



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



In the matter of: )  
 )  
----- ) ISCR Case No. 05-00536  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

May 21, 2010

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding personal conduct and financial considerations. Eligibility for a security clearance and access to classified information is denied.

**Statement of the Case**

On July 6, 2006, Applicant applied for a security clearance and submitted an EPSQ version of a Security Clearance Application (SF 86).<sup>1</sup> On September 16, 2007, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his financial situation and other unspecified issues. He responded to the interrogatories on November 5, 2007.<sup>2</sup> On October 20, 2009, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel*

<sup>1</sup> Government Exhibit 1 (SF 86), dated July 6, 2006.

<sup>2</sup> Government Exhibit 5-A (Original of Applicant's Answers to Interrogatories, dated November 5, 2007); Government Exhibit 5 (Copy of Applicant's Answers to Interrogatories, dated November 5, 2007).

*Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (hereinafter AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on October 26, 2009. In a sworn, written statement, undated but notarized, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on January 15, 2010, and the case was assigned to Administrative Judge Edward W. Loughran on January 27, 2010. It was reassigned to me on February 12, 2010, due to caseload considerations. A Notice of Hearing was issued on March 12, 2010, and I convened the hearing, as scheduled, on April 1, 2010.

During the hearing, 13 Government exhibits and 2 Applicant exhibits were admitted into evidence, without objection. Applicant and one other witness testified. The record remained open to afford Applicant the opportunity to supplement it, and on April 12, 2010, he submitted five additional documents. Four were admitted into evidence as Applicant exhibits C through F, respectively, without objection; however, Department Counsel objected to the fifth document (Applicant exhibit G for identification) on the grounds that the unsigned document was hearsay and was offered for the truth of the matter asserted. I sustained the objection and rejected the document. The transcript (Tr.) was received on April 8, 2010.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the Guideline F factual allegations (§§ 2.a. through 2.z.) and one of the Guideline E factual allegations (§ 1.c.) of the SOR. He denied the remaining Guideline E factual allegations (§§ 1.a. and 1.b.).

Applicant is a 43-year-old employee of a defense contractor, currently serving as acting lead technician,<sup>3</sup> and he is seeking to obtain a security clearance. He had previously been granted a security clearance in 1984.<sup>4</sup> He served on active duty with the U.S. Army from July 1984 until July 1987, and in the Army Reserve from July 1987 until May 1990.<sup>5</sup> After his discharge, Applicant was employed by a number of employers in a variety of positions, including electronic bench technician, electronic helper, and

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<sup>3</sup> Tr. at 36-37.

<sup>4</sup> Government Exhibit 1, *supra* note 1, at 10.

<sup>5</sup> *Id.* at 6.

electronic technician. He also went through a five-month period of unemployment (August 1998 until January 1999).<sup>6</sup> He has been with his current employer since April 2006.<sup>7</sup>

Applicant has been married since May 1996.<sup>8</sup> He and his wife have two children, born in 1995 and 2002, respectively.<sup>9</sup>

## **Personal Conduct**

On March 18, 2002, DOHA issued Applicant an SOR alleging security concerns under Guidelines E (Personal Conduct), F (Financial Considerations), G (Alcohol Consumption), and J (Criminal Conduct).<sup>10</sup> Applicant elected to have his case decided on the written record in lieu of a hearing. On September 25, 2002, Administrative Judge Richard A. Cefola issued a decision that it was “not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.”<sup>11</sup> Applicant continued to work for the same employer, but was relocated to a position not requiring a security clearance.<sup>12</sup>

In response to interrogatories previously sent to him by DOHA, on November 5, 2007, Applicant submitted a number of letters purportedly from various creditors indicating either that he made payment arrangements, had been making payments, or that the creditor had acknowledged errors in reflecting delinquencies. One letter, purportedly from the U.S. Department of Education, dated October 29, 2007, with an illegible signature, states:<sup>13</sup>

In our recent conversation you had indicated to us that your student loans were listed outstanding on your credit report. We understand our concern and want to assure you that you are in excellent standing with the US Department of Education. All your payments of \$630.00 have been received every month. We would like to Thank You for keeping current with your payments.

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 4-5.

<sup>10</sup> Government Exhibit 7 (Statement of Reasons, dated March 18, 2002).

<sup>11</sup> Government Exhibit 6 (ISCR Case No. 00-0744, dated September 25, 2002), at 7. It was determined that Applicant had mitigated only the alcohol consumption concerns.

<sup>12</sup> Tr. at 25.

<sup>13</sup> Letter from U.S. Department of Education, dated October 29, 2007, attached to Government Exhibit 5-A, *supra* note 2.

DOHA subsequently followed up on the status of the account (SOR ¶ 1.p.), and on December 7, 2007, the U.S. Department of Education sent a letter indicating Applicant's account was in collection, and his payment history reflected the two most recent payment checks had been returned.<sup>14</sup> On March 20, 2008, the U.S. Department of Education commented on the purported October 27, 2007 letter previously submitted by Applicant, which he attached to his response to DOHA's interrogatories.<sup>15</sup>

After reviewing the alleged October 29, 2007 Department of Education letter sent to [Applicant], our office of Direct Loans . . . was unable to find any record that the Department sent this letter. In addition, Direct Loans indicated that the letterhead format was incorrect, and that if they had sent the letter, a Direct Loans letterhead would have been used. Additional concerns I find include improper language, an Education address used in place of the borrower's address and no printed signature block. Based upon our research, the letter in question does not appear to be from the Department of Education; instead, it appears to be some veiled attempt to imitate a Department letter.

In reference to [Applicant's] account status with the U.S. Department of Education, his balance, as of today, is \$100,119.19 (includes principal, interest and projected collection costs).

Another letter, purportedly from a cable provider (SOR ¶ 1.s.), dated October 23, 2007, with an illegible signature, refers to previously agreed payment arrangements and a payment already made.<sup>16</sup> In another letter, purportedly from a different cable provider (SOR ¶ 1.q.), dated October 25, 2007, also with an illegible signature, the creditor apologizes for mistakenly seeking payment on an account in which the unpaid balance had been discharged in bankruptcy in 2002.<sup>17</sup> Still another letter, purportedly from an automobile finance company, dated October 24, 2007, again with an illegible signature, apologizes for an accounting error on Applicant's account, and states his account is in "excellent standing."<sup>18</sup> The final letter, from a collection agency representing a medical provider (SOR ¶ 1.r.), dated October 25, 2007, without any signature, acknowledges a payment bringing the account to current status.<sup>19</sup>

Applicant denied drafting, doctoring, forging, making up, or creating any of the aforementioned letters which he submitted to DOHA in response to the interrogatories,

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<sup>14</sup> Government Exhibit 4 (Letter from U.S. Department of Education, dated December 7, 2007).

<sup>15</sup> Government Exhibit 3 (Letter from U.S. Department of Education, dated March 20, 2008).

<sup>16</sup> Letter from cable provider, dated October 23, 2007, attached to Government Exhibit 5-A, *supra* note 2.

<sup>17</sup> Letter from cable provider, dated October 25, 2007, attached to Government Exhibit 5-A, *id.*

<sup>18</sup> Letter from automobile finance company, dated October 24, 2007, attached to Government Exhibit 5-A, *id.*

<sup>19</sup> Letter from collection agency, dated October 25, 2007, attached to Government Exhibit 5-A, *id.*

and has no idea why they would have been sent to him if they were not authentic.<sup>20</sup> Applicant stated he never contacted the U.S. Department of Education regarding their letter, but was happy that he had the letter.<sup>21</sup> After comparing the style, formats, fonts, and signatures of the subject documents, along with the commentary furnished by the U.S. Department of Education, I find that the documents are not authentic, and are most likely forgeries.

## Financial Considerations

There was nothing unusual about Applicant's finances until about 2002. At some point prior to November 2002, Applicant's unsecured consumer debt reached a certain level, and he and his wife decided to file for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.<sup>22</sup> He listed total liabilities of \$157,435, including about \$94,000 in student loans and about \$63,435 in unsecured debts.<sup>23</sup> In July 2003, the unsecured debts were discharged, but Applicant remained responsible for the student loans.<sup>24</sup>

Applicant's financial habits did not change after the bankruptcy.<sup>25</sup> Other than disconnecting cable television, he did nothing to prevent new debts from becoming delinquent.<sup>26</sup> He offered no reason for his failure to adjust his habits or address his financial situation.<sup>27</sup> At some unspecified point after the bankruptcy discharge, his accounts again became delinquent. Some accounts were placed for collection or charged off. Applicant could not explain why even the smallest of his debts had not been taken care of.<sup>28</sup>

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<sup>20</sup> Tr. at 28-34. It is interesting to note that Applicant Exhibit G for identification, which was submitted after the hearing, and which was objected to by Department Counsel and rejected by me, purports to be a letter from Applicant's wife (unsigned), in which she took full responsibility for forging the identified documents.

<sup>21</sup> *Id.* at 35.

<sup>22</sup> Government Exhibit 13 (Combined Experian, Trans Union, and Equifax Credit Report, dated October 18, 2006), at 5.

<sup>23</sup> Tr. at 55-56.

<sup>24</sup> *Id.* at 56.

<sup>25</sup> *Id.* at 57.

<sup>26</sup> *Id.* at 51.

<sup>27</sup> *Id.* at 49.

<sup>28</sup> *Id.* at 48-51, 69. His comment in this regard is not entirely accurate. On October 4, 2007, Applicant paid one particular collection agency \$977 to be applied to unspecified delinquent accounts, leaving an unpaid balance of \$284.53. See Receipt for Payment, dated October 4, 2007, attached to Government Exhibit 5-A, *supra* note 2. On November 2, 2007, he made payments to four different creditors identified in the SOR: \$719 (¶ 2.m.), \$285 (¶ 2.n.), \$166 (¶ 2.s.), and \$440 (¶ 2.x.). See MoneyGram receipts, also attached to Government Exhibit 5-A, *id.*

Because of his relative inaction pertaining to his delinquent student loans,<sup>29</sup> the U.S. Department of Education indicated it intended to collect the debt by administrative wage garnishment. Applicant agreed to a rehabilitation plan but the loan was not rehabilitated because two payments were returned for insufficient funds.<sup>30</sup> Instead, a wage garnishment order was sent to Applicant's employer in October 2008, and effective November 21, 2008, the first garnishment payment was received from Applicant's employer.<sup>31</sup> As of August 24, 2009, Applicant owed \$72,986.72 principal, \$10,081.36 interest, and \$20,218.77 projected collection costs.<sup>32</sup>

In addition to the allegation pertaining to Applicant's bankruptcy, the SOR identified 25 purportedly continuing delinquencies, including the student loan account, as reflected by seven credit reports, including one from 2006,<sup>33</sup> three from 2007,<sup>34</sup> one from 2008,<sup>35</sup> one from 2009,<sup>36</sup> and one from 2010,<sup>37</sup> totaling approximately \$89,901. Of that amount, \$83,308 is for student loans. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agent name, or under a different creditor or collection agent name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. Those debts listed in the SOR, all of which Applicant admitted, and their respective current status, according to the credit reports, documents submitted by Applicant, and Applicant's written and testimonial comments relative thereto, are described below:

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<sup>29</sup> Applicant made only "sporadic" payments between January 25, 2007 and October 29, 2007, and his loan status was changed to "defaulted." See Government Exhibit 2 (Letter from U.S. Department of Education, dated August 24, 2009), at 1.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Government Exhibit 13, *supra* note 22.

<sup>34</sup> Government Exhibit 12 (Equifax Credit Report, dated September 16, 2007); Merged Infile Credit Report, dated November 5, 2007, attached to Government Exhibit 5-A, *supra* note 2; Government Exhibit 11 (Equifax Credit Report, dated December 7, 2007).

<sup>35</sup> Government Exhibit 10 (Equifax Credit Report, dated February 29, 2008).

<sup>36</sup> Government Exhibit 9 (Equifax Credit Report, dated July 14, 2009).

<sup>37</sup> Government Exhibit 8 (Equifax Credit Report, dated March 26, 2010).

SOR ¶	TYPE DEBT	AMOUNT	STATUS
2.a.	Medical service	\$889	Collection. Partial payment on Mar. 31, 2010, under payment plan. <sup>38</sup>
2.b.	Medical service	\$223	Collection. Partial payment on Mar. 31, 2010, under payment plan. <sup>39</sup>
2.c.	Medical service	\$97	Collection. Partial payment on Mar. 31, 2010, under payment plan. <sup>40</sup>
2.d.	Medical service	\$118	Collection. Partial payment on Mar. 31, 2010, under payment plan. <sup>41</sup>
2.e.	Telephone service	\$575	Collection. Unpaid. <sup>42</sup>
2.f.	Medical service	\$24	Collection. Partial payment on Mar. 31, 2010, under payment plan. <sup>43</sup>
2.g.	Medical service	\$125	Collection. Partial payment on Mar. 31, 2010, under payment plan. <sup>44</sup>
2.h.	Medical service	\$77	Collection. Partial payment on Mar. 31, 2010, under payment plan. <sup>45</sup>
2.i.	Cable service	\$45	Collection. Unpaid. <sup>46</sup>
2.j.	Telephone service	\$197	Collection. Unpaid. <sup>47</sup>
2.k.	Medical service	\$557	Collection. Unpaid. <sup>48</sup>
2.l.	Medical service	\$102	Collection. Unpaid. <sup>49</sup>
2.m.	Electric utility service	\$419	Collection. A payment made in Nov. 2007. <sup>50</sup> Unpaid. <sup>51</sup>
2.n.	Telephone service	\$283	Charged off. A payment made in Nov. 2007. <sup>52</sup> Unpaid. <sup>53</sup>

<sup>38</sup> Applicant Exhibit B (Collection Service Receipt for Payment, dated March 31, 2010); Applicant Exhibit A (Collection Service List of Accounts, dated March 31, 2010).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Government Exhibit 8, *supra* note 37, at 1.

<sup>43</sup> Applicant Exhibit A, *supra* note 38

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Government Exhibit 8, *supra* note 37, at 2.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> MoneyGram receipt, *supra* note 28.

<sup>51</sup> Government Exhibit 8, *supra* note 37, at 2.

<sup>52</sup> MoneyGram receipt, *supra* note 28.

<b>SOR ¶</b>	<b>TYPE DEBT</b>	<b>AMOUNT</b>	<b>STATUS</b>
2.o.	Telephone service	\$57	Collection. Unpaid. <sup>54</sup>
2.p.	Student loan	\$83,308	Collection. Partial payments under wage garnishment. <sup>55</sup>
2.q.	Cable service	\$160	Collection. Possibly included in bankruptcy. Last listed on Nov. 2007 credit report. <sup>56</sup>
2.r.	Medical service	\$100	Collection. Possibly paid. Last listed on Nov. 2007 credit report. <sup>57</sup>
2.s.	Cable service	\$316	Collection. Possibly paid. A payment made in Nov. 2007. <sup>58</sup> Last listed on Nov. 2007 credit report. <sup>59</sup>
2.t.	Medical service	\$306	Collection. Possibly paid. Last listed on Nov. 2007 credit report. <sup>60</sup>
2.u.	Insurance	\$297	Collection. Unpaid. Last listed on Nov. 2007 credit report. <sup>61</sup>
2.v.	Utility service	\$223	Collection. Unpaid. <sup>62</sup> Not listed in any credit report.
2.w.	Credit card	\$599	Collection. Charged off. Settled with less than full payment before Nov. 2007. <sup>63</sup>
2.x.	Telephone service	\$440	Collection. Paid Nov. 2, 2007. <sup>64</sup>
2.y.	Unspecified account	\$364	Collection. Disputed by Applicant in Nov. 2007. <sup>65</sup> No longer on any other credit report.

<sup>53</sup> Government Exhibit 8, *supra* note 37, at 3.

<sup>54</sup> *Id.*

<sup>55</sup> Government Exhibit 2, *supra* note 29, at 1.

<sup>56</sup> Merged Infile Credit Report, attached to Government Exhibit 5-A, *supra* note 2, at 2. Resolution of this account is suspect for reasons stated above. See Letter from cable provider, attached to Government Exhibit 5-A, *supra* note 17.

<sup>57</sup> *Id.* Merged Infile Credit Report, at 2; Resolution of this account is suspect for reasons stated above. See Letter from collection agency, attached to Government Exhibit 5-A, *supra* note 19.

<sup>58</sup> MoneyGram receipt, *supra* note 28.

<sup>59</sup> Merged Infile Credit Report, *supra* note 2, at 2; Resolution of this account is suspect for reasons stated above. See Letter from cable provider, attached to Government Exhibit 5-A, *supra* note 16.

<sup>60</sup> *Id.* Merged Infile Credit Report, at 2; Applicant claims he made arrangements for payments to be made by direct withdrawal, effective November 30, 2007, but offered no documentary evidence to support his claim.

<sup>61</sup> *Id.* Merged Infile Credit Report, at 2; Applicant claims he made arrangements for payments to be made starting November 20, 2007, but offered no documentary evidence to support his claim.

<sup>62</sup> Applicant's Answer to SOR, at 4.

<sup>63</sup> Merged Infile Credit Report, *supra* note 2, at 3; Government Exhibit 8, *supra* note 37, at 3.

<sup>64</sup> MoneyGram receipt, dated November 2, 2007, *supra* note 28.

<sup>65</sup> Merged Infile Credit Report, *supra* note 2, at 1.



Applicant and his family have continuing medical issues which generate medical expenses. His wife has a degenerative lumbar disc, requiring several surgeries and continuing pain management; his daughter has chronic allergies; and he had a colon tumor.<sup>66</sup> In addition to the SOR debts, Applicant now has additional, non-SOR, accounts which have become delinquent. His payment on March 31, 2010, partially addressed some of those non-SOR debts.<sup>67</sup>

On November 5, 2007, Applicant submitted a personal financial statement indicating monthly joint net income of \$4,564, monthly expenses of \$3,945, with no scheduled monthly debt payments, and a net remainder of \$619 available for discretionary spending.<sup>68</sup> Applicant currently earns \$30 per hour. After the \$400 per month student loan garnishment, the monthly joint net income is between \$3,600 and \$3,900, leaving less funds available for discretionary spending.<sup>69</sup>

Applicant has accepted responsibility for his “complete lack of attention to personal and financial matters.”<sup>70</sup> He added, “My abilities as both a technician and a lead have thus far allowed me to advance in my knowledge and career without being worried about the adverse effects of my dismal personal affairs. I realize now as I guess I always did that this bill would come due.”<sup>71</sup>

## Character References

Applicant’s immediate supervisor has known Applicant for approximately 10 ½ years, and has been his immediate supervisor for the past 4 years. He considers Applicant to be a dedicated, conscientious, and trustworthy individual.<sup>72</sup> The site manager and the facility security representative both support Applicant’s application. They characterize him in glowing terms, using words such as integrity, honesty, trustworthiness, and responsibility.<sup>73</sup>

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<sup>66</sup> Tr. at 66.

<sup>67</sup> *Id.* at 50-51, 64, 71.

<sup>68</sup> Applicant’s Personal Financial Statement, dated November 1, 2007, attached to Government Exhibit 5-A, *supra* note 2.

<sup>69</sup> Tr. at 36-41.

<sup>70</sup> Applicant Exhibit C (Applicant’s Statement to Department Counsel, undated).

<sup>71</sup> *Id.*

<sup>72</sup> Applicant Exhibit F (Statement from Supervisor, undated); Tr. at 74.

<sup>73</sup> Applicant Exhibit D (Letter from facility security representative, dated April 8, 2010); Applicant Exhibit E (Letter from site manager, dated April 7, 2010).

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>74</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>75</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>76</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>77</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship

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<sup>74</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>75</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>76</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>77</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>78</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>79</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

## **Analysis**

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

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 notes several conditions that could raise security concerns. Under AG ¶ 16(a), a “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, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” is potentially disqualifying. Similarly, under AG ¶ 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative,” may raise security concerns. Applicant’s submission to DOHA of forged documents to support his contention that various accounts were no longer delinquent or never were delinquent, provided false and misleading information concerning critical

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<sup>78</sup> *Egan*, 484 U.S. at 531

<sup>79</sup> See Exec. Or. 10865 § 7.

relevant facts to DOHA's personnel security specialist, as well as to me during Applicant's hearing pertaining to his eligibility and suitability for a security clearance. His actions provide sufficient evidence to examine if his submissions were deliberate falsifications or were the result of simple oversight or negligence on his part.

As noted above, Applicant denied drafting, doctoring, forging, making up, or creating any of the aforementioned letters which he submitted to DOHA in response to the interrogatories. At the hearing, he claimed to have no idea why they would have been sent to him if they were not authentic. Yet, when he submitted them, he knew, or reasonably should have known, the actual state of his financial affairs. Many accounts were already delinquent and he was aware that his limited financial resources were insufficient to satisfy them all. With delinquent student loans approaching \$100,000, it was unreasonable for him to assert there was no delinquency. Under the circumstances, I find his denials not to be credible. That is not to say that he actually drafted, doctored, forged, made up, or created the documents, for there is no direct evidence that he did so. However, he did use the documents with the presumed knowledge that the contents therein were false. I find Applicant's explanations are incredible in his denial of deliberate falsification.<sup>80</sup> AG ¶¶ 16(a) and 16(b) have been established.

The guidelines also include examples of conditions that could mitigate security concerns arising from personal conduct under AG ¶¶ 17(a)-(g). But in this instance, none of the mitigating conditions apply.

## **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. . . .

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<sup>80</sup> The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Likewise, under AG ¶ 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,” may also be potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Also, under AG ¶ 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,” is potentially disqualifying.

As noted above, there was nothing unusual about Applicant’s finances until about 2002, when he and his wife filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. In July 2003, \$63,435 in unsecured debts were discharged, and his financial problems were eliminated. But not for long, for within a matter of a few years, various new accounts became delinquent. Despite promises to pay certain accounts, and claims to have paid others, with few exceptions, he has failed to keep his bills current. Accounts became delinquent and were placed for collection; some were charged off. And he continued to spend. Now there are additional delinquent non-SOR accounts. It appears that when his financial relationship with one cable company came to an impasse, he simply chose to move on to another such company, leaving the original provider with an unpaid account. (SOR ¶¶ 2.i., 2.q., and 2.s.) The same is true for his relationships with mobile telephone service. (SOR ¶¶ 2.e., 2.n., 2.o., and 2.w.) While he has submitted some documentation to support his contentions regarding payments supposedly made or accounts supposedly disputed, he has not done so for the remaining delinquent accounts. AG ¶¶ 19(a), 19(c), and 19(e) apply.

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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated 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.” 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.”<sup>81</sup> Also, AG ¶ 20(e) may apply where “the individual has a reasonable

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<sup>81</sup> The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’

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.”

Applicant’s financial problems commenced in 2002, were resolved by a Chapter 7 bankruptcy discharge of his debts in 2003, and eventually re-emerged. Because the financial situation is frequent and continuing in nature, AG ¶ 20(a) does not apply. Applicant’s handling of his finances, under the circumstances, does cast doubt on his current reliability, trustworthiness, or good judgment.

Likewise, Applicant receives minimal application of AG ¶ 20(b), for Applicant has not documented evidence that the conditions that resulted in his financial problems at some point were largely beyond his control. He has noted certain family health issues, but has not explained how they interfered with his handling of his finances. Applicant failed to act responsibly under the circumstances. He failed to explain the circumstances regarding his financial problems between 2003 and the present. Rather than consolidating and minimizing expenses, except for dropping cable service, he continued to spend unwisely. He increased his expenditures and failed to reduce his delinquencies.<sup>82</sup>

AG ¶ 20(c) does not apply because Applicant has not received financial counseling and debt consolidation guidance, or if he has, he has not provided documentation to support any other conclusion.

AG ¶ 20(d) only partially applies because Applicant initiated a very limited good-faith effort to repay several creditors, well before the SOR was issued. He made several payments in January, October, and November 2007, and again in March 2010, but except for those payments, ceased all such voluntary action. After years of ignoring his delinquent student loans, or making rare payments, the U.S. Department of Education garnished his wages and is now getting paid “involuntarily.” Over the years, Applicant did not act aggressively, timely, or responsibly to resolve his delinquent debts. Instead, he has taken no significant actions to address the satisfaction of those delinquent debts.<sup>83</sup>

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Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

<sup>82</sup> “Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

<sup>83</sup> The Appeal Board has previously held that “[A] applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim” he or she initiated a good-faith effort to repay creditors or otherwise resolve debts. ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

AG ¶ 20(e) does not apply because, while Applicant might have a legitimate reason to dispute the unknown account set forth in SOR ¶ 2.y., he has not provided “documented proof to substantiate the basis of the dispute.”

### **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) the 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.

There is some evidence in favor of mitigating Applicant’s conduct. Well after his finances got out of control, he initiated some belated good-faith efforts to pay some debts, well before the SOR was issued. For a brief period in 2007, he made some minor payments to some creditors. Thereafter, all of his efforts ceased, and did not resume until the day before the hearing.

The disqualifying evidence under the whole-person concept is more substantial. Applicant continued to obtain services and goods from a variety of creditors, but either had no ability or intention to pay for them. As a result, he continued to accumulate delinquent debt and did not pay his older debts. In July 2003, \$63,435 in unsecured debts were discharged in bankruptcy.

Nevertheless, since his bankruptcy discharge, with the exceptions described above, Applicant did not make significant good-faith efforts to pay a variety of delinquent debts. While he ignored most of his creditors, he made a number of promises and claimed to have paid several creditors. Yet, there is insufficient or questionable documentation to support his contentions that he had fully, or partially, satisfied some of the creditors. Now, seven years after his debts were discharged under a Chapter 7 bankruptcy order, he is again enmeshed in financial disarray. His long-standing failure to repay creditors, at least in reasonable amounts, or to arrange payment plans, while creating new debts, reflects judgment traits which raise concerns about his fitness to hold a security clearance.

Of course, the issue is not simply whether all his debts are resolved or at least under repayment arrangements; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. And there is the personal conduct surrounding the submission to DOHA of the forged documents. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history and personal conduct in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>84</sup> His insufficient good-faith efforts or evidence to reflect actual payments to his SOR creditors, and his inability to satisfactorily explain his submission of the forged documents, are sufficient to raise continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>85</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has " . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Although there are few positive signs in Applicant's favor, such as his recent efforts to take corrective actions, and his maintenance of some of his payments of his daily living expenses, these steps are simply insufficient to show he can "live within [his] means, satisfy debts, and meet financial obligations." See AG ¶ 18. Moreover, the personal conduct issues raise questions about his honesty and trustworthiness. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his personal conduct and financial considerations.

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<sup>84</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>85</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).



## 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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	Against Applicant
Subparagraph 2.j:	Against Applicant
Subparagraph 2.k:	Against Applicant
Subparagraph 2.l:	Against Applicant
Subparagraph 2.m:	Against Applicant
Subparagraph 2.n:	Against Applicant
Subparagraph 2.o:	Against Applicant
Subparagraph 2.p:	For Applicant
Subparagraph 2.q:	Against Applicant
Subparagraph 2.r:	Against Applicant
Subparagraph 2.s:	For Applicant
Subparagraph 2.t:	For Applicant
Subparagraph 2.u:	For Applicant
Subparagraph 2.v:	For Applicant
Subparagraph 2.w:	For Applicant
Subparagraph 2.x:	For Applicant
Subparagraph 2.y:	For Applicant
Subparagraph 2.z:	Against Applicant

## **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge