



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



In the matter of: )  
)  
) ISCR Case: 11-08431  
)  
)  
Applicant for Security Clearance )

**Appearances**

Department Counsel: Braden M. Murphy, Esq.  
For Applicant: *Pro se*

01/02/2013

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the Government's security concerns raised under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

On April 1, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 13, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for 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 effective within the Department of Defense on September 1, 2006.

On August 31, 2012, Applicant answered the SOR in writing and elected to have a hearing. DOHA received Applicant's answer (AR) on September 5, 2012, and

assigned the case to me on October 11, 2012. On November 6, 2012, DOHA issued a Notice of Hearing, setting the case for November 20, 2012. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Exhibits (AE) 1 through 8 into evidence without objection. DOHA received the hearing transcript on November 30, 2012.

### **Findings of Fact**

Applicant admitted the factual allegations contained in paragraphs 1.a through 1.c of the SOR. His admissions are incorporated into the findings of fact herein.

Applicant is 50 years old and married for 21 years to his second wife. He has two children from a previous marriage and three children with his current wife. He also has two step-children. Three of the seven children live at home. (GE 1.) As a parent, he is involved in his children's sports activities and martial arts. He has been a Cub Scout leader for three of his boys. His wife works part time as a customer service representative for an insurance company. (Tr. 25-26.)

Applicant enlisted in the Marine Corps in August 1979, soon after graduating from high school. He served until June 2000, when he retired with an honorable discharge. While on active duty, he deployed to an African country in 1994 and to another country in 1997. (Tr. 8.) He was a shop supervisor for communications and navigational systems that are installed in aircraft. (Tr. 29.) He received a Navy and Marine Corps Achievement Medal and a Navy and Marine Corps Commendation Medal. At different times while in the Marine Corps, he held a Confidential clearance, a Top Secret security clearance, and had access to sensitive compartmented information (SCI). He was an E-6, staff sergeant, when discharged. (Tr. 27; AE. 8.) After leaving the Marine Corps, Applicant began training soldiers for a defense contractor, traveling throughout the United States. (Tr. 24.)

Applicant attributed his financial difficulties to his wife's loss of employment in 2007 and her annual salary of \$25,000, along with the economic slowdown in 2008, when the electronics industry moved out of the United States and created a downward trend in the need for electronics training. For several years, his annual salary remained at \$45,000 because of the poor economy. (Tr. 58.). Subsequently, he and his wife supported their large family on his salary, plus \$12,000 he earned from his Marine Corps pension. In 2011 his annual salary increased to \$48,000. Currently, his salary is between \$49,000 and \$50,000. His wife now works part time, earning \$10,000 annually. (Tr. 29-31, 34-35.)

When Applicant realized in 2008 that he and his wife were beginning to experience financial difficulties, he sought assistance through a debt consolidation company. At the time he did not have delinquent debts and wanted to prevent that from happening. Per the advice of the company, he consolidated all financial obligations into one repayment plan in October 2008. (AE 4.) The company began paying creditors, one

by one, which in turn created some delinquent accounts. As of July 3, 2012, the company notified him that since October 16, 2008, it had reduced approximately \$55,000 of debt to \$28,000 through its negotiations and settlements. (AE 4.) To date, he has resolved more than seven debts, as indicated on a May 2012 credit bureau report (CBR), some of which were not included on the SOR. (GE 4.) He continues to pay the company \$500 monthly to resolve debts. (Tr. 36-39, 61-62.)

Applicant has not participated in a formal credit or financial counseling course. However, he and his wife have eliminated credit cards and learned to closely monitor their income and spending. (Tr. 56-57.) He submitted a detailed budget. His net household monthly income is \$6,116, including \$1,128 from his military pension and \$750 from his wife's income. All of their expenses and obligations total \$5,937, leaving about \$180 remaining at the end of the month. (Ex. 5.)

The SOR alleged three delinquent debts that totaled \$32,222. The debts became delinquent in 2008. The status of each debt is as follows:

1.a. The Chase credit card debt for \$14,000 is included in Applicant's repayment plan. The debt consolidation company has not yet negotiated a settlement. It will be resolved when the company receives an acceptable offer. (Tr. 41; AE 4.)

1.b. The BOA credit card debt for \$11,000 was paid and released through the repayment plan. The company settled the debt, which had increased to \$15,966, for \$4,710. (Tr. 39; AE 2.)

1.c. The THD/CBNA/Home Depot debt for \$7,222 is included in Applicant's repayment plan. The company offered to settle the account for \$2,528 with 10 monthly payments of \$252, beginning at the end of November 2012. The matter is being resolved. (Tr. 40, 64; AE 3.)

Applicant submitted a letter of recommendation from the president of his company, who has known him for 12 years. He noted that Applicant is a trustworthy employee, demonstrating "responsibility and care with company assets" over the past 12 years. (AE 7.) A program manager with Applicant's employer stated that Applicant "has always performed professionally and handled himself with the utmost integrity." (AE 6.)

Applicant testified forthrightly and credibly. He takes full responsibility for his debts and finances. He and his wife are cooperatively resolving them and living on a tight budget. He loves his job and country. (Tr. 66-67.)

### **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 (AG) 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 AG ¶ 2(a), describing 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 "any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that adverse 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."

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.

## **Analysis**

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

The security concerns pertaining to Financial Considerations are 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 conditions that could raise a security concern and may be disqualifying, two of which are raised by the evidence in this case:

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

Applicant began accumulating delinquent debts in late 2008, including the three debts alleged in the SOR. He has been unable to repay all of them to date due to insufficient income. The evidence raised the above disqualifications.

After the Government raised potential disqualifying conditions, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 20 includes three conditions that could mitigate the security concern arising under this guideline:

- (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.

Applicant's delinquent debts began accumulating in 2008 after he became the sole support for his family in 2007 when his wife lost her job. His income was insufficient to pay all family expenses for seven people. He responsibly attempted to manage those financial obligations through a debt consolidation company that he hired in October 2008. The evidence supports the application of AG ¶ 20 (b).

Although he has not participated in formal credit counseling, Applicant has made commonsense decisions to resolve his debts, such as hiring a debt consolidation company, eliminating credit cards, and monitoring spending and income. Based on his good-faith efforts to consolidate his obligations through a repayment plan, he has paid one SOR-listed debt, will pay off another debt in ten months, and is in the process of settling the third debt. His budget accommodates the repayment plan with sufficient

income to avoid incurring additional debt. At this time there are clear indications that his finances are under control, warranting the application of AG ¶ 20 (c) and AG ¶ 20 (d).

### **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 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.

According to 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 facts and circumstances surrounding this case. Applicant is an honest, responsible, 50-year-old former Marine, who honorably served this country for 20 years. He held some level of a security clearance during his service. In 2008 he realized that his income was no longer sufficient to handle his bills, so he sought help with a debt consolidation company. He has worked with the company for the last four years, and will continue to do so until all financial obligations are resolved. His monthly repayments on that plan are included in his budget. At the end of November, he began resolving a \$7,222 debt for \$2,528. The remaining SOR-listed debt for \$14,000 is being negotiated and will begin to be paid when a settlement is reached. Until 2008 there was no evidence that he experienced financial difficulties. The likelihood of a recurrence is minimal, given his financial awareness and management of the debts. He removed any potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant mitigated the security concerns arising from financial considerations.

### **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 through 1.c: For Applicant

**Conclusion**

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

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SHARI DAM  
Administrative Judge