



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-07667
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro Se*

August 22, 2008

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**Decision**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 28, 2005. (Government Exhibit 1.) On January 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 filed an Answer to the SOR on March 17, 2008, and requested a hearing before an Administrative Judge. Department Counsel was ready to proceed on April 7, 2008. The case was originally assigned to another Administrative Judge on April 10, 2008. I received the case assignment on April 21, 2008. DOHA issued a notice of hearing on April 25, 2008.

The hearing was convened on May 15, 2008. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant called one witness, testified on his own behalf and submitted Applicant's Exhibits A through R, without objection. DOHA received the transcript of the hearing on June 3, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

The Applicant is 53 and married. He is employed by a Defense contractor and seeks to obtain a security clearance in connection with his employment in the Defense industry.

### **Guideline F, Financial Considerations**

The Applicant began working in the Defense industry in October 2005. Beginning in 1989, and continuing until 2000, the Applicant was a successful small businessman who ran his own company. Applicant's Company (AC) provided services to various clients, but he had one primary client (Client). The AC was grossing approximately \$2 million in sales by 1998. Over the next two years (1998-2000), a change in management at the Client brought an end to the Applicant's relationship with them. Without the Client's business, AC could not remain in business. By 2000, the AC had been dissolved. Because of the nature of his business, the Applicant had to agree to be personally responsible for many of the corporate debts. This fact, and a complete loss of income, forced the Applicant into bankruptcy in 2000.<sup>1</sup> (SOR subparagraph 1.b.) (Transcript at 47-54, 62-84; Applicant's Exhibits H-Q.)

From 2000 through 2005, in particular between 2003 and 2005, he had several low paying jobs as he looked for permanent employment and his income was very erratic. He currently makes less money than he did when he owned his business. (Transcript at 84-87, 90.) This time period was very difficult for the Applicant, who has a family. He testified, "What I am trying to say is I want to make it clear that that [inability to pay his bills] really had nothing to do with me being unwilling or unable to live within my means because I had no means to live within." (Transcript at 87.)

The Applicant began working for the Defense industry in October 2005. He has been able to consistently pay his current debts since beginning employment. All of the indebtedness dates to the period when he was unemployed or underemployed. The Applicant submitted a credit report showing charged off debts, which the Applicant paid after becoming employed in 2005, and before issuance of the SOR. The Applicant stated, "I did the best I could during my rough years; and, then after I got past those rough years, I went and tried to make good on what I could make good on." (Transcript at 101-102; Applicant's Exhibit G.)

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<sup>1</sup>Subparagraph 1.b. contains a typographical error which has been corrected by striking the date "December 2007" and substituting the date "December 2000." This comports with the evidence.

Subparagraph 1.a. The Applicant admits that he owes the Federal Government \$57,000.00 in back payroll taxes, interest and penalties.<sup>2</sup> The debt dates from when he owned his company. The Applicant has continually been in contact with the IRS, letting them know his employment and financial situation. (Transcript at 90-94, 125-132; Applicant's Exhibit A.) In their latest communication with the Applicant, dated May 12, 2008, they state, "All of the tax accounts . . . have been placed in a non-collectible status at this time due to your current financial situation. Being placed in this status means that we will not take any collection action on the amount that you owe until your financial status changes." (Applicant's Exhibit A at 4.) The Applicant's situation is changing because his children are grown and he can downsize his house and expenses. He hopes to be able to begin to pay the IRS soon. (Transcript at 135-137.)

Subparagraph 1.c. The Applicant admits having had a State tax lien in the amount of \$2,640.00. The taxes were paid and the lien released in December 2005. (Transcript at 94-95; Applicant's Exhibit B.)

Subparagraph 1.d. The Applicant firmly believed that he did not owe a utility company \$173.40. After much research, he was unable to find proof of payment. In order to resolve the debt he paid it. (Transcript at 100, 132-133; Applicant's Exhibit F.)

Subparagraph 1.e. The Applicant denied currently owing a cable company \$26.70. He presented a statement from the collection agency showing that the payment had been made in December 2005, soon after the Applicant was employed in the Defense industry. (Transcript at 99-100; Applicant's Exhibit E.)

Subparagraph 1.f. The Applicant was in a long term dispute with this hospital and his insurance company over the amount he owed for medical care after an accident. He had paid a substantial amount of this medical debt, and believed that the rest would be handled by his insurance company. In order to resolve this debt he paid it. (Transcript at 97-99, 133; Applicant's Exhibit D.)

Subparagraph 1.g. The Applicant submitted a copy of the Personal Financial Statement that he submits to the IRS in connection with his tax liability. This is based on the Applicant's actual expenses over a three month period. This exhibit shows a monthly net remainder of \$218.00, not over \$1,000 a month. (Transcript at 96-97; Applicant's Exhibit C.)

The Applicant submitted that his current financial situation is stable. He is able to pay his current debts and is in communication with the IRS about his unpaid tax liabilities. His financial difficulties were over a limited time, and he has paid the rest of his debts.

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<sup>2</sup>Pursuant to motion by the Department Counsel, Subparagraph 1.a. was amended by striking the figure "\$16,798" and substituting the figure "\$57,000." This comported with the evidence introduced at the hearing. (Transcript at 139.)

## **Mitigation**

A co-worker of the Applicant, who was an employee in the Applicant's company and is a friend, testified on the Applicant's behalf. He describes the Applicant as, "extremely trustworthy, responsible, above reproach." (Transcript at 55.)

The Applicant submitted letters from supervisors and other people he works with. These people have the "highest confidence and trust" in him. His immediate supervisor states that, "honesty, truth and integrity are sound descriptions of his character." (Applicant's Exhibit A.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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(c), "a history of not meeting financial obligations" may raise security concerns. There is evidence in the record that the Applicant has a \$58,000.00 tax lien for taxes related to his failed business. He also owed several other, smaller, bills. The evidence is sufficient to raise this potentially disqualifying condition, 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." In addition, AG ¶ 20(b) states that it may be mitigating if "the conditions that resulted in the financial problems were largely beyond the person's control (e.g., . . . a business downturn . . .), and the individual acted responsibly under the circumstances."

The majority of the Applicant's past due indebtedness was incurred between 2000 and 2005 when the Applicant's company failed and he had five years of sporadic employment and fluctuating income. As described at length above, once the Applicant was employed in the Defense industry, he began working to pay his past due indebtedness. Specifically, in addition to the debts in the SOR, he paid several creditors not mentioned in the SOR even though his debts had been charged off. Since being employed in the Defense industry, he has been able to pay all of his current debts. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, it also occurred because of a business downturn, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

AG ¶20(c) applies if "there are clear indications that the problem is being resolved or is under control." Evidence that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" is also mitigating under ¶20(d).

The Applicant has successfully paid off all of the debts in the SOR but one. He has not ignored his Federal tax liability, rather the record shows that he has maintained close and continuing contact with the IRS. The records submitted by the Applicant show the IRS understands his financial situation and intends no collection efforts at the current time. The Applicant expresses a credible intent to resolve the Federal tax liability at the earliest time he can. I conclude these potentially mitigating conditions apply.

### **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. The record shows that the Applicant had a successful career and business before his current problems began. He is respected in his current job.

The Applicant, by his own admission, had debt problems between 2000 and 2005. The reasons are described at length above. Rather than avoid his debts, once

