object, and I continued the case, rescheduling it for October 28, 2011.

I held the hearing as scheduled, receiving four Government exhibits, marked Government Exhibits (GE) 1 through 4, and nine Applicant exhibits, marked Applicant Exhibits (AE) 1 through 9. Also, I considered the testimony of Applicant and his wife. DOHA received the transcript (Tr.) on November 4, 2011.

### **Findings of Fact**

Applicant is a 46-year-old married man with four children. Two of his children are adults and the others are teenagers. Applicant is currently enrolled in college and has nearly completed a degree in criminal justice. (Tr. 28)

From 1990 to 2006, Applicant worked for a municipal police department before retiring early on disability. Since 2007, Applicant has been working for an airport security company. He works with the K-9 squad tasked with checking for explosives and illegal contraband. (Tr. 29) Applicant is also the assistant football coach for a local Division III college. (Tr. 29)

While working for the police department, Applicant gradually began experiencing disabling shoulder problems. Because this medical problem did not occur on the job, Applicant did not receive worker's compensation, and had to apply for disability retirement. (Tr. 41-42) Although he ultimately received it, the process took approximately a year and a half. Unable to work, Applicant received no pay and gradually exhausted his leave. (Tr. 43) Once his leave was exhausted, his family was totally dependent on his wife's income, and he began to fall behind on his debts. By the time he was granted disability retirement, he had accrued approximately \$3,170 of delinquent debt, as listed in SOR subparagraphs 1.e, and 1.g through 1.j, and he was behind on his student loan payments, as listed in SOR subparagraph 1.f. Since being granted disability retirement and beginning his new job, Applicant has paid these debts and caught up on his student loan payments. (Department Counsel Stipulation at Tr. 51)

The SOR lists four additional debts that are allegedly delinquent, subparagraphs 1.a, 1.b, 1.d, and 1.f. Subparagraph 1.a is a tax lien entered against Applicant's property in May 2010 in the approximate amount of \$8,934. The accrual of this delinquency is unrelated to Applicant's disability. Rather, it stems from tax year 2002. That year, Applicant withdrew money from his 401k account, and his accountant, unbeknownst to him, neglected to file the requisite form reporting this income to the state taxing

authority. (Tr. 47) Several years later, the state taxing authority conducted a random audit, discovered the omission, and calculated the amount owed. The taxing authority then began applying tax refunds to the lien. (Tr. 48) By April 2011, Applicant had satisfied the lien and it was released. (AE A)

SOR subparagraph 1.b is a delinquency allegedly owed to a utility company in the amount of \$1,230. (Tr. 31) Applicant admits that he lived in the residence listed on the bill, but contends that the period covered by the bill does not coincide with the period that he lived at the residence. (GE I) Applicant filed a complaint with the consumer credit counseling agency. (*Id.*) His complaint included documentation indicating that he had moved before the electrical usage was accrued. (*Id.* at 2) The dispute remains outstanding.

SOR subparagraph 1.d is a debt allegedly owed to a credit card company in the amount of \$2,165. Applicant successfully disputed it. (GE C)

SOR subparagraph 1.f is a student loan account, with a balance of \$19,571, that is allegedly approximately two months behind. This account belongs to Applicant's son, who is also in college, and shares his name. (Tr. 35; AE E) As noted above, Applicant's student loans are current. (AE B)

Applicant maintains a budget. He has approximately \$3,364 of monthly after-expense income. (GE 4 at 17)

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

## Analysis

### Guideline F, Financial Considerations

Under this guideline, “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 (AG ¶ 18). Applicant’s financial struggles trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The following 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.

(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 successfully disputed the delinquencies alleged in SOR subparagraphs 1.d and 1.f. I resolve these subparagraphs in his favor.

Applicant also disputed the debt owed to the utility company listed in subparagraph 1.b. Although this dispute is still technically outstanding, Applicant supplied ample evidence to trigger the application of AG ¶ 20(e).

Applicant’s most significant delinquency was the tax debt from tax year 2002. He incurred this when his accountant filed his state tax return inaccurately by failing to report income from a 401k withdrawal. Applicant was not aware of this delinquency until

the state taxing authority conducted a random audit several years later. This delinquency was satisfied through the garnishment of Applicant's later tax returns.

Applicant's other delinquencies were caused by a disability that prevented him from working. Because of the lengthy period of time it took for his employer to consider his disability retirement claim, Applicant earned no income for more than a year. Since being granted disability retirement benefits, Applicant has satisfied his delinquent debts.

Applicant maintains a budget and has more than \$3,000 of monthly after-expense income. I conclude his financial problems were an anomaly caused by his lengthy period of disability in the mid 2000s, and that all of the mitigating conditions 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 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.

Applicant's financial problems were caused by circumstances beyond his control. He has resolved all of his delinquencies, and his substantial after-expense income renders the possibility of his financial problems recurring unlikely. 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
Subparagraphs 1.a - 1.j:	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.

MARC E. CURRY  
Administrative Judge