



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



In the matter of: )  
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SSN: ----- )  
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Applicant for Security Clearance )

ISCR Case No. 06-26161

**Appearances**

For Government: Francisco J. Mendez, Jr., Esquire, Department Counsel  
For Applicant: Pro Se

February 14, 2008

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**Decision**  
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CREAN, Thomas M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 16, 2005. On June 8, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for financial considerations and personal conduct under Guidelines F and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 in an undated response. He denied all allegations with explanation. He elected to have the matter decided on the written record in lieu of a hearing. Department counsel submitted the Government's written case on October 26, 2007. Applicant received a complete file of relevant material (FORM) on November 16, 2007, and was provided the opportunity to file objections,

and submit material to refute, extenuate, or mitigate the disqualifying conditions. Department Counsel mailed additional material to Applicant at the same mailing address on December 10, 2007. Applicant was provided an additional 30 days to respond with additional information. Applicant did not respond to the FORM or the additional material. The case was assigned to me on January 15, 2008. Based on a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Procedural and Evidentiary Rulings**

Department counsel in the FORM moved to amend the SOR to add a second allegation, 2.b, under Guideline E, based on falsifications in Applicant's answer to the SOR. Specifically, the new allegation is that Applicant knew of four debts that he stated in his answer to the SOR that he did not have knowledge.

Applicant was provided in the FORM an opportunity to respond to the amendment of the SOR. Applicant did not raise an objection to amending the SOR. The SOR is amended to add allegation 2.b under Guideline E as requested by Department Counsel.

### **Findings of Fact**

Applicant is a 47-year-old senior information technology security manager for a defense contractor. He has worked with this contractor since 2005. He retired after 18 years of active Army service in 2001. Between 2001 and 2005, he worked as a senior systems engineer for defense contractors. He and his first wife divorced after a 23 year marriage in 2002. They had two children who are now in their twenties. Applicant notes that some of the debts in the SOR were incurred by his first wife while he was stationed overseas, and also because she did not pay their bills. He remarried in 2004. He held a security clearance while on active duty in the Army. (Item 23; Response to SOR, undated)

Applicant responded "NO" to question 24 on his security clearance application which asked had he ever been charged with or convicted of an offense(s) related to alcohol or drugs. Records show that in April 1994, while on active duty, Applicant was arrested and charged by civilian authorities with driving under the influence. He was found not guilty of driving under the influence but guilty of reckless driving. He paid a fine. Applicant stated he had not been drinking alcohol that night but had taken a cold medicine that contained alcohol. In responding to the question on the security clearance application, Applicant believed he did not have to list the offense since it happened over 14 years earlier and he thought outside the time line for listing these type offenses. He states he was told he only had to go back ten years. (Item 2, paragraph 2. a; Item 10)

Applicant claims in his answer to the SOR that he did not know about some of the debts listed. The debts include a debt of \$16,660 to a bank in collection (allegation

1.d); a debt for \$117 for satellite television service (allegation 1.e); a debt to a credit union for \$3,224 (allegation 1.q); and a bank debt for \$9,978 (allegation 1.s).

Applicant filed a Chapter 7 bankruptcy in April 2004. He listed unsecured liabilities of over \$194,000 with \$6,700 in assets. (Item 20) The bankruptcy trustee recommended dismissal of the bankruptcy because the unsecured debts were consumer debt; Applicant is capable of paying on his debts based on his income and work potential; the purchases causing his debts exceeded his ability to pay at the time the debts were incurred; he could contribute to debt payment without being deprived of the necessities of living; he qualifies for a Chapter 13 bankruptcy; and he has not participated in a debt repayment program. The trustee questioned Applicant's good faith in resolving debt. (Item 21) The bankruptcy was dismissed based on the recommendation of the trustee. (Item 22) Applicant claims his former wife and their divorce caused his financial problems leading to bankruptcy, and that the trustee recommended dismissal of the bankruptcy because he was continuing to support his college student daughter. (Item 2)

The SOR lists 18 delinquent debts totaling over \$105,000. These debts include a collection account for a utility for \$89 (1.b); a medical debt for \$135 (1.c); a credit card debt to a bank for \$16,660 (1.d); a satellite television account for \$117 (1.e); a cable debt for \$143 (1.f); another cable debt of \$431 (1.g); a state lien for child support for \$2,910 (1.h); a credit card debt for \$27,000 (1.i); a credit card collection account for \$7,051 (1.j); a consumer loan for \$544 (1.k); a collection account for \$13,000 (1.l); two credit card accounts to the same company for \$1,634 (1.m) and \$2,413 (1.n); three credit accounts to the same credit union for \$7,666 (1.o), \$11,000 (1.p), and \$3,224 (1.q); another delinquent credit account for \$1,039 (1.r), and a bank credit card debt for \$9,978 (1.s). All of the above delinquent debts are listed on and confirmed by various credit reports. The credit reports also show Applicant's debt total has risen from \$68,000 in 2001, to \$74,000 in 2003, to \$86,000 in 2004, to over \$100,000 in 2007. As noted, the SOR lists delinquent debts of over \$105,000. (See, Items 14, 16, 17, 25, 26, and supplemental FORM material, December 10, 2007)

Applicant denied any knowledge of the debts in 1.b, 1.c, 1.d, 1.e, 1.j, 1.l, 1.q, 1.r, and 1.s. He did not present any information concerning any inquiry he made about the debts. He stated the cable debts in 1.f and 1.g were paid in full but he does not have receipts. Applicant stated he was out of the country on military assignment when he was ordered to pay child support. He contacted the child welfare office upon returning and set up an automatic payroll deduction for the child support. He has continued to pay child support even though he is no longer required to do so. He presented no information concerning support payments or any efforts to pay past due child support that may have accumulated while he was overseas. He discussed the credit card debt listed at 1.i with the creditor to have them split the debt between he and his wife. The creditor refused and Applicant stated he would only pay his part of the debt. He has presented no information to show any payment of any part of this debt. He claims the debt listed at 1.j is his wife's and not his debt and was charged off before he returned from overseas. Applicant claims the credit card debts at 1.m and 1.n are the same debt

and that he paid the debt. He presented no information to verify the debts are the same or that they have been paid in full. In addition, on his statement to security investigators, he acknowledged he owed both debts. (Item 18 at 3) Applicant stated the credit union debt at 1.o is the same debt as listed at 1.k. The debts are for different amounts and the account numbers are not the same on the credit reports. Applicant claims the debt at 1.p is for a car purchased by his former wife and he is not responsible for the debt. He presented no information on any contact with the creditors on these debts.

Applicant stated in his answer to the SOR that he did not know about the debts at 1.d, 1.e, 1. q, and 1.s. All four debts are listed on various credit reports dated as early as 2001. In addition, he acknowledged the four debts in a statement to security investigators in 2004. (Item 18, statement dated February 13, 2004, at 3-4).

### **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(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.

## **Analysis**

### **Financial Consideration:**

Under financial considerations, 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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶19(a) (inability or unwillingness to satisfy debts), FC DC ¶ 19(b) (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt), FC DC ¶ 19(c) (a history of not meeting financial obligations), and FC DC ¶19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). Applicant accumulated delinquent debts because of an unwillingness to pay his financial obligations. The debt total has risen over the years with no indication of any attempt to pay the debts. The debts appear to be for normal consumer items which indicate he may be spending beyond his means.

Financial Considerations Mitigating Conditions (FC MC) ¶ 20(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) does not apply. Most of the delinquent debts have not been addressed by Applicant and are listed on the most recent credit report. The debts are still not paid so they are current debts. There are a number of delinquent debts from various sources so they are not infrequent. The debts seem to be ordinary credit card debts, telephone bills, department store accounts, or loans. There is no evidence they were incurred under unusual circumstances. An examination of the debts by the bankruptcy trustee shows they are largely consumer debts. Since they are current debts that have not been paid, they cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

I considered FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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). Applicant claims some of his debts were incurred by his wife without his knowledge while he was overseas. He presented no information to establish that the debts were incurred by his wife. He also did not show any actions he took to resolve the debts once he returned from overseas. Applicant also claims his debts were caused by his divorce. He presented no information to show how the divorced caused his debts. In fact, the credit reports show he incurred delinquent debt years before the divorce, and continued to incur delinquent debt after the divorce. He did not establish he acted responsibly under the circumstances, so the mitigating condition does not apply.

I considered FC MC ¶ 20(a) (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). Applicant presented no information of financial counseling, so this mitigating condition does not apply.

I considered FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant presented no information to show he has a plan to pay the debts or any action that he has taken to pay his debts. There is no indication Applicant acted responsibly towards his debts or that the situation is under control. In fact, the opposite seems to be true, his finances are not under control and that he has not acted responsibly. The indication is that he just did not pay his debts, the debts continued to accumulate, and he continued to incur more debt. There is no indication of a good faith effort to pay creditors or resolve debts. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

## **Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance process depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's potentially inaccurate answers to a question concerning an alcohol-related charge on his security clearance application and his SOR response that he had no knowledge of delinquent debts raise security concerns under Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations determine security eligibility or trustworthiness).

Applicant denied intentional falsification. He believed he only had to list alcohol-related offenses that happened in the last ten years. He claims to have asked supervisors and other about the process and was informed that he had to go back only ten years. Since the offense was over 14 years earlier, he did not include it. However, in his response to the SOR, he claims he had no knowledge of four debts. The debts are clearly listed on credit reports and he acknowledged the debts in a statement he provided security investigators. It is clear that he knew of the four debts and his statements on the debts in response to the SOR are false. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant knew of the four debts when he completed his response to the SOR, so his false responses as to knowledge of the debts were knowing and willful. The question concerning alcohol-related charges is clear and straight forward and uses the word "ever" and does not limit the time of concern. Applicant established a pattern of action in answering questions falsely or providing false information. Applicant has demonstrated on two separate occasions that he deliberately provided false information in the security clearance process with intent to deceive. I find against Applicant as to Personal Conduct.

### **"Whole Person" Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered Applicant’s Army service and many years holding a security clearance. However, Applicant has not taken action to resolve his past due debts. His indifferent attitude and lack of actions shows he is not trustworthy, responsible, or exercises good judgment. I conclude Applicant has not mitigated the security concerns arising from his finances and personal conduct. Clearance is denied.

**Formal Findings**

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.s:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge