



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-08388  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 13, 2008

**Decision**

HOWE, Philip S., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on October 24, 2005. On September 8, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) 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 answered the SOR in writing on October 5, 2007. The Department Counsel requested a hearing before an Administrative Judge on November 5, 2007. Department Counsel was prepared to proceed on November 9, 2007, and I received the case assignment on November 16, 2007. DOHA issued a Notice of Hearing on December 18, 2007, and I convened the hearing as scheduled on January 10, 2008.

The Government offered Exhibits (Ex.) 1 through 8, which were received without objection. Applicant testified and submitted Exhibits A through F. Exhibit A received an objection, and I upheld the objection because the exhibit documents were the SOR and other documents already in the file. DOHA received the transcript of the hearing (Tr.) on January 22, 2008. I granted Applicant's request to keep the record open until January 25, 2008, to submit additional matters. On January 25, 2008, he submitted Exhibits G to O, without objection. The record closed on January 25, 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 June 25, 2007, Applicant denied the factual allegations in ¶¶ 1.a, 1.c, 1.d., 1.f., and 1.g. of the SOR, with explanations. He admitted the factual allegations in ¶¶ 1.i. of the SOR. He neither admitted nor denied the allegations contained in ¶¶ 1.b., 1.e., 1.h., 1.j., and 1.k. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 43 years old, divorced with custody of his nine-year-old daughter, and works for a defense contractor. He was divorced in 1999 after his daughter was born. His wife did not want to continue with the marriage or take care of the child. A property settlement divided the property and debts between Applicant and his former wife. His former wife was responsible for the automobile debt because she took the automobile. They were equally responsible for any debts incurred during the marriage, and separately responsible for debts they individually incurred after the marriage. Applicant's former wife was ordered to have reasonable visitation and to pay Applicant \$300 monthly for child support. Applicant has not received this money. Applicant also is a military veteran, serving from 1986 until 2001. (Tr. 37, 38, 55, 107, 110; Exhibit 1)

Applicant's credit reports show several unpaid judgments and delinquent debts. From 2005 onward, Applicant exerted efforts with increasing intensity, reflected in the volume of the copies of his letters and emails to creditors, to resolve his delinquent debts. Some debts he repaid or settled before the SOR issuance date. The current status of each of the delinquent debts listed in Paragraph 1 of the SOR is as follows (Exhibits C, N, O):

DEBT ALLEGATION	CURRENT STATUS/EVIDENCE
1.a. Department store credit card, \$2,172, denied	Unpaid. Confirmed was wife's account. Letter from company, statement from security officer who heard company tell Applicant account belonged to his former wife. Not on current credit report. (Tr. 61-66, 110; Exhibits 2, 3, 5-8, B, H, G. N)

<p>1.b. Seven medical accounts, neither admitted nor denied, \$1,763.</p>	<p>Applicant paid \$825.21 on these debts over the past two years. He paid \$275 for three months on these debts. He paid the co-pay at time of service, and his insurance was to pay any balances according to the contract. The hospital is researching their bills to determine exact amount owed. (Tr. 66-71, 101, 103, 110; Exhibits 2, 3, 5-8, C, G, I, N)</p>
<p>1.c. Bank credit card debt, \$2,198. Denies</p>	<p>Applicant settled this debt for \$1,232 in January 2007. It was a judgment and when seeking a mortgage loan for his current house, the bank told him he needed to pay judgments. (Tr. 74-84, 112; Exhibits 2-8, Exhibits C, G, N, O, Answer)</p>
<p>1.d. Debt collector, \$605, denies</p>	<p>Account cancelled by latest collection agency. (Tr. 85-87, 113; Exhibits 2-8, C, G, N, O)</p>
<p>1.e. Collection agency for \$588, neither admits nor denies</p>	<p>Unpaid because Applicant does not have any information on the debt and denies he owes it. He wrote several letters attempting to confirm this debt. It is from an electric power company debt from 2001 when he lived in another state. He has not gotten a response, but would pay it if it is confirmed as a legitimate debt of his. (Tr. 87,113; Exhibits 2-8, C, G, J N, O)</p>
<p>1.f. Collection agency for retailer, \$4,884, denies</p>	<p>Applicant does not have an account with the retailer, and the company told Applicant over the phone he does not owe any money. This statement was witnessed by a security officer at his work location. Applicant wrote several letters over the past year attempting to resolve this account. Applicant does not owe this debt. (Tr. 89, 113; Exhibits 2-8, C, G, K, N, O).</p>

1.g. Catalog company collection, \$835, denies, unpaid	Applicant does not have any account with this company. Company closed in 2002. January 2008 letter from receiver states account permanently closed. Applicant does not owe this debt. (Tr. 91, 119, 120; Exhibits 2-8, C, G, K, N, O)
1.h. Cell telephone company debt, \$217 and \$378, neither admits nor denies.	Applicant paid \$231 to one collection agency on September 28, 2007. Another agency claims it owns the account. Applicant told it he paid the other creditor and for them both to work it out between themselves. \$378 is unpaid because no creditor has information on the account, according to Applicant, and without proof of the debt, he will not pay it. (Tr. 92-94, 121; Exhibits 2-8, C, G, M, N, O)
1.i. Sanitation company debt, \$91, admits	Paid debt on October 2, 2007. (Tr. 95, 122; Exhibits 2-8, C, G, N, O, Answer)
1.j. Telephone or cable company, \$181, denies knowledge of this debt	Paid on September 27, 2007. (Tr. 95, 122; Exhibits 2-8, C, G, N, O, Answer)
1.k. Telephone bill for \$67, denies knowledge of this debt	Paid on September 27, 2007. Creditor did not cash check, Applicant stopped payment on check. (Tr. 95, 96, 104, 105, 122; Exhibits 2-8, C, G, N, O, Answer)

Applicant contacted a credit counseling agency. He paid \$400 for their services, attempting to resolve his debts through disputes or payment. He received only three credit reports from them, and he was not satisfied with their service. Applicant paid \$6,188 on his debts, including the \$4,000 on the car loan judgment debt. (Tr. 101, 126; Exhibits C, G)

Applicant completed his SCA on October 24, 2005. In response to Question 37 (any judgments in the past seven years which remain unpaid), Applicant answered, "no." Unbeknownst to Applicant, he had a judgment against him in his former state of residence, owed to a bank for \$9,813 as the balance on a car loan. He never received notice of the lawsuit. This car loan pertained to the auto his former wife took when they divorced. She allowed the car to be repossessed, and never told Applicant about it. Applicant was able to settle it for \$4,000 on January 25, 2007.

In answer to SCA Question 38 (any debts in the past seven years more than 180 days delinquent), Applicant answered, "no." Applicant's credit reports showed the debts listed in SOR Paragraph 1. Applicant answered the two questions based on the information he had at the time. He did not think at that time he had any debts older than

180 days. Applicant repeatedly stated he wanted proof that any debts were legitimately his before he undertook to pay them. Based on that belief, he answered these two SCA questions truthfully. He did not intend to mislead or falsify his answers. (Tr. 47-50, 128-130, 136-138, 154, 155, 170; Exhibits 2-8, C, G, N, O, Answer)

Applicant submitted 19 character statements from the people for whom he works at his job location. Applicant works in information technology. His character statements were written by general officers, field and company grade officers, civilians, and staff professionals. All statements show the writers trust Applicant, and praise his personal and professional conduct on the job. (Exhibit E)

### **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, the administrative judge applies the guidelines 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.

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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated delinquent debt and was unable to pay these obligations. 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 delinquent debts occurred after his divorce. He moved in 2001 from his former state of residence to his present location. He knew nothing about the judgments against him which were filed in his former state. These debts occurred some years ago, with no evidence of recent debt except for his mortgage loan. I find the behavior occurred under unusual circumstances (his divorce, subsequent move, former wife’s irresponsibility) that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

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 received counseling, though he was not satisfied with the results. He took it upon himself to write many letters from 2006 onward and send emails to all the collection agencies, businesses, and other creditors he could locate. He testified he researched them on the internet, and made many telephone calls attempting to resolve the debts. The volume of correspondence and emails he introduced into the record show his persistence and diligence in obtaining information attempting to pay his debts. He paid six of the eleven listed delinquent debts, and spent \$6,188 to do so. He resolved the balance of the delinquent debts by obtaining letters or emails from the creditors that he was not liable, or a witness statement regarding two debts when he knew he could not get a statement from the creditor. He is financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set forth in ¶15, and states as follows:

“Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.”

The guideline states several Disqualifying Conditions that could raise security concerns. Under ¶16(a), “involving deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, or determine trustworthiness, and ¶16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, or other official government representative,” apply if Applicant deliberately falsified his answers to Questions 37 and 38. However, after hearing Applicant’s explanation, and examining his exhibits, I conclude that he did not deliberately falsify his answers. He sincerely believed that he had no debts more than 180 days delinquent, he knew of no debts specifically proven to be his responsibility which were delinquent, and did not know about the judgments against him in his former state of residence when he completed the SCA. Applicant is persuasive and credible in his explanation. The efforts Applicant took since 2006 to obtain information on these delinquent debts are so comprehensive, persistent, and zealous, that only some one who truly did not know about them would have gone to that extent to discover the information, and then document it in such detail and volume.

## **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 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 the facts and circumstances surrounding this case. While some debts remain unpaid, they are insufficient to raise security concerns. Some of these debts were clearly not Applicant's debts. There are no recent debts which are delinquent, showing he is managing his money prudently. The divorce gave rise to these debts, and Applicant is trying to pay them. There is no potential for pressure or coercion based on the extent of Applicant's efforts shown by his extensive documentation chronicling his persistent efforts to resolve his debts, and his demonstrated sincerity in trying to resolve these debts. His explanations and demeanor at the hearing show it is not likely that he will incur such debts in the future.

I also considered and gave substantial weight to Applicant's character references, and the fact that he has custody of his daughter after his wife did not want to be a mother and a wife. His dedication to the care of his daughter demonstrates his heightened sense of responsibility, in addition to his zeal in resolving his debts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations and personal conduct security concerns, and I conclude them for him. I also conclude the "whole person" concept for Applicant.

## **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. to 1.k: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a. and 2.b: 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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PHILIP S. HOWE  
Administrative Judge