



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 06-18439
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

March 31, 2008

**Decision**

WESLEY, Roger C., Administrative Judge:

**History of Case**

On September 16, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the 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 clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on October 4, 2007, and requested a hearing. The case was assigned to me on January 3, 2008, and was scheduled for hearing on January 30, 2008. A hearing was held on January 30, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (himself) and one

exhibit. The transcript (R.T.) was received on February 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access classified information is denied.

### **Procedural Rulings and Evidentiary Issues**

At the outset of the hearing, Applicant's request to convert his FORM into a hearing was approved. Hearing was permitted to proceed.

Before the close of the hearing, Applicant requested leave to supplement the record with documentation of any information pertaining to the sale of his home (including the sale price of his foreclosed home) and an updated income and expense statement. For good cause shown, Applicant was granted seven days to supplement the record. In turn, the Government was granted three days to respond. Within the time permitted, Applicant supplemented the record with an updated earnings and expense statement, but nothing pertaining to his home foreclosure. His post-hearing exhibit was admitted as exhibit G and considered.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated 30 delinquent debts exceeding \$120,000.00. Under Guideline E, he allegedly falsified his security clearance application of August 8, 2005, by omitting his debts over 180 and 90 days delinquent, respectively.

In his response to the SOR, Applicant admitted each of the alleged debts, without explanation. Responding to the falsification allegations covered by Guideline E, Applicant denied any intentional omission of the information called for in his security clearance application.

### **Findings of Fact**

Applicant is a 45-year-old warehouseman for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married his first wife (W1) in June 1987 and has one adopted son (age 20) from this marriage (ex. 1). Applicant divorced W1 in February 1998. In April 1998, Applicant married his current spouse (W2), and has two stepdaughters (ages 19 and 22) from this marriage. Applicant provides financial support for W2 and their children.

While separated but still married to W1, Applicant encountered difficulties in meeting his marital debts without help from his estranged spouse and filed for Chapter 13 relief during the 1997 period (R.T., at 35, 61-62). Most of the covered debts were credit cards, which Applicant acknowledges to be indicative of living beyond his means

(R.T., at 61-62). Applicant satisfactorily completed the Chapter 13 plan approved by the bankruptcy court and paid off all of his scheduled creditors. (R.T., at 61).

Since his marriage to W2, Applicant and his spouse have accumulated numerous additional debts (30 in all). Most of these delinquent debts were accumulated between 2002 and 2006, and primarily reflect medical co-pay debts associated with medical services provided his wife and youngest daughter that were not picked up by their medical insurance (R.T., at 43-44, 70-71). Some, though, are consumer debts. In the aggregate they total about \$6,000.00.

By far, Applicant's largest listed debt is a mortgage debt of \$114,000.00 on a home purchased in January 2005 for \$120,000.00 (R.T., at 51) Applicant and W2 financed his purchase of the home with a fixed rate mortgage and no down payment (R.T., at 51). Whether Applicant and W2 obligated themselves on a purchase money mortgage to meet the down payment requirements of secondary lenders is not clear.

Faced with mounting medical expenses associated with his daughter, he put the home up for sale in May 2006 (R.T., at 45). While the home was being marketed, Applicant and W2 stopped making mortgage payments (R.T., at 46). Six months later (in December 2006), the lender foreclosed on the property (R.T., at 47). While Applicant believes the lender utilized non-judicial procedures to complete its foreclosure of the property, Applicant never opened the envelopes, and, accordingly, cannot be completely certain what kind of foreclosure procedures the lender utilized to schedule and complete the sale of the property (R.T., at 48-49). Applicant has not received any post-sale bills or notices from the seller that he is aware of, and does not know whether or not the sale proceeds covered the mortgage obligation.

Since receiving the SOR, Applicant and his wife have not been able to pay any of their admitted listed debts (R.T., at 64). So far, they have confined their payment efforts to downsizing in their living arrangements, paying off Applicant's car loan, and several other debts (R.T., at 35, 69). Currently, Applicant brings home \$2,229.14 in net monthly income (see ex. G). Additionally, he receives child support from W1 for their son in the amount of \$300.00 a month and Social Security benefits for their youngest daughter in the amount of \$700.00 a month (R.T., at 66-67). Together, Applicant and W2 currently receive about \$4,000.00 a month in income and benefits (R.T., at 68). Applicant's net monthly income promises to increase some when W2 returns to work in February 2008, as expected (see ex. G).

Set off against Applicant's income are his current monthly expenses and debts: they total approximately \$2,050.00 in expenses and \$85.00 in debts, based on his most recent personal financial statement (see ex. G). This represents a considerable deduction from the monthly expenses and debts he reported at hearing (R.T., at 68-69). Just on the basis of his last reported net monthly income and expenses/debts (excluding child support, Social Security benefits for Applicant's youngest daughter, and W2's anticipated income supplement), Applicant is left with a net positive remainder of just \$94.00 a month in which to address his debts.

Applicant has sought no formal counseling regarding his finances. He assures he is not behind with any of his current bills, but could identify no source of emergency relief to help him with his listed debts.

Asked to complete a security clearance application (SF-86) in August 2005, Applicant omitted his debts over 80 and 90 days delinquent, respectively, when responding to questions 38 and 39. With his working two jobs, he consistently relied on W2 to pay their bills and did not realize he had debts over 180 or 90 days past due when he completed the security questionnaire (R.T., at 41-43, 73-74). He attributed his omissions to his haste in completing the application without first checking his credit report for listed debts that had not been paid. He assures he did not purposely omit his delinquent debts (R.T., at 43, 74-75).

Several months after completing his SF-86, Applicant was interviewed by an agent from the Office of Personnel Management (OPM) (R.T., at 38). Applicant recalls reviewing his credit report with the agent and answering questions about certain debts listed in the credit report (R.T., at 38-40).

To be sure, most of Applicant's omitted debts are medically-related and relatively small in amount. Without a credit report or spouse to double-check the reported status of his debts, it is conceivable that he might not have known he had debts at the time that had been or were 180 days delinquent, or were then over 90 days delinquent. By the accounts of his performance evaluations, Applicant has consistently been characterized as an industrious, reliable performer (see exs. B and C). Friends who know him, attest to his honesty and trustworthiness (see ex. A). These are important character gauges when assessing his overall disposition for honesty and integrity. Considering all of the circumstances of Applicant's omissions, his claims of inadvertent omission are accepted as both plausible and credible. Inferences warrant that Applicant's initial omissions were not deliberate, and not made with any intent to intentionally mislead the Government.

## **Policies**

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*The Concern:* "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income

is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

### **Personal Conduct**

*The Concern:* “Conduct involving questionable judgment, untrustworthiness, unreliability, 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.”

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversarial proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing on the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take into account cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is a warehouseman for a defense contractor who accumulated a number of delinquent debts (medical, consumer-related, and home-related) over a five-year period spanning 2002 and 2006. Considered together, and without resolution, they raise security significant concerns. Security significant, too, are Applicant’s delinquent debt missions in the security clearance application he completed in 2005.

## **Applicant's finances**

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information" and place the person "at risk of having to engage in illegal acts to generate funds." Applicant's accumulation of delinquent debts and his past failure to address them warrant the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC 19(a), "inability or unwillingness to satisfy debts" and DC 19(c), "a history of not meeting financial obligations."

Applicant's debt accumulations follow an historical pattern. Before encountering financial problems with his current spouse, he got into financial difficulty following his estrangement from his first spouse and filed for Chapter 13 relief. Applicant successfully completed his Chapter 13 plan, and by itself would be mitigated. It bears consideration, though, when assessing the security significance of his post-2002 financial set backs.

Of particular concern are the uncertain financial ramifications of his 2006 home foreclosure. According to Applicant, he obtained 100 per cent financing of the house he purchased in 2005 for \$120,000.00. Quite conceivably, the lender secured the mortgage loan with a first trust deed or combined first trust deed and purchase money mortgage on the property. Were this to be the case, and the lender foreclosed non-judicially, Applicant quite likely would not have any deficiency liability to potentially confront, regardless of what the home sold for in a foreclosure sale.

Foreclosure law in Applicant's state does provide for an action to recover a deficiency for any foreclosed security (by either judicial or non-judicial sale procedures) that does not cover the loan balance at the time of the sale. See §51.002 of T Property Code (2007). The State's deficiency statute is time sensitive and requires independent legal actions by the claiming creditor within a specified period of time. While there is no evidence that Applicant's lender has initiated any legal action to recover a claimed deficiency, it still has ample time to do so.

Without any documentation from Applicant about his foreclosure, it is simply not feasible to piece together all of the events associated with his lender's foreclosure to ascertain whether he is at any risk of a creditor action to recover any deficiency owing on the loan after crediting proceeds from the public sale of the property. Absent clarifying documentation, Applicant is not well positioned to mitigate security concerns over his finances.

Afforded an opportunity to provide post-hearing documentation about his home foreclosure, Applicant has not provided any paperwork covering the legal actions taken by the lender. Nor has he provided any documented payment efforts with respect to

his other listed creditors. He provides no proof either of his seeking financial counseling to explore other ways of discharging his remaining listed debts.

Applicant's explanations of medical debts are plausible and reasonable to a degree. They certainly show how he incurred medical bills associated with treatment for his wife and youngest daughter. Extenuating circumstances sufficient to warrant application of MC 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," of the Guidelines for financial considerations are somewhat in evidence in this record.

Mitigation credit, though, is not available to Applicant based on his proofs. Without any credible demonstration of concrete steps (to include financial counseling) to absolve himself of any deficiency responsibility on his foreclosed home, and his remaining debts covered in the SOR, Applicant does is not in a position to take advantage of any of the remaining mitigating conditions.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant's debt accumulations does not enable Applicant to surmount security concerns either. Documented Applicant efforts to address the listed debts and demonstrate extenuating circumstances, repayment efforts where warranted, and good-faith disputes (if any) all could have had a bearing on Applicant's demonstrated reliability and trustworthiness, but are not available in this evidentiary record. Without more, it is difficult to draw convincing conclusions about Applicant's overall trustworthiness based on factors not covered in the mitigation conditions of the guideline for financial considerations.

Taking into account all of the facts and circumstances surrounding Applicant's accumulated debts, Applicant does not mitigate security concerns related to his proven debt delinquencies. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.a through 1.dd of the SOR.

### **Applicant's debt omissions**

Posing potential security concerns, too, are Applicant's documented omitted delinquent debts in the SF-86 he completed in August 2005. He attributed his omissions to haste and his failure to double-check his bills before completing his SF-86

as evidence of his lack of any intent to deliberately mislead the Government. His claims have merit.

From a whole person perspective, Applicant presents as an essentially honest and hardworking applicant who failed to use due diligence in checking his bills to determine whether any of them fell into the 180 day and 90 day delinquency categories covered in the SF-86. His SF-86 omissions were not motivated by any deliberate intent to mislead the Government, and his omissions are not indicative of any overall trust problem.

Based on Applicant's accepted explanations, he may take full advantage of: MC 17(f), "the information was unsubstantiated or from a source of questionable reliability." Applicant is credited with his successful refutation of the allegations of falsification in sub-paragraphs 2.a and 2.b of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Sub-paras. 1.a through 1.dd:	AGAINST APPLICANT
GUIDELINE E: (PERSONAL CONDUCT):	FOR APPLICANT
Sub-paras. 2.a and 2.b:	FOR APPLICANT

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge