

DATE: January 31, 2007

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In re:

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SSN: -----

Applicant for Trustworthiness Position

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ADP Case No. 06-10343

## **ECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has approximately 51 delinquent debts, an approximate total of \$85,000. Much of the debt remains unresolved. He did not sufficiently explain his omission of his delinquent accounts, including judgments on his trustworthiness application. Criminal conduct concerns were raised based on this omission and his past criminal history. Concerns under financial considerations, personal conduct, and criminal conduct remain. Applicant's eligibility for a assignment to a sensitive position is denied.

### **STATEMENT OF THE CASE**

On November 15, 2004, Applicant submitted an application for a position of public trust - an ADP I/II/III position. The Defense Office of Hearings and Appeals (DOHA) declined to grant the application under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive").<sup>(1)</sup> On August 2, 2006, DOHA issued to Applicant a Statement of Reasons (SOR) detailing the basis for its decision. The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline F, Financial Considerations, Guideline E, Personal Conduct, and Guideline J, Criminal Conduct.

In a sworn statement dated October 12, 2006, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on November 1, 2006. A notice of hearing was issued on November 13, 2006, scheduling the hearing for November 30, 2006. The hearing was conducted on that date. The government submitted seven exhibits that were marked as Government Exhibits (Gov Ex) 1-7. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted two exhibits which were admitted as Applicant Exhibits (AE) A and B without objection. The record was held open until December 14, 2006. Applicant did not submit further documents. DOHA received the hearing transcript (Tr.) on December 8, 2006.

### **FINDINGS OF FACT**

In his SOR response, Applicant admits the allegations under Guideline F, ¶¶ 1.a, 1.g-1.v, 1.x-1.z, 1.dd-1.ff, 1.hh, 1.kk, 1.nn - 1.qq, 1.ss-1.uu and 1.yy, but denies the allegations in ¶¶ 1.b-1.f, 1.w, 1.aa-1.cc, 1.gg, 1.ii, 1.jj, 1.ll, 1.mm, 1.rr, 1.vv-1.xx. He denies all of the allegations under Guideline E, ¶¶ 2.a and 2.b. Under Criminal Conduct, he admits ¶¶ 3.a-3.d and denies ¶ 3.e. (2) Applicant's admissions 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 a 46 year old man employed by a Defense contractor who is seeking a position of public trust. He has a high school education. (3) He has been employed with his current employer since November 2004 and is currently a team leader in the customer service department. (4) He is single and has four children, ages 25, 22, 15 and 13. (5)

On November 15, 2004, Applicant completed a Public Trust Position Application (SF 85-P). (6) He answered, "No." in response to question "19. Your Financial Record - Bankruptcy, Liens, Judgments: In the last 7 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subjected to a tax lien, or had a legal judgment rendered against you for a debt?" In response to question "20. Your Financial Record- 180 Day Delinquencies: Are you now over 180 days delinquent on any loan or financial obligation? (Include loans or obligations funded or guaranteed by the Federal Government.)," he also answered, "No."

A subsequent background investigation revealed Applicant has 51 delinquent accounts with a total approximate balance of \$85,545. (7) The delinquent accounts include 14 judgments, one state tax lien, 34 collection accounts and three charged off accounts. The status of the accounts are as follows:

SOR Paragraph	Debt	Status	Record
1.a	\$460 judgment entered on July 26, 2000 for unpaid rent.	Admits. Unresolved.	Tr. 14-15, 30; Gov Ex 4 at 1; Gov 6 at 6.
1.b	\$1,877 judgment entered on August 19, 1992, for unpaid rent.	Denies. Claims rented month to month. Not resolved.	Tr. 30-31; Gov Ex 3 at 18; Gov Ex 4 at 2; Gov Ex 6 at 13.
1.c	\$2,196 state tax lien entered in July 1997.	Denies. Claims paycheck garnished.	Tr. 31-34; Gov Ex 4 at 3.
1.d	\$2,205 judgment entered in January 2001, for unpaid rent.	Denies. Documentary evidence indicates it is another person - wrong SSN	Tr. 34-35; Gov Ex 4 at 4.
1.e	\$844 judgment entered in December 2000, for unpaid rent.	Denies. Unresolved.	Tr. 34-36; Gov Ex 3 at 5; Gov Ex 5 at 2; Gov Ex 6 at 5.
1.f	\$758 judgment entered in August 2003 for unpaid rent.	Denies but admits co-signed brother's lease. Unresolved.	Tr. 36-37; Gov Ex 2 at 6; Gov Ex 3 at 5, 21; Gov Ex 5 at 2; Gov Ex 6 at 5.
1.g	\$4,772 judgment entered in May 2002 for delinquent child support.	Admits. Paycheck is garnished.	Tr. 37-38; Gov Ex 2 at 5, 8; Gov Ex 3 at 2; Gov Ex 5 at 2; Gov Ex 6 at 3, 5.
1.h	\$1,823 judgment entered in December 1999 for delinquent child support.	Admits. Paycheck is garnished.	Tr. 37-38; Gov Ex 2 at 5, 8; Gov Ex 3 at 3; Gov Ex 5 at 2; Gov Ex 6 at 3, 6.
1.i	\$4,009 judgment owed to an auto insurance company.	Admits. Set up payment plan.	Tr. 38-39; Gov Ex 2 at 6; Gov Ex 3 at 3; Gov Ex 5 at 2; Gov Ex 6 at 3, 5; AE B.
1.j	\$260 collection account for a returned check placed for collection in March 2003.	Admits. Unresolved.	Tr. 40-41; Gov Ex 2 at 9; Gov Ex 3 at 17; Gov Ex 5 at 2.

1.k	\$92 medical account placed for collection in October 2003.	Admits. Unresolved.	Tr. 40; Gov Ex 2 at 8-9; Gov Ex 6 at 11.
1.l	\$375 returned check placed for collection in July 2005.	Admits. Unresolved.	Tr. 40-41; Gov Ex 5 at 2.
1.m	\$134 electric bill placed for collection in June 2001.	Admits. Unresolved.	Tr. 41; Gov Ex 2 at 9; Gov Ex 3 at 10; Gov Ex 5 at 2; Gov Ex 6 at 14.
1.n	\$475 medical account placed for collection in February 2004.	Admits. Unresolved.	Tr. 41; Gov Ex 2 at 8-9; Gov Ex 3 at 12; Gov Ex 6 at 11.
1.o	\$112 medical account placed for collection in July 2004.	Admits. Unresolved.	Tr. 42; Gov Ex 2 at 8-9; Gov Ex 3 at 14; Gov Ex 5 at 2; Gov Ex 6 at 13.
1.p	\$92 medical account placed for collection in October 2001.	Admits. Unresolved.	Tr. 42; Gov Ex 2 at 8-9; Gov Ex 3 at 14; Gov Ex 5 at 2.
1.q	\$65 medical account placed for collection in June 2001.	Admits. Unresolved.	Tr. 42; Gov Ex 2 at 8-9; Gov Ex 5 at 2; Gov Ex 6 at 9, 13.
1.r	\$81 medical account placed for collection in August 2001.	Admits. Unresolved.	Tr. 42; Gov Ex 2 at 8-9; Gov Ex 5 at 2; Gov Ex 6 at 9,13.
1.s	\$256 satellite television account placed for collection in June 2005.	Admits. Unresolved.	Tr. 42; Gov Ex 3 at 21; Gov Ex 5 at 2.
1.t	\$469 medical account placed for collection in September 2001.	Admits.	Tr. 42; Gov Ex 2 at 8-9; Gov Ex 3 at 17; Gov Ex 5 at 2.
1.u	\$154 cable television account placed for collection in June 2004.	Admits. Claims paid, did not provide receipt.	Tr. 42-43; Gov Ex 2 at 10; Gov Ex 3 at 15; Gov Ex 5 at 2; Gov Ex 6 at 15, 19.
1.v	\$58 gas bill placed for collection in November 2004.	Admits. Unresolved.	Tr. 43; Gov Ex 3 at 22; Gov Ex 5 at 2.
1.w	\$141 satellite television account placed for collection in April 2001.	Denies. Believes paid since has active account with same company.	Tr. 43-45; Gov Ex 2 at 10; Gov Ex 3 at 6; Gov Ex 5 at 2; Gov Ex 6 at 7, 16.
1.x	\$870 account for unpaid rent placed for collection in January 2001.	Admits but believes duplicate of SOR ¶ 1.a. Unresolved.	Tr. 45; Gov Ex 5 at 2.
1.y	\$201 department store account charged off in arch 2001.	Admits. Unresolved.	Tr. 46; Gov Ex 5 at 3; Gov Ex 6 at 9.
1.z	\$21,191 collection account for delinquent child support.	Admits. Paycheck garnished.	Tr. 46-47; Gov Ex 2 at 5, 8; Gov Ex 3 at 11; Gov Ex 5 at 3; Gov Ex 6 at 4.
1.aa	\$947 account placed for collection in December 1999.	Denies. Unresolved.	Tr. 47-49; Gov Ex 2 at 7; Gov Ex 3 at 7, 9, 22; Gov Ex 5 at 3; Gov Ex 6 at 10, 14.
1.bb	\$2,116 to unknown medical creditor for account charged off in March 2005.	Denies. Does not recognize account. Unresolved.	Tr. 49; Gov Ex 5 at 3.

1.cc	\$1,013 judgment for unpaid rent entered in June 2001.	Denies. Claims co-tenant failed to pay.  Unresolved.	Tr. 49-50; Gov Ex 2 at 5; Gov Ex 3 at 2; Gov Ex 6 at 3.
1.dd	\$4,008 judgment for delinquent child support entered in January 2001.	Admits. Paycheck garnished.	Tr. 50-51; Gov Ex 2 at 5, 8; Gov Ex 5 at 2; Gov Ex 6 at 3, 6; Gov Ex 3 at 3.
1.ee	\$1,658 judgment for unpaid child support entered in July 1999.	Admits. Paycheck garnished.	Tr. 50-51; Gov Ex 2 at 5, 8; Gov Ex 3 at 4; Gov Ex 6 at 4.
1.ff	\$16,150 judgment for unpaid child support entered in March 1999.	Admits. Paycheck garnished.	Tr. 50-51; Gov Ex 2 at 5, 8; Gov Ex 3 at 4; Gov Ex 6 at 4.
1.gg	\$4,220 judgment for unpaid rent, entered in February 1998.	Denies. Claims never lived there.  Unresolved.	Tr. 51; Gov Ex 3 at 4; Gov Ex 6 at 4.
1.hh	\$245 account charged off in August 2004.	Admits. Unresolved.	Tr. 52; Gov Ex 2 at 7; Gov Ex 3 at 6; Gov Ex 6 at 8.
1.ii	\$128 medical account placed for collection in August 2004.	Denies. Not familiar with this account. Unresolved.	Tr. 52; Gov Ex 2 at 8-9; Gov Ex 3 at 7; Gov Ex 6 at 9.
1.jj	\$5,691 balance owed after car repossession in 2001.	Denies. Claims told he did not have to pay off the balance.	Tr. 52-53; Gov Ex 2 at 7; Gov Ex 3 at 7; Gov Ex 6 at 9.
1.kk	\$586 medical account placed for collection in ay 2003.	Admits. Unresolved.	Tr. at 53; Gov Ex 2 at 8-9; Gov Ex 6 at 16.
1.ll	\$882 medical account placed for collection in ay 2002.	Denies. Not familiar with debt.	Tr. at 53; Gov Ex 2 at 8-9; Gov Ex 6 at 10.
1.mm	\$302 medical account placed for collection in arch 2004.	Denies. Not familiar with debt.	Tr. at 53-54; Gov Ex 2 at 9; Gov Ex 3 at 10; Gov Ex 6 at 10, 14.
1.nn	\$80 account placed for collection in February 2001.	Admits. Unresolved.	Tr. at 54; Gov Ex 2 at 7-8; Gov Ex 3 at 12; Gov Ex 6 at 12.
1.oo	\$52 account placed for collection in July 2003.	Admits. Unresolved.	Tr. at 54; Gov Ex 2 at 7-8; Gov Ex 3 at 12; Gov Ex 6 at 12.
1.pp	\$34 account placed for collection in July 2003.	Admits. Unresolved.	Tr. at 55; Gov Ex 2 at 7-8; Gov Ex 3 at 13; Gov Ex 6 at 12.
1.qq	\$66 account placed for collection in February 2001.	Admits .  Unresolved.	Gov Ex 2 at 7-8; Gov Ex 3 at 13; Gov Ex 6 at 12.
1.rr	\$1,577 apartment account placed for collection in August 1999.	Denies. Not familiar with apartments.	Tr. at 55; Gov Ex 2 at 10; Gov Ex 3 at 13; Gov Ex 6 at 13, 19.
1.ss	\$87 account placed for collection in October 2000.	Admits. Unresolved.	Tr. at 55; Gov Ex 2 at 8; Gov Ex 3 at 15; Gov Ex 6 at 15.
1.tt	\$72 account placed for collection in October 2000.	Admits. Unresolved.	Tr. at 55; Gov Ex 2 at 8; Gov Ex 3 at 15; Gov Ex 6 at 15.
1.uu	\$882 medical account placed for collection in February 2002.	Admits. Unresolved.	Tr. at 55-56; Gov Ex 2 at 8-9; Gov Ex 3 at 16; Gov Ex 6 at 16.
1.vv	\$284 medical account placed for collection in December 1998.	Denies. Does not recall debt.	Tr. at 56; Gov Ex 2 at 8-9; Gov Ex 3 at 16; Gov Ex 6 at 17.
1.ww	\$329 medical account placed for collection in December 1999.	Denies. Does not recall debt.	Tr. at 56; Gov Ex 2 at 8-9; Gov Ex 6 at 17.

1.xx	\$151 account placed for collection in January 1999.	Denies. Does not recall debt.	Tr. at 56; Gov Ex 2 at 10; Gov Ex 3 at 17; Gov Ex 6 at 17.
1.yy	\$15 radiology account placed for collection in January 2001.	Admits. Unresolved.	Tr. at 56; Gov Ex 3 at 18.

Of the debts alleged in the SOR that Applicant admits to, he has not resolved any of the accounts. He entered into a payment plan in November 2006, for the debt alleged in SOR ¶1.i which relates to a debt owed to an insurance company after a car accident. [\(8\)](#) He submitted proof that he started making payments on another account which does not appear to be alleged in the SOR. [\(9\)](#) He claims to have paid the debts in SOR ¶¶ 1.u and 1.w but has not provided proof of payment. He has not formally disputed any of the debts that he denies. He testified that his paycheck is being garnished for the child support he owes but provided no copies of his paycheck verifying this or the current balance of the child support owed. The child support judgments are for his two youngest children. [\(10\)](#) He claims the state tax lien alleged in SOR ¶ 1.c was paid through wage garnishment but provided no evidence to support this assertion. [\(11\)](#) The debt alleged in SOR ¶ 1.d is not Applicant's. Documentary evidence indicates it is the debt of another individual who has the same name as Applicant but has a different social security number. [\(12\)](#)

Some of the accounts are medical accounts. In 2001/2002, Applicant had a heart attack. He did not have health insurance at the time. Some of the debts were paid by a state health insurance program which is similar to Medicaid. [\(13\)](#) He admits to being responsible for some of the medical debts. I find for Applicant with respect to the medical debt alleged in SOR ¶¶ 1.bb. Applicant denies this debt. The only evidence supporting this allegation is a vague entry on a credit report indicating that it is a medical account which was charged off. [\(14\)](#) The name of a creditor or collection agency is not listed. I find the allegation too broad to give proper notice to Applicant about this debt.

Applicant also had two periods of unemployment. He was unemployed from January 2002 to March 2002. He was also unemployed from November 5, 2003, to December 8, 2003. [\(15\)](#)

Applicant has not attended credit counseling. [\(16\)](#) He considered filing for bankruptcy but chose not to do so based on the cost. [\(17\)](#) He recently got a pay raise. He makes \$14.75 an hour and works 40 hours a week. He also works as a part-time softball umpire. [\(18\)](#)

Applicant claims that when he filled out his trustworthiness application, he was not aware of any debts that were over 180 days old. He claims he did not realize that he had delinquent debts including judgments and liens until he was provided a copy of his credit report during his background investigation. [\(19\)](#) Considering the extensive number of judgments filed against Applicant and the numerous delinquent accounts, I find Applicant's explanation for not listing his judgments and delinquent debts that were over 180 days old implausible. At hearing, questions about his credibility were further raised by his testimony that he listed information about his child support judgments on his trustworthiness application. [\(20\)](#) In fact, no information pertaining to the child support judgments are listed on his trustworthiness application. He also listed only one of his four children in response to question 10 on the security clearance application. He did not list his two younger children - he is obligated to provide child support for these two children. [\(21\)](#) I find his omission of his judgments and delinquent debts were deliberate.

From July 1979 to February 2001, Applicant has been arrested or charged with a criminal offense on four occasions. On July 12, 1979, he was arrested and charged with criminal possession of state property, 3rd degree; unlawful possession of marijuana and trespass. [\(22\)](#) On October 18, 1985, he was charged with criminal assault, two counts of domestic violence and destruction of property. He was found guilty of assault and malicious mischief-domestic violence. [\(23\)](#) On December 17, 2000, he was charged with domestic violence - assault and contributing to the delinquency of a minor. He failed to appear in court and a failure to appear warrant was issued on May 1, 2001. [\(24\)](#) On February 15, 2001, he was arrested and charged with threat/intimidate and interfere with judicial proceedings-domestic violence. He pled guilty to interfere with judicial proceedings-domestic violence. He was sentenced to 12 months probation and required to attend [\(25\)](#)

eight weeks of domestic violence counseling. He completed the terms of his sentence. He has not been arrested nor had any further incidents of domestic violence since that time.<sup>(26)</sup>

Applicant provided no information related to his duty performance.

## POLICIES

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>(27)</sup> The President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."<sup>(28)</sup>

To be eligible for assignment for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.<sup>(29)</sup> The adjudicative guidelines at issue in this case are:

**Financial Considerations** - An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified or sensitive information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

**Personal Conduct** - Personal conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

**Criminal Conduct** - Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets and/or sensitive information. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

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

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(30)</sup> An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(31)</sup> An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.<sup>(32)</sup>

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made.<sup>(33)</sup> Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.<sup>(34)</sup> Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.<sup>(35)</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." (36) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (37) The same rules apply to trustworthiness determinations for access to sensitive positions.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline F - Financial Considerations; Guideline E - Personal Conduct; and Guideline J, Criminal Conduct.

### **Financial Considerations**

Based on all the evidence, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*A history of not meeting financial obligations*); and FC DC E2.A6.1.2.3 (*Inability or unwillingness to satisfy debts*) apply to Applicant's case. Applicant has a history of not meeting his financial obligations since 1998. The SOR alleged approximately 51 delinquent accounts with a total approximate balance of over \$85,000. Some of these delinquent accounts may be duplicates of each other, however, the burden was on Applicant to provide proof of the current status of his accounts. He did not provide sufficient evidence to indicate any of the SOR allegations related to the same debt.

I considered the Financial Considerations Mitigating Conditions (FC MC). Applicant has numerous delinquent debts which remain unresolved. Therefore, I cannot apply FC MC E2.A6.1.3.1 (*The behavior was not recent*), and FC MC E2.A6.1.3.2 (*The behavior was isolated*). He has a nine year history of financial irresponsibility so the behavior is not isolated.

FC MC E2.A6.1.3.3 (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*) applies, in part. Several medical bills were incurred as a result of Applicant's heart attack in late 2001/early 2002. He did not have health insurance at time of his heart attack. The state paid some of the bills but not all. He also had two brief periods of unemployment. However, this does not explain the full extent of his nine year history of financial irresponsibility. Although MC 3 applies, in part, one must also consider a person's actions towards resolving the delinquent debt. Based on Applicant's minimal actions in resolving his delinquent debt, I give MC 3 little weight.

I cannot apply FC MC E2.A6.1.3.4 (*The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or under control*) since Applicant has not attended financial counseling. He continues to have numerous unresolved delinquent debt. It is unlikely that his financial problems will be resolved in the near future.

While I acknowledge Applicant provided evidence that he took steps to resolve two of his delinquent accounts, (38) I cannot apply FC MC E2.A6.1.3.6 (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). He has taken little action to resolve the majority of his delinquent accounts other than the child support accounts which are being repaid through wage garnishment.

Applicant has not mitigated the security concern under Guideline F. Guideline F is decided against Applicant.

### **Personal Conduct**

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

I conclude that Applicant deliberately omitted his judgments in response to question 19 and his numerous debts that were over 180 days old in response to question 20. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2

*(The deliberate omission, concealment, or falsification of relevant and material 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. Although Applicant claims that he did not deliberately withhold his judgments in response to question 19 and his delinquent debts in response to question 20 on the trustworthiness application, his explanation that he was not aware that he had delinquent debt lacks credibility considering the extent of his delinquent debt. When he signed the application, he certified that his answers were "true, complete, and correct to best of his knowledge and belief and are made in good faith." The government expects Applicants for trustworthiness determinations to tell the truth at all times. Considering the extent of his delinquent debt, I find he deliberately did not list his debts on his trustworthiness application.*

I find that none of the mitigating conditions apply under personal conduct. Guideline E is decided against Applicant.

## **Criminal Conduct**

The government established its case under Guideline J. From July 1979 to February 2001, Applicant was arrested on four occasions. His most recent criminal conduct was his deliberate falsification on his November 15, 2004, security clearance application which violates Title 18 United States Code § 1001. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1: *(Allegations or admission of criminal conduct, regardless of whether the person was formally charged)* and CC DC E2.A10.1.2.2: *(A single serious crime or multiple lesser offenses)* are raised in Applicant's case.

The criminal conduct concern can be mitigated. Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1: *(The criminal behavior was not recent)* does not apply since the falsification occurred during Applicant's most recent background investigation. It is recent. CC MC E2.A10.1.3.2 *(The crime was an isolated incident)* does not apply since Applicant has a prior criminal history. It is too soon to apply CC DC E2.A10.1.3.6: *(There is clear evidence of successful rehabilitation)* due to the recency of the deliberate falsification. Applicant has not mitigated the criminal conduct concern. Guideline J is decided against Applicant. In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole 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 have considered all the evidence and the "whole person" in evaluating Applicant's trustworthiness. I am persuaded by the totality of the evidence that it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

## **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: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against Applicant



Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: Against Applicant

Subparagraph 1.t: Against Applicant

Subparagraph 1.u: Against Applicant

Subparagraph 1.v: Against Applicant

Subparagraph 1.w: Against Applicant

Subparagraph 1.x: Against Applicant

Subparagraph 1.y: Against Applicant

Subparagraph 1.z: Against Applicant

Subparagraph 1.aa: Against Applicant

Subparagraph 1.bb: For Applicant

Subparagraph 1.cc: Against Applicant

Subparagraph 1.dd: Against Applicant

Subparagraph 1.ee: Against Applicant

Subparagraph 1.ff: Against Applicant

Subparagraph 1.gg: Against Applicant

Subparagraph 1.hh: Against Applicant

Subparagraph 1.ii: Against Applicant

Subparagraph 1.jj: Against Applicant

Subparagraph 1.kk: Against Applicant

Subparagraph 1.ll: Against Applicant

Subparagraph 1.mm: Against Applicant

Subparagraph 1.nn: Against Applicant

Subparagraph 1.oo: Against Applicant

Subparagraph 1.pp: Against Applicant

Subparagraph 1.qq: Against Applicant

Subparagraph 1.rr: Against Applicant

Subparagraph 1.ss: Against Applicant

Subparagraph 1.tt: Against Applicant

Subparagraph 1.uu: Against Applicant

Subparagraph 1.vv: Against Applicant

Subparagraph 1.ww: Against Applicant

Subparagraph 1.xx: Against Applicant

Subparagraph 1.yy: 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

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.d: Against Applicant

Subparagraph 3.e: Against Applicant

**DECISION**

In light of all of the evidence presented in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. Eligibility is denied.

ERIN C. HOGAN

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended; and Memorandum for the Deputy Under Secretary of Defense Counterintelligence and Security, titled "Adjudication of Trustworthiness Cases," dated November 19, 2004.
2. Answer to the SOR.
3. Tr. 46; Gov Ex 1.
4. Tr. 20.
5. Tr. 37-38, 47, 67.
6. Gov Ex 1.
7. Gov Ex 2, 3, 4, 5, 6.
8. Tr. at 27; AE B.
9. AE A.
10. Tr. at 37-38.
11. Tr. at 30-31.
12. Gov Ex 4 at 4.
13. Tr. at 65.
14. Gov Ex 5 at 3.
15. Tr. at 66.
16. Tr. at 57.
17. Tr. at 68.
18. Tr. at 57-58.
19. Tr. at 10, 58.
20. Tr. at 58.
21. Gov Ex 1.
22. Gov. Ex. 7 at 3.
23. *Id.*

24. Gov. Ex. 2.

25. Gov. Ex. 2; Gov Ex. 7 at 3.

26. Tr. at 64.

27. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

28. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).

29. *Id.* at Appendix 8.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at ¶ C8.2.1.

34. Directive , ¶ E3.1.14.

35. *Id.* at ¶ E3.1.15.

36. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

37. Directive, ¶ E2.2.2.

38. AE A and B.