



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



In the matter of: )  
)  
) ISCR Case No. 07-08884  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John B. Glendon, Esq., Department Counsel  
For Applicant: *Pro se*

May 14, 2008

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

**Statement of the Case**

Applicant submitted his Security Clearance Application (e-QIP), on December 26, 2006. On October 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F. 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 November 21, 2007. He submitted a supplemental answer on December 8, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 16,

2008, and I received the case assignment on January 17, 2008. DOHA issued a notice of hearing on January 25, 2008, scheduling the hearing for February 12, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 5, which were received without objection. Applicant offered Applicant Exhibits (AE) A through M, which were received without objection, and he testified on his own behalf. I held the record open until February 22, 2008 to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE N through S without objection, which were forwarded to me by Department Counsel by letters dated February 22, 2008 (Exhibit (Ex.) I and II). DOHA received the transcript of the hearing (Tr.) on February 21, 2008. The record closed on February 22, 2008.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a., and 1.c. – 1.j. He denied SOR ¶ 1.b. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 44-year-old supply technician chief, who has been employed by a defense contractor since August 2003. Tr. 21-22. He graduated from high school in June 1982, and did not pursue higher education. Tr. 19. He is a first-time applicant for a security clearance. Tr. 22-24.

Applicant married his wife in March 1989, separated from her in September 2001, and was granted a final divorce in July 2007. He is currently unmarried. He and his former wife have two daughters, ages 23 and 18. Applicant continues to provide support for his 18-year-old daughter, who is attending her senior year in high school. When she graduates, his support obligation ends. Tr. 25-26.

The SOR alleges a total of ten debts. (SOR ¶¶ 1.a. – 1.j.) Apart from three tax liens (SOR ¶¶ 1.a., 1.b., 1.g.) and a foreclosure judgment (SOR ¶ 1.f.), the remaining six debts alleged in the SOR consist of collection/charged off accounts owing approximately \$17,340. The alleged debts are supported by the government's evidence and Applicant's admissions. Response to SOR, GE 2, GE 5. Applicant provided documentation that the tax lien owed in SOR ¶ 1.b. had been paid. Response to SOR, AE E. The debt reflected in the foreclosure judgment (SOR ¶ 1.f.) was satisfied by the foreclosure sale. Tr. 66-73. GE 2, AE K.

Applicant has paid or settled the debts reflected in SOR ¶¶ 1.e., and 1.h. AE N, AE O. He has addressed debts reflected in SOR ¶¶ 1.c., 1.d., 1.i., and 1.j. by seeking the services of a debt management company and has established a debt consolidation plan. He has established a monthly payment plan to the debt management company which is paid by direct debit from his bank account. AE Q, AE S. With regard to the remaining tax debts alleged in SOR ¶¶ 1.a. and 1.g., Applicant has contacted the Internal Revenue Service and resolved his tax problems by filing his returns and/or setting up a payment plan. AE P, AE R.

Applicant attributes his financial difficulties to the loss of his job in 2002, and a costly separation and divorce which spanned a six-year period. Applicant testified that the majority of the charge accounts were attributable to his former wife. Additionally, his former wife quit her job in 2001 and withdrew the funds from her 401k account, leaving him with her tax liability as a result of early withdrawal. Tr. 96-97

Applicant's annual salary is \$57,672. His monthly budget reflects a net remainder of \$831 after all his monthly bills are paid. Tr. 102, AE N.

A supervisor from Applicant's company testified on his behalf. The supervisor holds a top secret clearance and described Applicant as a very good employee, who can be trusted and counted on to perform whatever duties are assigned. He recommended Applicant for a security clearance. Tr. 108-114.

Applicant submitted two reference letters from two work-related supervisory personnel. These letters described Applicant as "very security conscious," "first to volunteer for additional work," "first-class professional," "performance has been outstanding," "will do what it takes to get the job done," and possesses "integrity" and "patriotism." Both supervisory personnel recommended Applicant for a security clearance. AE B, AE C.

## **Policies**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,<sup>1</sup> and the whole person concept.<sup>2</sup> Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations) is the applicable relevant adjudicative guideline.

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<sup>1</sup> Directive, Section 6.3. "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2 . . ."

<sup>2</sup> Directive ¶ 2(a) ". . . The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . . ."

## Burden of Proof

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>3</sup> The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.<sup>4</sup> The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.<sup>5</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.<sup>6</sup>

## Conclusions

Under Guideline F (Financial Considerations),<sup>7</sup> the government's concern is that an Applicant's "[f]ailure 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."

Applicant has a history of failing to meet his financial obligations dating back to at least 2002. Since then, he has accumulated ten debts, which were substantiated by the government's evidence and discussed above. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

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<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (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); Directive ¶ E3.1.32.1.

<sup>5</sup> *Egan*, *supra* n.6, at 528, 531.

<sup>6</sup> See *Id.*; Directive Enclosure 2, ¶ 2(b).

<sup>7</sup> Guidelines ¶ 18.

Applicant experienced a loss of income after losing his job in 2002, and undergoing a costly separation and divorce. The financial toll of this unexpected income loss and divorce-related costs placed Applicant in a precarious financial situation from which he is still recovering. These facts demonstrate circumstances beyond his control.

Applicant provided documentation demonstrating that he paid or resolved all of his debts either by contacting the creditors directly or by retaining the services of a debt management company. He has established realistic payment plans with all his creditors, and has remained current on those plans. His evidence reflects he has the resolve and wherewithal to pay down his debts.

Considering the record evidence as a whole,<sup>8</sup> I conclude that two of the mitigating conditions apply. Financial Considerations Mitigating Condition (FC MC) Guidelines ¶ 20(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;* and FC MC ¶ 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;* apply in this case.

He presented evidence showing he dealt responsibly with his financial obligations as demonstrated by contacting his creditors and resolving his debts. Applicant's evidence sustains a finding that he is financially responsible and has taken control of his financial situation. Based on the available evidence, his financial problems are not likely to be a concern in the future.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant's age, education, his maturity, his years of working for a defense contractor, work performance, commitment to his family, and his demeanor and conduct during his hearing. Considering the totality of Applicant's circumstances, he demonstrated sufficient judgment and trustworthiness in the handling of his financial affairs. In short, he has mitigated the security concerns raised.

### **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 – 1.j.: For Applicant

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<sup>8</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 FC MC 1, all debts are considered as a whole.

## **Decision**

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. Clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge