

KEYWORD: Financial; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 63-year-old chief financial officer and partner with a business that contracts with the federal government. He had a series of financial problems that arose in 1999-2000. He accumulated over \$100,000 of delinquent debts that remain unpaid. He decided to stop paying some of his debts. He intentionally failed to list, on his security clearance application, that he had any debts in the past seven years that were over 180 days delinquent. Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is denied.

CASENO: 06-21218.h1

DATE: 04/30/2007

DATE: April 30, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 06-21218
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CAROL G. RICCIARDELLO**

**APPEARANCES**

**FOR GOVERNMENT**

Braden Murphy, Esq., Department Counsel

**FOR APPLICANT**

Dan Hargrove, Esq.

**SYNOPSIS**

Applicant is a 63-year-old chief financial officer and partner with a business that contracts with the federal government. He had a series of financial problems that arose in 1999-2000. He accumulated over \$100,000 of delinquent debts that remain unpaid. He decided to stop paying some of his debts. He intentionally failed to list, on his security clearance application, that he had any debts in the past seven years that were over 180 days delinquent. Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline J, criminal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 1, 2006, detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on November 29, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 18, 2007. With the consent of the parties, I convened a hearing on March 20, 2007, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Department Counsel moved to amend the SOR to reflect the correct dollar amount in ¶ 1.1. There being no objection, the amount was changed to reflect \$8,230. The Government offered three exhibits that were marked as GE 1-3 and admitted without objection. Applicant testified on his behalf, had one witness testify, and offered twelve exhibits that were marked as AE A-L and were admitted without objection. DOHA received the hearing transcript (Tr.) on March 30, 2007.

### **FINDINGS OF FACT**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 63 years old and the chief financial officer and partner, along with two other partners for a business with approximately 27-30 employees. The three partners have been in business together since 1987. The business contracts with commercial entities and the federal government as resellers of high technology. Applicant and his partners hold top secret clearances. Applicant has held his clearance since approximately 1997. Applicant is responsible for the accounting and financial aspects of the business, including producing monthly and annual financial statements, liaising with banks to obtain and repay loans, and initiating large lines of credit with

banks to maintain the company's buying ability.<sup>1</sup> He is considered by his partners to be an expert in finances and handles his responsibilities in an honest and trustworthy manner and is accountable for all of the business' finances. His partners believe he has a keen sense of attention to detail and his handling of the company's finances is beyond reproach.<sup>2</sup>

In May 1998 Applicant married. His wife had two daughters from a previous marriage. Applicant owned a home at the time, but purchased a different one so his stepdaughters could continue to attend the same school they had previously. He leased his original home (House C) and lived in House (T) with his family. Due to his wife's mental problems the marriage ended in September 1999. Applicant was ordered to support his ex-wife until the end of 1999, and allow her to remain in House T until then. As an act of benevolence he continued to provide her support until sometime in 2001. This included paying for living expenses, a car, and tuition for the stepdaughters' education.<sup>3</sup>

Sometime in 1998 Applicant acquired stock from another company in an exchange for other stocks. He took the stock and deposited it in two different brokerage firms. There was a waiting period before he could sell the stock. He used the stock as collateral on two margin loans. One margin loan was for \$150,000 based on the value of the stock at \$416,917. The second margin loan was for \$300,000, based on stock value of approximately \$780,000. A margin loan carries significant risk in the event the stock falls below a certain value. The stock market is unpredictable. It is commonly understood that the greater the risks, the greater the potential, but not guaranteed, rewards. Applicant assumed this risk when he secured a margin loan. Although Applicant believed it was unlikely that the stock would fall below margin, it was not totally unforeseeable. It was merely a risk he was willing to take because of the greater rewards. Unfortunately for Applicant, the stock fell below a predetermined threshold and there was a margin call. It resulted in the stock being sold and it created a tax liability of more than approximately \$100,000 for Applicant.<sup>4</sup> In addition, when Applicant borrowed \$450,000 on margin, he took the money and lent it to a business acquaintance because he believed he could yield a higher interest rate. The loan was unsecured and had no collateral. Applicant believed he could make more money with the loan. The acquaintance subsequently went bankrupt and Applicant lost the \$450,000.<sup>5</sup>

Applicant worked out a repayment plan with the Internal Revenue Service to pay the tax debt. He refinanced his two houses and since tax years 1999 and 2000, he has been consistently repaying his tax debts and has approximately \$9,000 remaining to be paid for penalties and interest.<sup>6</sup>

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<sup>1</sup>AE A Affidavit from partner, sworn.

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

<sup>3</sup>Tr. 68.

<sup>4</sup>Tr. 66-81.

<sup>5</sup>AE F.

<sup>6</sup>Tr. 79-85; AE E and G. I have not considered Applicant's debt to the IRS for disqualifying purposes, but have considered it when analyzing the whole person.

Applicant continued to own two houses until December 2006, when he sold one of his houses. He lived in House C beginning in 2000. He had attempted to sell House C in 2003 and again in 2005, but it was in need of repair and the housing market was in a downturn, so he was unable to sell the house. He did repairs on the house and it eventually sold in December 2006. Applicant paid more than \$16,000 to close on the house.<sup>7</sup> The monthly mortgage payments on the two houses were approximately \$6,000.

Applicant and his business partners decided to pursue a new business venture in 2001. The venture did not prove to be profitable and the partners' income dropped. In 1999, Applicant listed his adjusted income as \$185,000. It dropped to \$68,000 in 2000; \$43,000 in 2001; \$40,000 in 2002; and then started to rise to \$81,000 in 2003; \$187,000 in 2004; and \$325,000 in 2005.<sup>8</sup> When Applicant's income went down he began using credit cards to maintain his expenses.<sup>9</sup> He claimed he could not afford his expenses because of the decrease in his salary.<sup>10</sup> The delinquent credit cards and other debts listed in the SOR are in excess of \$104,000. Applicant disputes some of the amounts.

Applicant contacted some of the credit card companies in 1999 to negotiate lower payments and they refused.<sup>11</sup> Applicant contracted with a credit consolidation service in October 2003 to work out a monthly repayment payment.<sup>12</sup> He was to pay \$1,357 a month and it would be disbursed to seven creditors. He made four to six payments and then stopped because he stated he could not afford the payments.<sup>13</sup> He continued to pay the mortgages on the two homes he owned. He spoke with a bankruptcy attorney in approximately 2002-2003, who advised him not to file bankruptcy. Applicant stated the attorney advised him to not pay the credit cards with the highest balances. Some of the delinquent credit card debts that Applicant owes have been charged off by the creditors. Some of the debts were referred to collection agencies. In addition, Applicant stated he maintains other credit cards that are not delinquent and pays them regularly.

Applicant assumed financial responsibility for his girlfriend in 2001. He pays \$400 a month on a lease for a car for her. He pays for her gas, groceries, cell phone, insurance and all living expenses. She contributes \$1,000 annually to the household and expends \$1,000 in supplies for her art business. In addition, he has spent approximately \$50,000 over two to three years to repair House

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<sup>7</sup>Tr. 88-98; AE K.

<sup>8</sup>AE I; These are the amounts that Applicant lists as his "actual" income. He lists his total income for 1999 as \$272,771; 2000 as \$299,595; 2001 as \$52,837; 2002 as \$50,178; 2003 as \$109,990; 2004 as \$224,963; 2005 \$360,608.

<sup>9</sup>Tr. 98.

<sup>10</sup>Tr. 98.

<sup>11</sup>Tr. 98.

<sup>12</sup>Tr. 99; AE J.

<sup>13</sup>Tr. 174.

C.<sup>14</sup> He has approximately \$30,000 in savings he is holding in reserve to pay his taxes.<sup>15</sup> He also has approximately \$70,000 in a 401k plan. He estimated his monthly expenses are approximately \$5,000.

Applicant admits he owes the credit card debt in SOR 1. a, but disputes the amount, believing he owes \$22,099. The debt was charged off and Applicant has not paid it. He stated he is not paying this debt because of insufficient funds.<sup>16</sup>

The debt in SOR 1. b is a credit card debt referred to collection November 2003. He believes this debt is a duplication of 1. i. He has made no effort to repay it.<sup>17</sup>

The debts in SOR 1. c and 1.d are both credit card debts that Applicant has elected not to pay.<sup>18</sup> SOR 1.d is a \$256 delinquent debt referred to a collection agency that remains unpaid. Applicant has not contacted the creditor to inquire about information concerning the debt or resolve it.<sup>19</sup>

SOR 1.f is a medical debt of \$364. Applicant denies the debt because he has no information as to the identity of the creditor. He has not taken any action to find out who the creditor is and if it is a legitimate debt.<sup>20</sup> SOR debt 1.g is another debt that Applicant does not recognize, but has made no attempt to contact the creditor and resolve it.<sup>21</sup> This account was opened in April 2004.

SOR debt 1.h is a debt for \$60 and the creditor has a local address.<sup>22</sup> Applicant stated he did not recognize the creditor and has not made contact to resolve it.<sup>23</sup> This debt was referred to collection in April 2004. SOR debt 1.i is a credit card debt charged off in May 2004 for \$17,064. Applicant stated he believed it is the same debt as SOR 1. b. He did not provide specific verification to support his claim and has not done anything to pay the debt or contest its duplication.<sup>24</sup>

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<sup>14</sup>Tr. 176.

<sup>15</sup>Tr. 175.

<sup>16</sup>Tr. 134-137.

<sup>17</sup>Tr. 138.

<sup>18</sup>Tr. 137-138.

<sup>19</sup>Tr. 139.

<sup>20</sup>Tr. 140; GE 2 at 2.

<sup>21</sup>Tr. 10; GE 3 p 11.

<sup>22</sup>Tr. 143; GE 3 p. 4.

<sup>23</sup>*Id.*

<sup>24</sup>Tr. 143.

SOR debt 1. j is a debt for \$400 to a local creditor.<sup>25</sup> Applicant stated he does not know who the creditor is. He has not done anything to resolve the debt.<sup>26</sup> It was sent to collection in June 2004. SOR debt 1. k is for \$425 for an account referred for collection in July 2004.<sup>27</sup> Applicant stated he does not know who the creditor is and has done nothing to research or resolve the debt.<sup>28</sup>

Applicant denies the debt in SOR 1.l because he cannot recall the account. It is a credit card debt for \$8,230 that was charged off in August 2004.<sup>29</sup> Applicant admits the debt in SOR 1.m. It is a credit card debt for \$10,224 that was sent to collection in October 2004. He has not contacted the creditor or done anything to resolve the debt.<sup>30</sup>

Applicant does not know the medical creditor in SOR 1.n. He did not recall if he received medical services. The amount owed is \$175. Applicant has not paid it or attempted to resolve it.<sup>31</sup>

The debt in SOR 1.o is for satellite television service. Applicant contracted with the service through a promotional offer. He later canceled the service and disputed the amount of \$390 owed.<sup>32</sup> He has not paid or resolved the debt.

Applicant has not paid any of the debts owed in SOR 1.a-1.o. Some of the debts are charged off and some remain in a collection status. Applicant stated he has not spent the time to find out what the debts were incurred for.<sup>33</sup> Applicant has not contacted any of the creditors on the SOR since 1999 when he attempted to negotiate lower payment options with certain creditors.<sup>34</sup> He stated he intended to contact the creditors and work out payment plans, but has not done anything yet.<sup>35</sup>

Applicant completed and swore to his security clearance application renewal on January 12, 2005. Question 38 asked: *Your Financial Delinquencies-180 Days, In the last 7 years, have you been over 180 days delinquent on any debt(s)?* Applicant responded "No." Question 39 asked: *Your Financial Delinquencies-90 days, Are you currently over 90 days delinquent on any debt(s)?* Applicant answered "No." Applicant stated the reason he did not state he had delinquent debts over

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<sup>25</sup>GE 3 at 3.

<sup>26</sup>Tr. 144.

<sup>27</sup>GE 3 p.2.

<sup>28</sup>Tr. 145.

<sup>29</sup>Tr. 145.

<sup>30</sup>Tr. 146-147.

<sup>31</sup>GE 2; Tr. 147.

<sup>32</sup>Tr. 147-149.

<sup>33</sup>Tr. 172.

<sup>34</sup>Tr. 142.

<sup>35</sup>Tr. 170

180 days was because “I had talked to counsel, and they indicated that anything that had been dismissed was not considered past due.”<sup>36</sup> He interpreted “dismissed” to mean “written off” or “charged off.”<sup>37</sup> Applicant stated he had sought this attorney’s advice regarding filing bankruptcy in 2002-2003. When asked if the attorney had told him that he did not have to list any of his debts on his security clearance application or if Applicant discussed his responses to his security clearance application with him, Applicant’s response was, “No, we didn’t talk specifically about this.”<sup>38</sup> He further stated, “It wasn’t in regard to the security clearance. It was just in general with creditors.” He further stated: “We didn’t talk about [the] security application. I just asked him if a debt had been charged off, was it considered past due.” Applicant never sought advice on how to answer questions on his security clearance application.<sup>39</sup> He stated he made a mistake in not putting his debts on his security clearance application. Applicant did not write any explanation or clarification in Question 43, which asks: *General Remarks-Do you have any additional remarks to enter in your application?* He did not notify the government that he failed to list his delinquencies prior to being confronted by a government investigator.<sup>40</sup> Based on the entire record of evidence, testimony and observation, I find Applicant was not credible and he deliberately and intentionally failed to list his delinquent debts.

## POLICIES

“[N]o one has a ‘right’ to a security clearance.”<sup>41</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 occupy a position . . . that will give that person access to such information.”<sup>42</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>43</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>44</sup> “The clearly consistent standard indicates that security clearance determinations should

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<sup>36</sup>Tr. 155.

<sup>37</sup>*Id.*

<sup>38</sup>Tr. 157.

<sup>39</sup>Tr. 158.

<sup>40</sup>Tr. 164.

<sup>41</sup>*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>42</sup>*Id.* at 527.

<sup>43</sup>Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

<sup>44</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

err, if they must, on the side of denials.”<sup>45</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>46</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>47</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.<sup>48</sup>

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive to be considered in evaluating a person’s eligibility to hold a security clearance. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the revised adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline F-Financial Considerations are a concern because 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.

Guideline E-Personal Conduct is a concern because conduct involving questionable judgment, lack of candor, dishonest, 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.

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

<sup>46</sup>*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

<sup>47</sup>Executive Order 10865 § 7.

<sup>48</sup>*See* Exec. Or. 10865 § 7.



Guideline J-Criminal Conduct is a security concern because criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

### CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19 (a) (*inability or unwillingness to satisfy debts*) and FC DC 19 (c) (*a history of not meeting financial obligations*), apply in this case. Applicant has more than \$104,000 in delinquent credit cards and other debts that he has not paid. He made a decision that he would not pay his large credit card debts. The debts are charged off or in collection. He admits he owes most of the debts and has not made payments on the debts. Those debts that he stated he was unaware of, whom the creditor was, or what the debt was incurred for, he has not taken action to contact or research the debt to resolve it. Many of his debts date back to 1999 through 2005. For a period of time Applicant may have been unable to pay some of his debts, but based on all of the facts he is also unwilling to pay his debts and has established a history of financial delinquency.

I have considered all the Financial Considerations Mitigating Conditions (FC MC), and especially considered 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*), FC 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*), FC MC 20 (c) (*the person received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*), FC MC 20 (d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), FC MC 20 (e) (*the individual has a reasonable 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 many delinquent debts are recent because they remain unpaid. Applicant went through a period of financial crisis. He took out two large margin loans. The loans involved risk. When the stocks went below margin and were sold, he had a significant tax liability. He lent a large amount of money without any collateral in an unsecured loan. Both actions were risky financial decisions made by Applicant, who is an astute businessman with a great deal of experience, as the chief financial officer of a business. Although he had hoped to make money from his decisions, he did not. Applicant did not have control over the financial markets and the acquaintance who defaulted on a large loan, but he did have control over the risk he was willing to take to reap greater rewards. Applicant did not have control over his divorce that caused additional financial problems. He also did not have total control over the decision he and his partners made to pursue additional

opportunities that then failed and reduced his income for a period of time. Applicant did have control over how he handled his personal finances during his financial problems. He made certain financial choices in what to do about the two houses he owned. Because the housing market was weak, he kept both houses and continued to make the payments on them. However, he decided to live off of credit cards during this period. He failed to pay those credit cards listed in the SOR. His salary has increased steadily since 2004, but he has not made an attempt to pay back the creditors in the SOR, despite acknowledging he owes most of the debts. I find the debts are recent and unresolved and that his lack of action to repay his creditors cast doubt about his judgment, reliability and trustworthiness. Therefore FC MC 20 (a) does not apply.

I have considered all of the financial issues that occurred that affected Applicant, including all of those mentioned in the findings of fact and conclusions. I find that some of the conditions that resulted in Applicant's financial turmoil were beyond his control. I also find he did act responsibly in setting up a payment plan for his tax liability and helping his ex-wife. I find he did not act irresponsibly in his business' decision to expand in a market that did not prove profitable. However, I also find he did not act responsibly by living off of numerous credit cards and not making an effort to repay them. He deliberately chose to not pay his credit cards and other bills that continue to remain delinquent. He continues to maintain other credit cards, but has not made an effort to resolve those debts listed on the SOR. He does not dispute most of them, but has not paid them. His salary is at a level that he could make some payments. He pays for a car, insurance, subsistence and other living expenses that are not reimbursed for his friend, but is unwilling to pay even the smallest of the debts listed in the SOR. Therefore I find FC MC 20 (b) does not apply.

Applicant sought bankruptcy advice and started a credit repayment program, but failed to continue the monthly payment plan. He has not made a good faith effort to repay his creditors nor is there clear indications that the problem is being resolved. Applicant's finances have improved, and although he claimed he intended to resolve his debts, he has not shown a clear indication or action to do so. I find FC MC 20 (c) and (d) do not apply.

Applicant disputes the amount of certain debts listed in the SOR and denies others. However, he has not substantiated his claims. In 1999 he contacted some of the creditors to see if he could negotiate lower payments. This was not a satisfactory plan to the creditors and since then Applicant has not attempted any other resolution. I find FC MC 20 (e) does not apply.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) 16 (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*) applies. Applicant intentionally failed to list he had delinquent debts over 180 days on his security clearance application. Applicant had been going through a severe financial crisis since 1999. He admitted he was living off of credit cards. He is familiar with the security clearance application and its purpose. Although he stated he spoke to a bankruptcy attorney about listing charged off debts as it pertained to bankruptcy, it is simply not credible that he believed he did not have to divulge any of his financial problems on his security clearance application. Some of Applicant's debts were not charged off, but were in collection. Applicant is an astute savvy businessman with years of financial experience. The question is quite clear: "In the last 7 years have you been over 180 days delinquent on any debt(s)?" Applicant's

explanation for not listing his debts is simply not believable. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background.<sup>49</sup> An applicant's financial history is a matter that could affect a final agency decision on whether to grant the applicant a clearance, and an applicant's failure to disclose the information would impede a thorough investigation of his background. At the time he completed the security clearance application Applicant was aware of his delinquent debts and that he was required to list them, yet he deliberately failed to do so. Hence, the above disqualifying condition applies.

I have considered all of the Personal Conduct Mitigating Conditions (PC MC ) and especially considered PC MC 17 (a) (*the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and PC MC 17 (e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress*). There is no evidence to support any effort by Applicant to correct the falsifications before being confronted with the facts. Applicant's answers on his application regarding his debts were deliberate falsifications with the intent to mislead. Applicant has not provided any information of positive steps he has taken to reduce his vulnerability to exploitation, manipulation or duress. I find PC MC 17 (a) and (e) do not apply.

Based on all the evidence, Criminal Conduct Disqualifying Condition (CC DC) 31(a) (*a single serious crime or multiple lesser offenses*) and 31 (b) (*allegations or admissions of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*), apply. Applicant intentionally and deliberately lied on his security clearance application, a felony violation under Title 18 U.S.C. § 1001.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) 32 (a) (*so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), and CC MC 32 (d) (*there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement*). Applicant's falsification of his security clearance application casts doubt about his reliability, trustworthiness and good judgment. His falsifications on an application to consider his trustworthiness to protect our nation's secrets are troubling. He had an opportunity to reflect on his falsifications before being interviewed and come forward to correct them, but he did not. His actions cast doubt on his reliability, trustworthiness and good judgment. I find there is insufficient evidence of successful rehabilitation. Therefore, I find CC MC 32 (a) and (d) do not apply.

### **Whole Person Analysis**

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole

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<sup>49</sup>ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002).

person” concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person in evaluating the case. I considered Applicant’s credibility, demeanor and responsiveness when testifying. I reviewed and considered the documentary evidence. I also considered Applicant’s extensive financial experience and background, and ability to make important decisions. Applicant had a series of financial crises occur that were unfortunate. Some were because of risks he assumed and some he did not have control over. However, Applicant also made choices regarding his finances and living expenses. He knew of his financial problems and discussed them in great detail, but he also knew he was responsible for divulging them on his security clearance application and intentionally did not. His explanation for why he did not was not believable. He has made no effort to repay the debts listed in the SOR.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns based on his financial considerations, personal conduct and criminal conduct.

**FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

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|---------------------------|-------------------|
| Paragraph 1. Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a:-1.p:    | Against Applicant |
| Paragraph 2. Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a:         | Against Applicant |
| Subparagraph 2.b:         | Against Applicant |
| Paragraph 3. Guideline J: | AGAINST APPLICANT |
| Subparagraph 3.a:         | Against Applicant |

**DECISION**

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

Carol G. Ricciardello  
Administrative Judge