



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-05316
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Pro Se

May 30, 2008

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted his security clearance application (SF 86) on May 23, 2005. On November 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for financial considerations under Guideline F for Applicant. 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 within the Department of Defense for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on November 27, 2007.

Applicant answered the SOR in writing on December 20, 2007. He admitted that the financial accounts were his accounts but denied any security concerns for the financial considerations allegations in the SOR with explanation. He requested a hearing before an administrative judge. Department counsel was prepared to proceed on January 31, 2008. The case was assigned to another administrative judge on

February 1, 2008, and reassigned to me on February 13, 2008. DOHA issued a notice of hearing on March 19, 2008, for a hearing on April 30, 2008. I convened the hearing as scheduled. The government offered six exhibits, marked Government exhibits (Gov. Ex.) 1 through 6, which were received without objection. Applicant submitted nine documents, marked Applicant Exhibits (App. Ex.) A-I, which were received without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted five document, marked App. Ex. J-M. The documents were admitted into the record without objection from Department Counsel. DOHA received the transcript of the hearing (Tr.) on May 9, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted

### **Findings of Fact**

Applicant is 43 years old and has worked for the past three years as a machinist in a Navy shipyard. He retired from active duty in the Navy as a petty officer first class (E-6) after over 20 years service as a machinist in 2004. He held a security clearance while on active duty. (Gov. Ex. 1, Security Clearance Application, dated May 23, 2005; App. Ex. G, Discharge Form 214, dated June 30, 2004) He has been married three times with a child he supports from his first marriage. He has been married to his present wife for over nine years. (Tr. 68-69) Applicant and his wife have a combined monthly income of \$6,687, with combined monthly expenses of \$3,646, leaving combined monthly discretionary funds of over \$3,200. (Tr. 68-72; App. Ex. H, Personal financial statement, dated April 29, 2008; App. Ex. J, pay stubs, various dates)

Credit reports and the SOR have five delinquent debts: a delinquent furniture account for \$2,385 (SOR 1.a); a charged off account for \$1,973 (SOR 1.b); an account placed for collection for for \$13,580 (SOR 1.c); a judgment for \$1,973 (SOR 1.d); and a delinquent account for \$762 (SOR 1.e). (Gov. Ex. 2, credit report, dated November 15, 2005; Gov. Ex. 3, credit report, dated July 5, 2007; Gov. Ex. 5, credit report, dated January 10, 2008; Gov. Ex. 6, Judgment, dated December 10, 2002)

Applicant did not purchase any furniture from the creditor listed in SOR allegation 1.a. As soon as he learned of the delinquent debt listing on his credit report, he wrote the creditor disputing the account. (Tr. 20-21, 41-44; Applicant Exhibit F Letter, undated) The account has been removed from his credit report. (Government Exhibit 5, credit report, dated January 10, 2008; Applicant Exhibit A, dated March 6, 2008)

The debts listed in SOR allegations 1.b and 1.d are the same debt. SOR allegation 1.b is the debt to the original creditor, and SOR allegation 1.d is the account as a judgment. The account was his third wife's account which she incurred before she married Applicant. When they married, the creditor listed Applicant as an authorized user and also responsible for the card payments. When Applicant leaned of the delinquent account, he paid the judgment in full in July 2004, thus settling the account. (Tr. 24-28, 44-45; App. Ex. C, paid in full letter, dated December 19, 2007)

Applicant purchased a used car in 1996, financed by the creditor listed in SOR allegation 1.c. At the time, Applicant was on active duty in the Navy stationed on a ship based in California. He listed as his home address his mother's house in California. After returning from a deployment, Applicant moved the car to Virginia where it was registered with the required and accepted insurance coverage. Applicant paid the loan by allotment for at least two years. When he returned from a deployment, he learned the car had been repossessed. He was informed by the creditor that sometime during the loan time, they did not accept his car insurance as sufficient and used some of his car payment to purchase insurance, thus putting his loan in default. He never received any correspondence from the creditor that his payments were being diverted to pay for insurance. His mother never informed him if any correspondence was received at her house. Applicant believed he had almost paid the car loan. Since he learned the car had been repossessed, he told the creditor to advise him what was remaining on the loan after the car was sold. Applicant was advised at the time, he still owed over \$10,000. The car was originally purchased for \$7,000. Applicant made over two years of car payments at \$325 monthly so that only about \$3,000 should have remained on the loan. Applicant was recently advised that he owes over \$21,000. The debt in the SOR allegation and the credit report is listed for \$13,580. (Tr. 22-23, 47-67) The credit report listing was supposed to be removed from his credit report in August 2007. (App. Ex. E, credit report information, dated August 29, 2006) Applicant has disputed this account with the creditor and sought his Navy active duty finance records to show the payroll allotment for the debt. The records have not been received. (App. Exs. J-M, Letters and postal receipts, dated May 20, 2008)

The bank credit card debt listed in SOR allegation 1.e also belonged to his third wife before they married. The latest credit reports show the account is current and being paid as agreed. (Tr. 29-29, 45-47; Gov. Ex. 5, credit report, date January 10, 2008; App. Ex. A, credit report, dated March 6, 2008)

Applicant's latest credit report shows his debts are mostly current or paid in full. (Tr. 30-31) The car loan debt in SOR allegation 1.c is still listed. There is a collection account listed for a cell phone. However, Applicant presented documentation that that account was paid in full. (App. Ex. D, Letter, dated April 19, 2008) There is a collection account listed for \$53. However, Applicant presented documentation that the account was paid in full. (App. Ex. B, Letter, dated March 28, 2008)

### **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. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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.

### **Analysis**

#### **Financial Consideration:**

Under financial considerations, 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or 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 repay 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. Applicant's delinquent debts listed in credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations). Since two of the debts are the same, the SOR allegations are for four delinquent debts.

Financial Considerations Mitigating Conditions (FC MC) ¶ 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 happened years ago when applicant was on active duty or were his wife's before they married. He has either paid the debts or disputed them. Since the debts have either been paid or disputed, they do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) has some application to Applicant's financial issues. Two of the debts were the same debt. This debt and another debt were incurred by his wife before they married. When he learned of the debts, he paid them. The other two delinquent debts have been disputed by Applicant. The debts either arose by the actions of his wife or are in dispute so they were largely beyond Applicant's control. The remaining debt was caused by the creditor's questionable action that was unknown to Applicant. Since he paid two debts and disputed two others, he acted reasonably under the circumstances.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good effort to pay them. Applicant paid two of the debts in full and disputed the other two. His present credit report and other documents show his accounts are paid in full, except for the car loan he disputes. Applicant acted responsibly towards his debts and they are under control. Applicant established his good-faith efforts to resolve his debts, and mitigated security concerns for his financial situation

FC MC ¶ 20(d) (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 he issues) applies. Applicant disputed two of the debts. He did not have any knowledge of

one debt and has a legitimate dispute on another debt. For the furniture debt that he has no knowledge of, Applicant wrote the creditor and the debt was removed from his credit report. On the car loan, Applicant had legitimate concerns about the debt because the creditor did not credit his full payments to his account. He provided sufficient information of his action with the creditor to resolve the issue. Applicant has presented sufficient information to mitigate security concerns for financial considerations.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An 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 a security clearance 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. I considered Applicant’s over 20 years honorable active duty in the Navy during which he successfully held a security clearance. I considered that he took responsibility for the debts and paid two of the four of concern and disputed the other two. I considered that Applicant’s other financial obligations are paid as agreed. He manages his finances in a manner that does not create a security concern. Overall, on balance the record evidence leaves me with no questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Subparagraph 1.e:

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. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge