



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-08275
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rita C. O'Brien, Esquire, Department Counsel  
For Applicant: Pro Se

March 6, 2008

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 17, 2005. On October 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns 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 13, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on January 17, 2008, and I received the case assignment on January 17, 2008. DOHA issued a notice of hearing on January 28, 2008, and I convened the hearing as scheduled on February 15, 2008. The government offered Exhibits (Ex.) 1 through 4 which were received without objection. Applicant testified on his own behalf and

submitted Exhibits A through D, without objection. He also presented the testimony of one witness. At Applicant's request, I kept the record open until February 25, 2008. Applicant timely submitted a document that I marked as Exhibit E. Department Counsel had no objection to the submission. DOHA received the transcript of the hearing (Tr.) On February 26, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, dated November 13, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.d, of the SOR, with explanations.<sup>1</sup> He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 53-year-old employee of a defense contractor. Applicant served on active duty in the U.S. Navy from 1979 until 1999. He received a top-secret security clearance while he was on active duty in the Navy. He retired as an officer (O-5 Commander) from the Navy in 1999.<sup>2</sup> He has not held a clearance for the last few years.

Applicant's first marriage ended in divorce in 1991. He has four children from that marriage. In 1994, Applicant remarried. He has one son as a result of that marriage. He and his second wife separated in 2002. Applicant's second wife refused to work during the marriage. When Applicant retired his income was less. He and his second wife could not pay all their bills. They had three mortgages on the family home which was eventually foreclosed. He also had boarding school bills for three children.<sup>3</sup> Applicant filed for Chapter 13 Bankruptcy in May 2001, because he wanted to pay all his creditors.<sup>4</sup>

After Applicant retired from the Navy, he worked in the financial services industry. His work did not succeed as a result of the impact of September 2001. He took various jobs but they were low paying. He was also supporting his children and his estranged wife and paying the mortgage on the family home. The pastor of his church gave him temporary living quarters until he could find a place to live in 2002.

In 2003, Applicant's second wife filed an order for support. Applicant could not afford an attorney to represent him. The amount of court ordered support and mortgage payment totaled 100% of Applicant's income according to Applicant. During that time Applicant worked many jobs. He worked as a teacher and a janitor at night. He worked

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<sup>1</sup>Applicant's answer, dated November 13, 2007.

<sup>2</sup>GE 1(Security Clearance Questionnaire, dated October 17, 2005).

<sup>3</sup>Applicant's second wife was abusive to his three children from his former marriage. Applicant did not want them in the home with his second wife.

<sup>4</sup>GE 2 (Answer to interrogatories, dated August 28, 2007).

during the summer in construction work. However, he continued to pay under the bankruptcy plan. The bankruptcy was discharged in 2004. At the same time, he could barely afford all his living expenses. He fell behind in the support payments. Applicant's very contentious separation has lasted for five years. During this time, Applicant has paid all that he could to the state for child support and spouse support. Applicant has been paying into a state account for spouse/child support steadily since February 2003. This order required Applicant to pay approximately \$1,869 a month. He has asked the local department to provide him with a history of his payments. He received the printout but it has one account number. It is not clear how the money has been allotted.<sup>5</sup>

In 2005, Applicant began his current employment with a contractor. His salary fluctuated but he earned a steady income. His salary ranged from \$80,200 in the first year to \$52,000 in 2007. This was the result of different work under different contracts.

In August 2007, an amended order for child support was issued. Applicant has \$450 a month deducted from his civilian pay. His Navy retirement pay (\$3,266 a month gross) has an allotment of \$1,417 for the spousal/child support account. The account balance has been steadily decreasing. Applicant's balance as of February 8, 2008 is \$12,642.98. The balance on May 30, 2006 was \$17,584. Thus, Applicant has paid almost \$5,000 in arrearage in the past 18 months.

Applicant petitioned for Chapter 13 bankruptcy in May 2001. His delinquent debts were discharged in bankruptcy after his three years of payments in October 2004 (¶ 1.a). The SOR alleges additional debt in the total amount of approximately \$19,000.<sup>6</sup>

Allegation ¶ 1.b in the amount of \$14,321 is for an account past due for spouse support to the state. However, Applicant has provided documentation that he has been paying through garnishment or allotment (at his request) an amount since the 2003 court order.<sup>7</sup>

Allegation ¶ 1.c is a civil judgment for \$900. This is the result of Applicant's second wife living in the home after their separation. Applicant was negotiating with her over this debt. He did not learn of this judgment until several months after it occurred. However, it is still unpaid. He will pay it if she does not.<sup>8</sup>

Allegation ¶ 1.d in the amount of \$4,236 is for state income tax (2001). This occurred during the marital separation. Applicant acknowledges the tax debt is not paid.

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<sup>5</sup> *Id.*

<sup>6</sup> GE 3 (Credit Bureau Report for Applicant).

<sup>7</sup> AE D (Order of Child Support withholding).

<sup>8</sup> Tr. 40.

He is increasing his monthly tax withholding by \$100 beginning in March 2008.<sup>9</sup> It is not clear how this will affect the tax debt. However, he plans to repay the taxes with the money that will result from lower support payments.

Applicant's current monthly net income is approximately \$2,250 (this amount is the remainder after the garnishment and allotment payments). After monthly deductions and expenses, he has a net remainder of \$275.

Applicant has not received any financial counseling. However, he has a garnishment of \$1,417 a month which goes toward the spousal/child support account to the state. He even called the contact person at the state to see if he could pay more into the account.

Applicant's fellow Navy aviation officer has maintained a 30-year friendship with Applicant. He recommends Applicant highly. He believes that Applicant's financial difficulties stem from his failed marriage and not from any character defect. He commends Applicant as honest, trustworthy, loyal, extremely reliable and with unquestionable personal character.<sup>10</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. According to AG ¶ 2, 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.

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<sup>9</sup>AE E.

<sup>10</sup>AE A (Letter from LCDR US Navy (Ret)).

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 conditions that could raise security concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts<sup>o</sup> is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations<sup>o</sup> may raise security concerns. Applicant accumulated delinquent debt and was unable to pay some obligations for a period of time. He petitioned for Chapter 13 bankruptcy in 2001. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition

may be mitigated where 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. Applicant's financial worries arose before 2001. He accumulated some delinquent debt due to his retirement from the military, his wife's refusal to work and his lower income in the civilian world. His separation in 2002 exacerbated his debt problems. While the separation, pending divorce, and underemployment may have precipitated the debt, the inquiry does not end at that point. The Applicant's problems have been ongoing and he has not resolved his tax debt. He has been active in paying his child/spousal support despite an arrearage. He has been paying since the 2003 court order. His actions after being gainfully employed do not raise concerns about his current reliability, trustworthiness, or good judgment. This potentially mitigating condition applies in part.

Under AG & 20(b), it may be mitigating where 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. As noted above, the financial problems arose from his separation, retirement, lower earnings and court order. He acted responsibly by working two jobs at a time and living modestly during his underemployment. I find this potentially mitigating condition is a factor for consideration in this case.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not received counseling and has not resolved the delinquent 2001 tax debt. However, he filed bankruptcy and paid his creditors under the plan until 2004 when the bankruptcy was discharged. He has been paying by garnishment or allotment under the court order to the state for child/spousal support. He is now in a financially sound situation. He will begin to pay his 2001 tax debt now that he has more income. I conclude these potentially mitigating conditions apply in part.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant's second wife caused the \$900 judgment. He has not paid the amount because he was negotiating with her to do so. He will pay the judgment if she does not. I conclude this potentially mitigating condition applies in part.

### **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 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. Applicant served in the U.S. Navy for 20 years and retired as an officer. He held a top secret clearance during that time. He has an excellent recommendation from a retired navy officer who knew Applicant. Granted, he filed bankruptcy in 2001. However, this is a legal means of debt resolution. His debts under the bankruptcy plan were discharged in 2004. His very contentious separation and lower income after retirement caused his financial problems from 2002 onward. He has been paying on his court ordered child/spousal support. He is now earning more money and can address his 2001 tax debt. Of course, the issue is not simply whether all his debts are paid but is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has addressed his delinquent debts. He reported his financial information during his security investigation. He has been proactive in paying his debts. He will address his 2001 tax debt within the year. He has met his burden of proof in this case to overcome the government’s case.

Overall, the record evidence leaves me without questions and 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 his 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

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not 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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NOREEN A. LYNCH  
Administrative Judge