



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



In the matter of:	)	
	)	
-----,	)	ISCR Case No. 07-03330
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel

For Applicant: *Pro Se*

August 28, 2008

**Decision**

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

Applicant completed a Standard Form 86 (SF-86) security clearance application on June 15, 2004. On January 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating 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) promulgated by the President on December 29, 2005, and effective for SORs issued after September 1, 2006.

In a response notarized on February 1, 2008, Applicant denied all allegations raised regarding three delinquent accounts; which he claimed were created without his knowledge and through fraudulent means. Applicant declined the opportunity to present his case at a hearing. On February 14, 2008, however, Department Counsel requested a hearing before an administrative judge pursuant to the applicable Directive. The case

was originally assigned to another administrative judge and a hearing date of June 18, 2008, set. The case was reassigned to me on July 10, 2008, for caseload considerations. Department Counsel and Applicant agreed to a August 13, 2008, hearing date, and a Notice of Hearing was issued on July 17, 2008.

The hearing took place as scheduled. Department Counsel submitted six exhibits (Ex.), accepted into the record as Exs. 1-6 without objection. Applicant submitted 18 exhibits, accepted as Exs. A-R without objection. Applicant gave testimony. No witnesses were called. The transcript (Tr.) was received on August 19, 2008. No post-hearing materials were offered. The record was closed on August 20, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

### **Findings of Fact**

Applicant is a 45-year-old Merchant Marine who has worked for the same defense contractor as a marine engineer since approximately 2001. This employment follows a 20-year active duty career in the U.S. military which often required him to be away from home for protracted periods of time.<sup>1</sup> Applicant's term of military service ended in August 2001.<sup>2</sup> He has earned several certificates and licenses in his area of expertise and he is lauded in his area of work. He is divorced and has no children.

Applicant was married in December 1990.<sup>3</sup> The couple lived in the city in which Applicant was then stationed, although he maintained a permanent address of record in a different city within the same state.<sup>4</sup> This permanent address was the address of a friend.<sup>5</sup> Applicant continued to use this permanent address after he started a five year tour on a ship with a home port in a different state.<sup>6</sup> His wife, however, did not join him in the new state.<sup>7</sup> Within two years, the couple was estranged.

In 1993, while their marriage headed to divorce, Applicant was ordered to vacate the couple's home in their original city and state of residence without time to organize and prepare for an orderly move back to his new port city. Among the items left behind

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<sup>1</sup> Ex. 1 (Security Clearance Application, dated June 15, 2004) at 4.

<sup>2</sup> Tr. 45.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> Tr. 29-30. Applicant would use the latter address from 1990 to 2003 as his address of record, although it was an apartment belonging to a friend. Tr. 31.

<sup>5</sup> Applicant used this address as a reliable place to receive mail, "to have a permanent residence, because we're moving all the time on the ship, always going out . . . . [and] I lived aboard the ship." Tr. 31-32.

<sup>6</sup> Applicant went on at least one subsequent tour on board a ship for a significant duration.

<sup>7</sup> Tr. 30.

were the two civilian credit cards Applicant had in his name.<sup>8</sup> In his absence, Applicant's wife entertained many individuals Applicant did not know.<sup>9</sup> By the time he was permitted to return to the residence, he discovered that all of his personal possessions and records had been thrown away.<sup>10</sup>

Questionable credit card activity first occurred around the time Applicant was divorced in 1994.<sup>11</sup> At some other point, in the late 1990s, two credit card balances in Applicant's name reached a delinquent level of about \$4,000 each.<sup>12</sup> He concluded that his credit card information had been stolen during his estrangement and fraudulently used.<sup>13</sup> He provided the creditors with affidavits and other information contesting the debts as not being his. Assuming the debts had been accrued through fraud, Applicant thought his actions would clear up the matter. He never again heard from the creditors.

On August 3, 2000, however, those creditors pursued the two account debts through the courts. The two judgments at issue in the SOR, allegations 1.a-1.b, were secured by the creditor and purportedly served on Applicant at his address of permanent record.<sup>14</sup> Those judgments indicate that during the proceedings, Declarations of Non-Military Status were filed by the plaintiff against Applicant in July 2000 and in April 2001.<sup>15</sup> At those times, however, Applicant was actively serving in the military<sup>16</sup> and serving on a ship with a home port in a different state than the one noted in his permanent address. Applicant was unaware of any attempt to serve him with any judgments. His friend at the address he used as a permanent address never advised him of any attempts to serve him, despite the fact they maintained contact through about 2002 or 2003.<sup>17</sup>

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<sup>8</sup> Tr. 20.

<sup>9</sup> Tr. 21.

<sup>10</sup> Tr. 17.

<sup>11</sup> Tr. 29.

<sup>12</sup> Although the credit reports demonstrate inaccuracies on these accounts, as referenced in note 15 *infra*, the accounts were apparently opened in 1999.

<sup>13</sup> Tr. 20-21.

<sup>14</sup> Ex. 6 (Judgment Abstract, issued August 28, 2000); Tr. 32-33.

<sup>15</sup> *Id.*; Tr. 45.

<sup>16</sup> As noted by Department Counsel, "There is a Federal Statute, and it's called the Soldiers' and Sailors' Relief Act, and it bars entry of a judgment against an individual unless the moving party has established that they in fact are not burdened by military service and unable to defend. And I would submit . . . service was not provided to [Applicant] at a proper address, and for them to declare that he was not in military status, well you've got [evidence Applicant was then in active military service] until [the] 31<sup>st</sup> of August 2001." Tr. 45.

<sup>17</sup>Tr. 33.

In about 2004, Applicant learned there was derogatory information on his credit report. Specifically, a military credit card with a large balance and two 2000 judgments arising from the credit card balances he assumed had been previously resolved.<sup>18</sup> Applicant paid off his larger balance to the military credit account in full, but contested the judgments by telephone.<sup>19</sup> He still had no knowledge of who made the charges on these credit cards.<sup>20</sup> Indeed, Applicant was previously unaware of these judgments, not ever having received any paperwork regarding the proceedings and not ever having received anything forwarded from his permanent address of record.<sup>21</sup> Applicant again exchanged affidavits with the creditors. He sent in copies of his signature and pointed out inconsistencies in the information supporting the transactions, such as a number being slightly wrong for what appeared to be a check of his driver's license.<sup>22</sup> Applicant's current testimony regarding these affidavits and his efforts regarding these two alleged debts remains consistent with his May 2007 answers to DOHA investigators.<sup>23</sup> The last derogatory information of dubious origin arose in 2005, when a utility bill with no nexus to Applicant's residence was reported as delinquent.<sup>24</sup>

To help put an end to what he believes was on-going identity theft, Applicant hired someone to help straighten out his finances. She ultimately was fired for stealing.<sup>25</sup> He also sought assistance from the military when he was active duty, but his efforts were ineffective.<sup>26</sup> In 1998, he replaced his driver's license and identity card to distinguish their numbers from those being used in conjunction with fraudulent activity.<sup>27</sup>

Between 2005 and 2007 Applicant's work evaluations rated him from above-average to outstanding, each speaking of him in superlative terms with regard to his

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<sup>18</sup>The proffered credit reports muddle, rather than clarify the judgment amounts at issue. For example, Ex. 4 (credit report, dated August 2006), notes case number ending -802 for \$4,538 twice, indicating it comes from two different court numbers and duplicate entries for case number ending -976 for \$3,369 similarly indicate that they come from two different courts. More reliably, Ex. 6 (Judgment Abstract) reveals two judgments for \$4,889.73 for case number ending -802 and \$3,980.44 for case number ending -976.

<sup>19</sup> Tr. 22.

<sup>20</sup> Tr. 20.

<sup>21</sup> Tr. 23, 35-36.

<sup>22</sup> Tr. 21.

<sup>23</sup> Ex. 2 (DOHA Request for Additional Information, dated April 26, 2007, and responses notarized on May 24, 2007).

<sup>24</sup> Tr. 26. This utility account is noted in the SOR under allegation 1.c. It was opened in 2005 and is not associated with Applicant's property.

<sup>25</sup> Tr. 24.

<sup>26</sup> Tr. 25.

<sup>27</sup>On Ex. A (Identity cards); Tr. 40-41.

work, reliability, and attention to detail.<sup>28</sup> His superior at work commends his performance.<sup>29</sup> He has had no current problems living within his means. A 2007 personal financial statement indicates that his net monthly income of about \$8,404 is more than sufficient to cover his approximately \$1,000 per month in expenses and debt payments.<sup>30</sup> The only other account noted in Applicant's credit reports suggesting an inability to handle finances is his military charge card, which he fully and expeditiously paid off in 2004.<sup>31</sup>

## Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 over-arching adjudicative goal is a fair, impartial and common sense 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 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.

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

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<sup>28</sup> Exs. G-L (Applicant evaluations).

<sup>29</sup> Ex. N (Letter of Superior); Tr. 48.

<sup>30</sup> Ex. 2, *supra*, note 20.

<sup>31</sup> Ex. M (Account statement, dated February 23, 2004).

Department Counsel. . . .<sup>32</sup> The burden of proof is something less than a preponderance of evidence.<sup>33</sup> The ultimate burden of persuasion is on the applicant.<sup>34</sup>

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>35</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>36</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>37</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline 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

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. An

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<sup>32</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>33</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>34</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Executive Order 10865 § 7.

individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.<sup>38</sup> The Regulation sets out several potentially disqualifying conditions under this guideline.

In the 1990s, while mostly serving aboard a military ship, Applicant acquired some delinquent debt on his military charge card and some delinquent accounts or judgments ultimately appeared on his credit bureau report. Such facts are sufficient to give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) (*a history of not meeting financial obligations*) and FC DC AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) apply. With such conditions raised, the burden shifts to Appellant to overcome the case against himr and mitigate security concerns.

When Applicant's estranged wife moved to end their marriage, Applicant was left with little time to remove his belongings from their home, located in a state distant from his current military assignment. Left behind were his personal effects, papers, and two credit cards. For the next decade following their estrangement, several questionable entries appeared on his credit report. Knowing he was not responsible for these accounts, he properly reported them as incidents of fraud perpetrated by unknown parties lacking authority to use his credit or name. Given these facts, Financial Considerations Mitigating Condition (FC MC) 2, 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.

Fraudulent use of Applicant's identity and credit appears to have first taken place in the early to mid-1990s. Through his personal efforts with creditors and the issuance of new identification documents, no new occurrences have since transpired. The last questionable item to appear on his credit report was from a 2005 delinquent household utility having no nexus to his home. Applicant has no current contact with his ex-wife or her cohorts, and he is now mindful of how easily credit fraud may be perpetrated. There is no evidence establishing he is responsible for the two judgments and the utility bill at issue in the SOR, and it appears unlikely he even knew the two judgments had ever been pursued. Nothing in these facts indicates a lack of diligence, reliability, or trustworthiness, or shows Applicant cannot handle his money. Consequently, Financial Considerations Mitigating Condition (FC MC) 1, 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.

Although not an issue herein, Applicant did show that his financial history is generally positive and that he honorably repaid the one account he acknowledges as having briefly become delinquent, his military card. He has also explained the measures he took to clear up the unknown accounts on his credit report, and to inhibit any further attempts to steal his identity. Such actions give rise to FC MC 4, AG ¶ 20(d), (*the*

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<sup>38</sup> Revised Adjudicative Guideline (AG) ¶ 18.

*individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) and FC MC 3, 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) 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) 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 public trust position must be an overall common sense 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, as well as the "whole person" factors. Applicant is a regarded employee in his current capacity and has 20 years of lauded military service. He is a highly credible man who gave forthright testimony regarding his troubled marriage, the circumstances giving rise to his belief he has been a victim of identity theft and fraud, and his highly transient lifestyle in the military from the time of his 1990 marriage until his 2001 discharge. His depiction of his efforts over the years to address and remove the two accounts which ultimately became judgments against him has been consistent. Similarly, his demonstration that a utility bill has no apparent nexus to his home was persuasive.

Applicant has shown his ability to pay off his debts and to live within budget. Indeed, his finances indicate his debts and expenses are but a minor percentage of his monthly net income. Despite the presence of these three dubious debts on his credit bureau report, Applicant has otherwise mitigated security concerns regarding his financial situation that might tend to indicate poor self-control, lack of judgment, unwillingness to abide by rules and regulations, or otherwise raise questions about his reliability, trustworthiness and ability to protect classified information. Indeed, he has demonstrated not only his financial ability to address his validly acquired obligations, but his efforts to do so with regard to his military charge card.

Moreover, Applicant's persuasive argument that he was the victim of identity theft and fraud is echoed by Department Counsel's suggestion that Applicant was also inaccurately portrayed in the proceedings which resulted in the two judgments at issue. Court paperwork reflects that inaccurate representations were made that Applicant was not an active member of the U.S. armed services at the time. That paperwork also

inaccurately indicates Applicant was personally served at an address far from where he was then on military assignment. Such inaccuracies arose through no action or inaction by Applicant and bring into question whether these cases should ever have proceeded to judgment in the first place.<sup>39</sup> Consequently, they do not necessarily bear unfavorably on Applicant's ability to protect classified information. With security concerns mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

### **Conclusion**

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

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ARTHUR E. MARSHALL, JR.  
Administrative Judge

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<sup>39</sup> This is particularly true given the provisions of the Soldiers' and Sailors' Relief Act.