



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



In the matter of: )  
)  
) ISCR Case No. 11-00773  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

04/26/2012

**Decision**

HOGAN, Erin C., Administrative Judge:

On October 26, 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On November 8, 2011, and January 18, 2012, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 28, 2012. The case was assigned to me on March 6, 2012. On March 8, 2012, a Notice of Hearing was issued, scheduling the hearing for March 28, 2012. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered 12 exhibits which were admitted as Applicant Exhibits (AE) A – L. The transcript (Tr.) was received on April 5, 2012. The record was held open until April 11, 2012, to allow Applicant to submit additional documents. On April 11, 2012, Applicant

requested an extension until April 18, 2012, to submit additional documents. I granted his request. He timely submitted a 25-page document that was admitted as AE M. Department Counsel's memorandum in response to AE M is marked as Hearing Exhibit (HE) I. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his response to the SOR, Applicant admits all the SOR allegations.

Applicant is a 35-year-old employee of a Department of Defense contractor seeking to obtain a security clearance. He has worked for his current employer since December 2010. From August 1995 to August 2001, he served on active duty in the United States Air Force. He separated as an E-4 with an honorable discharge. He has held a security clearance for 15 years. He is twice divorced and has two daughters ages 8 and 12. His daughters live with their mother. (Tr. 7-8, 31, 36; Gov 1)

Applicant's security clearance background investigation revealed that he had five delinquent debts. The debts included a \$91 utility account placed for collection in January 2010 (SOR ¶ 1.a: Gov 4 at 1); a \$16,126 credit card account that was charged off in March 2009 (SOR ¶ 1.b: Gov 4 at 1; Gov 5 at 1); a \$30,634 credit card account that was charged off in May 2009 (SOR ¶ 1.c: Gov 4 at 2; Gov 5 at 1); a \$15,798 credit card account that was charged off in September 2009 (SOR ¶ 1.d: Gov 4 at 2; Gov 5 at 1); and a \$716 automobile debt that was charged off in September 2009 (SOR ¶ 1.e: Gov 4 at 3; Gov 5 at 2).

Appellant's financial problems began when his second wife left him in 2008. He testified that she left all of the debts for him to pay including a mortgage, two car loans, and three credit cards. His second wife earned \$50,000 a year. It was difficult for him to pay the debts on one income. In August 2009, he was laid off and was unemployed from August 2009 to December 2010. As a result, several of his accounts became delinquent. (Tr. 28-29) In 2010, his annual income was \$1,022.41. (AE D)

A credit report dated December 11, 2008, verifies that Applicant did not have significant delinquent debts in 2008. There were two minor delinquent accounts listed on the credit report. A \$521 collection account for an apartment complex, which was subsequently resolved and a \$51 collection account for a gas company. All of his other accounts were current. (Gov 6)

Applicant borrowed money from family members during his period of unemployment. He estimates that he borrowed \$700 a month from his parents and two cousins until he was hired in his current position in December 2010. He paid off all of his family members with the exception of his mother to whom he still owes \$1,000.

When he was hired by his current employer, he promised that he would begin to take steps to resolve his delinquent accounts as a condition of his employment. He

admits that he has a lot of debt, but has been paying off the debt. (Tr. 29) The current status of his delinquent accounts are:

SOR ¶ 1.a, \$91 utility account: Paid in full on November 7, 2011. (Tr. 21-22, 36; Gov 2 at 2; AE E)

SOR ¶ 1.b, \$16,126 charged-off credit card account: Applicant entered into a repayment agreement on November 11, 2011. He paid \$3,000 on November 21, 2011. He agreed to pay \$844 on the 15<sup>th</sup> of each month from December 15, 2011, to May 15, 2012. He provided proof of payment of \$3,000 in November 2011 and proof of the February 2012 and March 2012 payments. Applicant has two payments left and the debt will be resolved in May 2012. (Tr. 19, 36-37; AE H)

SOR ¶ 1.c, \$30,634 charged-off credit card account: The debts from Applicant's first marriage were consolidated in this account. Applicant agreed to pay \$500 a month starting in July 2010. He provided proof that payments were made in July 2010 to September 2010 to a collection agency. (AE M at 15-17) The next statement reveals that the account was transferred to another debt collector, a law firm. He provided proof of monthly payments to this creditor from May 2011 to November 2011 and January 2012. (Tr. 3; AE M at 18-25)

SOR ¶ 1.d, \$15,798, charged-off credit card account: Applicant has been making monthly payments of \$150 a month since July 2010. He intends to increase the amount when the debt alleged in SOR ¶ 1.b is paid off. He states the balance is around \$12,000. During the hearing, he provided proof that \$150 payments were made in January 2012 and February 2012. (Tr. 40-41; AE I) After the hearing, he provided proof of monthly payments from January 2011 to December 2011. (AE M at 4-14)

SOR ¶ 1.e, \$717 charged-off car loan account: Applicant settled this account in June 2011. He made several payments beginning in August 2010. The debt is resolved. (Tr. 41-42; AE F; AE G)

Applicant testified that he has no additional delinquent accounts. He is current on state and federal income taxes. (Tr. 42, 50-51.) His net monthly income is \$4,600. monthly expenses include child support \$1,200; rent (includes utilities) \$1,200; debt to SOR ¶ 1.b \$844; debt to SOR ¶ 1.c \$500; debt to SOR ¶ 1.d \$150; transportation costs \$100; groceries \$100; and cell phone \$70. If this is accurate, he has approximately \$436 in disposable income each month. He puts any extra money left over each month into a savings account. One half goes into a rainy day fund for emergencies and one half is used for incidental expenses that his daughters may need in addition to child support. He has \$2,000 in savings and \$2,000 in checking. (Tr. 43-45) After the hearing, Applicant submitted a copy of one of his pay statements. His net pay for a two-week period was \$2,382.49, so his net monthly pay is likely closer to \$4,764, which gives him additional income of \$164 a month. (AE M at 2) His annual income for 2011 was \$84,262. (AE M at 3)

In 2009, Applicant attended financial counseling through a service provided by his former employer. He and his second wife's home foreclosed in 2010. He does not owe anything after the foreclosure. (Tr. 51-52)

From February 2008 to June 2008, Applicant deployed to Iraq as a contractor. He received a Certificate of Appreciation for his efforts. (AE A). Applicant's supervisor indicates that she was aware of his financial situation and can attest to the fact that he began to resolve his delinquent accounts prior to his employment in December 2010. She indicates that Applicant has displayed integrity, diligence, and professionalism. She recommends he be granted a security clearance. (AE L) A Task Lead/Senior Intelligence Analyst has worked with Applicant at his current employer and at his previous employer. She states Applicant is "a hard worker, professional, and very trustworthy. His current work has proved invaluable." (AE K)

### **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 must be considered when determining 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, 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**

### **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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered difficulties meeting his financial obligations beginning in 2008, after he separated from his second wife. His financial situation became more problematic after he was laid off in August 2009. The SOR alleged five debts totaling \$63,365.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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 December 1, 2008 credit report reveals Applicant was financially stable before his separation and divorce. His situation was further aggravated by a period of unemployment between August 2009 to December 2010. He began to resolve his accounts in July 2010, but was able to be more responsive in December 2010 once he found full-time employment. The situation that resulted in Applicant's financial problems is unlikely to recur. His efforts to resolve his delinquent accounts once he was able to do so show that he is reliable, trustworthy, and has good judgment.

AG ¶ 20(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) applies. Applicant's financial problems began when he was unable to pay the marital debts after his second wife left him. Many of the accounts became delinquent after he was laid off in August 2009. He did not find suitable employment until December 2010. He began to resolve his debts in July 2010. He acted responsibly under the circumstances.

AG ¶ 20(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) applies because Applicant is systematically resolving his delinquent accounts. He provided proof that the debts alleged in SOR ¶¶ 1.a and 1.e are resolved. He is making payments on the remaining debts. Based on his track record of payments, Applicant appears to understand his financial situation and his financial situation appears to be under control. Several delinquent accounts remain, but he is making monthly payments towards those accounts. His annual income increased from \$1,022 in 2010 to \$84,262 in 2011. He lives modestly and has applied the extra income towards resolving his delinquent debts and supporting his daughters.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant resolved SOR ¶¶ 1.a and 1.e. The debt alleged in SOR ¶ 1(b) will be resolved in May 2012. He is making payments on the remaining delinquent accounts. He demonstrated a good-faith effort to resolve his debts.

## **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.

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 considered Applicant's past active duty service in the United States Air Force and his 15-year history of possessing a security clearance. A divorce and a period of unemployment were factors beyond Applicant's control which contributed to his financial problems. Applicant began to resolve his financial problems in July 2010. He became more capable of resolving his delinquent debts when he was hired by his employer in December 2010. Since that time, he has been methodically making progress in resolving his delinquent accounts. He resolved two debts and is making payments on his three remaining delinquent accounts. Applicant's track record of payments towards his creditors over the past year indicates that it is likely that he will continue to resolve his remaining delinquent accounts. He appears to be living within his means and demonstrated a good-faith effort to resolve his delinquent accounts. Security concerns are mitigated.

## **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.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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ERIN C. HOGAN  
Administrative Judge