



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



In the matter of: )  
)  
) ISCR Case No. 07-06254  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 4, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant settled his delinquent debt and is in control of his finances. He mitigated security concerns regarding Guideline F (Financial Considerations). Clearance is granted.

**Statement of the Case**

On May 1, 2006, Applicant submitted a security clearance application, Standard Form (SF) 86.<sup>1</sup> On September 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>2</sup> The SOR alleges security concerns under

<sup>1</sup> GE 1.

Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

Applicant answered the SOR on October 27, 2008, and requested a hearing before an administrative judge. The case was assigned to me on November 6, 2008. DOHA issued a notice of hearing on November 24, 2008, convening a hearing on December 17, 2008. Applicant's counsel requested a continuance on December 8, 2008, which I granted. A second notice of hearing was issued on December 12, 2008, convening a hearing on January 21, 2009. At the hearing, the government offered Government Exhibits (GE) 1 through 5, which were admitted without objection (Tr. 23-24). Applicant testified on his own behalf, and presented two exhibits, marked Applicant Exhibits (AE) 1 and 2, which were admitted without objection (Tr. 26). DOHA received the transcript of the hearing (Tr.) on January 28, 2009.

### **Procedural Issue**

On December 8, 2008, Applicant's counsel entered his appearance and requested a continuance. On January 16, 2009, counsel withdrew his appearance stating that for personal reasons Applicant decided to represent himself. At his hearing, Applicant confirmed his attorney's statements. He also indicated he had sufficient time to prepare for his hearing and was ready to proceed.

### **Findings of Fact**

Applicant denied the single financial allegation under SOR ¶ 1. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 56-year-old senior financial manager working for a government contractor. In 1979, he completed his first Bachelor's degree in business administration. He completed a master's in business administration in August 1981, and a second bachelor's degree in accounting in May 2007 (Tr. 6-8). He was taking the Certified Public Accountant exam (Tr. 39).

He enlisted in the U.S. Army in 1973, and served honorably until December 1976, when he was discharged at the rank of E-5 (Tr. 66). He married his wife in October 1975. They have twin daughters of this marriage, both of whom are working adults. His wife and two daughters work for a government contractor who performs security investigations for a government agency.

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<sup>2</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

From 1996 to 2001, Applicant was employed by a large company as a senior consultant. In 2001, he resigned his employment to start his own business as a small business consultant providing accounting/financial services, management, succession planning, and business advice (Tr. 38). His business never developed as he expected, and he had to take several small jobs, sometimes not related to his expertise, to make ends meet. He was unemployed or underemployed from 2001 to March 2006 (Tr. 27-28). During this period, Applicant used his credit to pay for his family's day-to-day living expenses and acquired numerous debts that became delinquent.

Applicant resolved part of his bad debt totaling around \$30,000 to \$40,000 primarily by refinancing his home in 2005 and 2006 (Tr. 29-31). In April 2006, Applicant found stable employment and quadrupled his earnings. He used his additional earnings to pay other debts. He changed jobs in 2007, when he was hired by his current employer, a government contractor. He has been working for his employer for approximately 16 months (Tr. 63).

Applicant testified he overlooked the debt alleged in the SOR when he refinanced his home in 2006 to pay delinquent debts. He attempted to refinance his home again in early 2008, but was unsuccessful. In May 2008, he retained the services of a law firm to assist him in negotiating and settling the debt (Tr. 32). He settled the debt in December 2008 for less than what he owed. He took a loan against his 401(k) retirement plan to satisfy the debt and to pay his attorney's fees.

Applicant's current net monthly income is approximately \$4,600 (Tr. 47-49). His wife's net monthly income is approximately \$4,000. She contributes to the household finances and pays some of the family's financial expenses. Applicant and his wife have additional expenses because they provide financial assistance to his mother and his wife's mother. Applicant's monthly expenses include his mortgage (\$2,500 a month) and the payment of his three credit cards. He carries a Visa with a balance of \$2,600, a Master Card with a balance of \$4,200, and a large department store charge card with a balance of \$13,000 (GE 44-45). He pays approximately \$800 a month towards his credit card debt (Tr. 49).

Applicant expressed remorse for his past financial problems. He claimed he has learned his lesson and he is now well aware of what it is required of him to show that he is reliable, trustworthy, and financially responsible. He is very concerned about the adverse impact losing his security clearance will have on his family and his career. He promised never to let himself get into another financial predicament again. Before 2001 he had no financial problems. He stated he has performed well for government contractors and that he is considered a responsible and reliable employee. He believes he and his wife are now more financially stable and stronger than they were in 2001. He has been investing time and effort to educate himself to become more competitive in the job market. He believes that completing his CPA certification will create additional job opportunities for him to earn more income and to be able to resolve his current financial obligations.

## 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"<sup>3</sup> demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).<sup>4</sup>

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<sup>3</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>4</sup> "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, his SOR response, his answers to the DOHA interrogatories, and his testimony. Since around 2001, he acquired numerous debts which became delinquent and remained outstanding for many years. As of the SOR date, he had one delinquent debts totaling approximately \$19,660. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Considering the record evidence as a whole,<sup>5</sup> I find Applicant mitigated the financial security concerns. Available evidence suggests Applicant had no financial problems before 2001. He established circumstances beyond his control that contributed to his inability to pay his debts, i.e., he quit his job in 2001 to establish his own consulting business, his failed business enterprise, and his inability to find stable employment until 2006. AG ¶ 20(b) applies.

Applicant contacted his creditors, refinanced his home twice and used his home equity to pay his delinquent debts. After he found stable employment and increased his earnings, he settled and paid additional delinquent debts. Apparently, he either overlooked his last delinquent debt when he refinanced his home in 2006, or he did not have the financial means to pay the debt at that time. He contacted the creditor and tried to settle the account on his own without success. Around May 2008, he retained the services of a law firm to assist him negotiate the resolution of his last delinquent debt. By the time of his hearing, he had paid his debt using a 401(k) loan. Applicant's evidence shows he dealt responsibly with his financial obligations before receipt of the SOR and he has resolved his delinquent debts.

Applicant still carries a significant (\$20,000) credit card debt; however, he does not seem to be financially overextended. Considering his and his wife's current earnings, he should be able to resolve his current debts in the foreseeable future. Applicant promised to pay his debts and to avoid future financial problems. In light of Applicant's past actions to resolve his debts, I believe it is likely he will continue to be financially responsible. AG ¶¶ 20(a), (c) and (d) apply.

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<sup>5</sup> See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

## **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.

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. AG ¶ 2(c).

Applicant's honorable service in the Army and his years working for government contractors weigh in his favor. Other than a DWI offense, he has no police record. Aside from her delinquent debts (which are a civil, non-criminal issue), he is a law-abiding citizen, a concerned son, and a caring father and husband. He expressed regrets for his financial mistakes and presented evidence that he is correcting them.

After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude Applicant has mitigated the security concerns pertaining to 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

## **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge