



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 06-22913
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 20, 2008

**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 22, 2003.<sup>1</sup> On January 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 13, 2007, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted

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<sup>1</sup>Applicant's 2003 security applications (signed October 18 and dated October 22) form the basis for the falsification allegations. Applicant's most recent completed application (electronic questionnaire) is dated October 10, 2007. This is included in the FORM.

the Government's written case on February 20, 2008.<sup>2</sup> Applicant received a complete file of relevant material (FORM) on February 27, 2008, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant submitted additional information on March 13, 2008, and April 28, 2008. The case was assigned to me on May 9, 2008. Based upon a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, dated March 13, 2007, Applicant admitted the factual allegations in ¶ 1.e of the SOR. He also admitted the factual allegations in ¶¶ 2.a-2.d of the SOR with explanations but denied any intentional falsification. Applicant denied the other allegations because the debts were paid or he had no knowledge of them. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 46-year-old employee of a defense contractor. He graduated from high school in 1979, and received an Associate Degree in May 1982. He is divorced with one child. He has worked for his current employer since October 2007 (GE 12). Applicant held an interim security clearance since 2003 (GE 3).

From 1990 until 2003, Applicant worked in various positions in the field of electronics (GE 12). He was unemployed for six months from May to September 2003 (GE 5). In 2007, he also reported unemployment from May until October.

In October 1990, Applicant was arrested and charged with a Driving Under the Influence offense. He was speeding after leaving a bar. He was found guilty of DUI (Interview 2006).

The SOR alleges five delinquent debts, including one foreclosure on Applicant's home in the amount of \$76,986. The total amount of other debt that Applicant owes is approximately \$20,000 (GE, 6, 7, 8, 10, 11, and 13).

Applicant admitted that the account in allegation ¶ 1.e for \$76,986 is a result of unemployment and an inability to sell or make payments on the home that he purchased in 1997. The loan was for \$77,000. He reports that when he purchased the home he had good credit and no unpaid accounts. He could not make payments in 2001 and the home was foreclosed in 2003 (GE 6). He believes the home was sold and believes he does not owe anything on the account due to FHA insurance. He has not contacted anyone about this matter. The foreclosure is listed on a 2007 credit report (GE 13).

For the following allegations: ¶¶ 1.a, 1.b, 1.c, and 1.d, Applicant claimed that he paid the accounts. He provided documentation for 1.b, an account that was settled for

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<sup>2</sup>The Government submitted 14 items in support of its contention.

\$890 (GE 9). Applicant submitted handwritten notes that were not legible (GE 3) and bank statements from his father for proof of payment for the other accounts. However, they did not match the accounts in the SOR. In addition, 1.a, 1.c, 1.d, and 1.e are still listed on the December 2007 credit bureau report (GE 13).<sup>3</sup>

The current status of Applicant's delinquent debts is as follows: one debt is paid. He hired an attorney in March 2008 to work with the credit bureaus to audit and verify the status of his credit report. He submitted a letter from the law firm, dated April 24, 2008 stating that "according to our client's report" certain accounts are no longer showing on the credit report. Credit bureau reports dated February, March and April 2007 show the accounts as noted above in 1.a, 1.c, and 1.d as unpaid in collection. Applicant did not report receiving financial counseling.

Applicant's answer and submissions to the FORM explain his attempts to remove the delinquent debts from his credit reports because he either disputed them or claimed that the debt was paid. He did not provide sufficient documentation to support his position concerning the debts alleged.

Applicant's current net monthly income is \$2,500. He reported no monthly expenses except for a miscellaneous \$500 a month. His net remainder is listed as \$1,950 (GE 9).

Applicant completed his October 18, 2003 security application (executed on October 22, 2003). In that application he answered "no" to question 24. Your Police Record - Alcohol/Drug Offenses, and "no" to questions 35, 38 and 39 concerning financial matters (GE 4).<sup>4</sup>

In 2007, in his answer to the SOR, Applicant explained that he made an error and that he just incorrectly marked the boxes. He elaborated in his answer to the SOR that he must not have read the question properly and he was not trying to hide anything (GE 3).

In March 2006, Applicant was interviewed as part of the security clearance process. He reported to the investigator that his financial difficulties started in 2001. He related to the interviewer that he was unemployed in 2001 but that time period does not correspond with the dates listed in his security application for his period of unemployment. He also stated that he received unemployment benefits and worked some odd jobs. He told the investigator that he knew his credit was "less than favorable" but had not reviewed his credit reports in a few years. During the interview, Applicant acknowledged certain debts and also discussed his financial difficulties and the various

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<sup>3</sup>Applicant submitted various bank statements and documents but did not identify which documents supported the debts listed in the allegations under Guideline F.

debts he had incurred. His credit reports confirm that Applicant had delinquent debts in 2003.

When Applicant completed his October 2007 security clearance application he answered “yes” to section 23: Your Police Record (which asks about prior arrests). He reported a February 1990 felony for driving under the influence.<sup>5</sup> He also answered “yes” to section 28 (a) and (b): Your Financial Delinquencies. He listed 2000 as the year the delinquencies were incurred. He provided a credit card debt of \$14,000 (not listed on the SOR) and stated he is working with his creditors to verify the item (GE 12).

### **Policies**

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The

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<sup>5</sup>There is no reference in the record to a 1981 DWI as noted in 2.a of the SOR.

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for Financial Considerations is set out in AG & 18:

Failure or inability to live within one-s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual-s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts<sup>@</sup> is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations<sup>@</sup> may raise security concerns. Applicant accumulated delinquent debts on numerous accounts and a foreclosure on his home. He did not meet his financial obligations from 2001 until the present time. His credit reports confirm that he has recent debts as well. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where Athe 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.<sup>@</sup> Applicant-s financial worries arose in approximately 2001. He accumulated some delinquent debt due to an inability to pay his home mortgage. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He has not acted responsibly. His conduct over the last six months with his creditors does not remove security concerns or doubts about his current reliability, trustworthiness, and good

judgment. He has approximately \$20,000 in delinquent debt. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating 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. As noted above, Applicant reported a period of unemployment in his answer to the FORM and in his interview with the investigators in 2006. However, the information is not consistent with his security clearance application employment periods. Although Applicant's home foreclosure may have initially started a downturn for him, he did not provide any explanation as to how this impacted his ability to pay other debts. He also related that he took odd jobs and received unemployment benefits. After he became re-employed, he did not act responsibly in identifying and resolving these debts. I find this potentially mitigating condition partially applies.

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. Applicant has not received counseling. He settled one debt in 2006. While some overdue debts may have been made current after 2003, Applicant did not provide documentation that the debts alleged have been paid. His reliance on his efforts to have items removed from his credit reports is not resolution of the financial issue. His efforts are not sufficient to carry his burden in this case. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant originally stated that he disputed some debts. He did not elaborate and his responses and efforts focus on hiring a law firm to remove the delinquent accounts from his credit reports rather than paying them or providing documentation that they are not his bills. I conclude this potentially mitigating condition does not apply.

### **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 cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel 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.

In this case, when Applicant completed his 2003 security application, he did not list any delinquent debts, or his 1990 arrest for driving while under the influence. In his 2007 security application, he listed delinquent accounts and answered “yes” to questions dealing with financial difficulties. In 2006, he reported during his security investigation that he knew he had credit problems. He also reported the 1990 DUI on his 2007 application. In his answer to the FORM in 2008, Applicant stated that he made an error in not listing the relevant information concerning debts or his police record. His explanations are not credible and not consistent. He provided deliberately false information. Thus, 16(a) applies.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case. After considering them, none of the mitigating conditions in AG ¶ 17 apply. Applicant’s falsification of his SF 86 in October 2003 is not minor. He did not promptly inform the government of his falsification. His interview in 2006 was three years after his 2003 application. He did not receive counseling to improve his conduct. No one advised him to falsify his SF 86. The falsification of his SF 86 is substantiated. The falsification of his 2003 SF 86 casts doubt on his current reliability, trustworthiness, and good judgment. Thus, none of the mitigating conditions apply under this guideline.

### **Whole Person Concept**

Under the whole person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.” Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and conclude they are insufficient to overcome the government’s case. Applicant has served in various positions with an interim security clearance for a number of years. However, Applicant has a long history

of financial difficulties and has not resolved many debts. The record contains scant information concerning Applicant. He chose to have his case decided on the written record. His answer to the SOR and submissions to the FORM are not sufficient for him to meet the burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations and personal conduct.

**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 F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant

**Conclusion**

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

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NOREEN A. LYNCH  
Administrative Judge