



ISCR Case No. 07-02850

Decision

case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 3), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleges under Guideline F, financial considerations, that Applicant owes delinquent debt totaling \$12,364 (SOR ¶¶ 1.a through 1.q). Under Guideline E, personal conduct, Applicant is alleged to have deliberately falsified his June 2006 electronic questionnaire for investigations processing (e-QIP)¹ by denying that he was over 180 days delinquent on any debts within the last seven years, and that he was currently over 90 days delinquent on any debts (SOR ¶ 2.a). In his Answer (Item 3), Applicant admitted most of the debts. He denied the medical debts alleged in SOR ¶¶ 1.h and 1.i, and did not respond to SOR ¶ 1.p concerning a telephone debt of \$316. He attributed his financial problems to health issues in his family, including his prostate cancer, over the past 10 years, but averred he was working hard to take care of his bills. He indicated that a hospital debt of \$1,216 (SOR ¶ 1.b) was being repaid at \$50 every two weeks. As for his failure to list his debts on his e-QIP, Applicant indicated without explanation that he did not understand the questions. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 58-year-old married father of two daughters, who are 30 and 17 years old, respectively. He has worked for the same defense contractor in various capacities (as laborer, rigger, pumper) since February 1973 and holds a secret-level security clearance (Item 1, Item 5, Item 6, Item 9).

On June 26, 2006, Applicant completed an e-QIP. He responded "No" to question 28a. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and question 28b. "Are you currently over 90 days delinquent on any debt(s)?" (Item 4). A Questionnaire for Sensitive Positions (SF 86) was also completed and it was forwarded to the government. The signature form for the e-QIP, which had been signed by Applicant on June 26, 2006, was attached to the SF 86. The SF 86 contained negative entries to the financial delinquency inquiries: "28A-LAST 7 YRS, OVER 180 DAYS DELINQUENT ON ANY DEBTS?" and "28B-CURRENTLY OVER 90 DAYS DELINQUENT ON ANY DEBTS?" (Item 5). It cannot be determined from the record if Applicant completed the SF 86 himself or it was prepared by his employer based on information he submitted on the e-QIP. Applicant certified by his signature on the e-QIP that the statements on the form were "true, complete, and correct to the best of [his] knowledge and belief and [were] made in good faith." (Item 4).

¹The FORM also includes as Item 5 a Questionnaire for Sensitive Positions (SF 86) bearing a copy of the signature page for the e-QIP form dated June 26, 2006. The government alleged Applicant falsified his e-QIP but quoted the questions in their abbreviated form as they appear on the SF 86.

A check of Applicant's credit on July 21, 2006, revealed several outstanding debts charged off or placed for collection, and one unpaid judgment of \$1,468 awarded a hospital in November 2000 (SOR ¶ 1.a). An automobile loan account of \$13,610 opened in September 1998 had been charged off in January 2002 in the amount of \$1,805 (SOR ¶ 1.c). In February 2002, Applicant leased a vehicle from another lender. He exceeded the mileage limit (Answer) and in November 2005, the lender charged off a \$4,623 balance (SOR ¶ 1.d). Several medical providers also referred unpaid balances totaling \$1,898 for collection over the period June 2000 to February 2006 (SOR ¶¶ 1.b, 1.e, 1.h, 1.i, 1.k, 1.l). The credit report also disclosed unpaid telephone charges of \$61 (SOR ¶ 1.m) and \$316 (SOR ¶¶ 1.j and 1.q, same debt) in collection since November 2003 and October 2005, respectively. In December 2005, a satellite television provider placed a debt balance of \$251 for collection (SOR ¶ 1.f) (Item 9).²

In April 2007, DOHA sent Applicant financial interrogatories, asking him to document any payments of the debts reported as delinquent on his July 2006 credit report. Applicant furnished recent pay stubs showing a weekly take-home pay with overtime of \$754.61 based on a base hourly rate of \$19.89. He also provided a May 2006 credit report showing new six collection accounts totaling \$701 placed with a single assignee by the county hospital since February 2002 (SOR ¶ 1.b), a \$164 collection debt for magnetic resonance imaging services delinquent since May 2006 (SOR ¶ 1.p), a new radiology debt of \$33 assigned in August 2006 increasing the total debt for radiology services to \$96 (SOR ¶ 1.i), and a \$355 telephone debt placed April 2006 (SOR ¶ 1.o). The recent credit report showed no progress toward resolving the debts that had been previously reported as delinquent. However, Applicant provided evidence of satisfaction by credit card on May 22, 2007, of a \$50 medical debt owed to the county hospital (SOR ¶ 1.b). Applicant also submitted a personal financial statement on which he disclosed miscellaneous expenses of \$1,500 for a vacation. Applicant reported his monthly expenses and debt payments (mortgage and another loan) exceeded his net income (Item 6).

At DOHA's request, Applicant completed another personal financial statement on June 15, 2007. He reported a total net income monthly of \$3,224, although the specific net salary figures of \$831 for himself and \$700 for his spouse do not add up to that figure. He reported lower monthly expenses due to a reduction in utility and medical costs. Assuming total net income of \$3,224 as reported, he had about \$208 remaining each month. He also indicated he had \$500 in savings (Item 7).

A check with Equifax Information Services on August 30, 2007, showed Applicant had paid \$150 of the medical collection debt in SOR ¶ 1.b (including \$50 paid by credit card in May 2007). Seventeen medical debts totaling about \$1,714 were listed as delinquent, about \$1,421 referred for collection since January 2006. Not listed on the credit report is about \$1,090 in other medical debt previously reported as delinquent on his consolidated report in July 2006. The credit report does not reflect any payments on the listed judgment debt in SOR ¶ 1.a, the automobile debts in SOR ¶¶ 1.c and 1.d, or

²The credit report contains duplicate listings for several of the collection accounts.

on the \$355 telephone debt in SOR ¶ 1.o. Previously reported other non-medical debts of \$251 for satellite television (SOR ¶ 1.f), and \$316 (SOR ¶¶ 1.j and 1.q, same debt) and \$61 (SOR ¶ 1.m) for telephone services, do not appear on the latest credit report (Item 8).

Applicant's financial problems are attributable in part to illness suffered by himself, his spouse, and a daughter, which caused bills to pile up. He indicated in October 2007 that the last ten years have been difficult for him and he would pay the debts as soon as he is able (Item 3).

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(c), 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 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

that 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.

Applicant has a history of financial delinquency since about 2000. That November, a hospital obtained a judgment of \$1,468 against him that has not been paid (SOR ¶ 1.a). Over the next seven years, various medical providers placed debt balances for collection totaling about \$2,800 (SOR ¶¶ 1.e, 1.g, 1.h, 1.i, 1.k, 1.l, 1.n, 1.p).³ Two auto lenders charged off debt balances totaling \$6,793 (SOR ¶ 1.c, 1.d). Other non-medical debts totaling \$983 (SOR ¶¶ 1.f, 1.j, 1.m, 1.o) were referred for collection. Significant security concerns are raised by “inability or unwillingness to satisfy debts” (AG ¶ 19(a)) and by “a history of not meeting financial obligations” (AG ¶ 19(c)).

Applicant attributes his debts to medical problems suffered by him, his spouse, and his daughter (“We have had so much sickness in our family, everything just got pile [sic] up, right behind each other my daughter, my wife, myself.” Item 3). A substantial portion of his delinquent debt is medical, so AG ¶ 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”) applies in part, but it does not adequately allay the judgment concerns in this case. Applicant has

³DOHA alleged that Applicant owed the hospital \$2,093 (\$1,216 in SOR ¶ 1.b, \$ 80 in SOR ¶ 1.h, and \$797 in SOR ¶ 1.n). The July 2006 credit report includes unspecified medical debt, some of which may be owed the hospital. The evidence also shows the \$50 debt in SOR ¶ 1.e is owed to the hospital as well. The total medical debt outstanding amounts to about \$2,800 excluding the unpaid judgment that is owed to a different hospital.

owed a sizeable court judgment since November 2000. While he indicated he paid on it “a while back” before his spouse’s illness (Item 3), there is no evidence of any payments on the debt. In 2006/07, a county hospital referred six new debt balances ranging from \$46 to as high as \$320 for collection. On June 1, 2007, Applicant reported among his miscellaneous expenses that he spent \$1,500 for a vacation. It is not clear if he saved or borrowed the funds, but his discretionary expenditure is difficult to justify when so many accounts are in collection status. He did not list any miscellaneous expense on June 15, 2007, but indicated at that time that he had \$500 in savings and a net monthly remainder of \$208. While his repayments since March 2007 totaling \$150 on SOR ¶ 1.b (\$50 by credit card in May 2007) qualify as a good faith effort under AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”), Applicant remains under a significant debt burden that he has only just begun to address, and there is not enough information about his present financial situation to conclude that he will be able to resolve it in the near future.

Guideline E, Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

As of June 2006 when Applicant completed his e-QIP (Item 4) and the SF 86 (Item 5), he owed more than \$1,500 in medical debt in collection (SOR ¶¶ 1.b, 1.e, 1.h, 1.i, 1.k, 1.l), non-medical debts of about \$7,776 (SOR ¶¶ 1.1.c, 1.d, 1.f, 1.m, 1.o), and a civil judgment of \$1,468 (SOR ¶ 1.a). These debts should have been reported on both forms in response to the financial delinquency inquiries pertinent to debts over 180 days within the past seven years (section 28a) and to debts currently over 90 days delinquent (section 28b). Applicant instead responded “No” to both questions. Although not alleged by the government, the unpaid judgment debt also should have been reported in response to section 27d concerning judgments not paid in the past seven years.

Under AG ¶ 16(a) personal conduct concerns are raised by the “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.” Applicant does not contest that he answered “No” to the debt inquiries, but submits he did not intentionally falsify his clearance application (“I answer [sic] no because I did not understand the question, I am sorry about the wrong answer.” Item 3). Applicant’s explanation for the omissions must be considered, but also assessed in light

of the record evidence as a whole. The financial delinquency questions are straightforward. The overwhelming evidence of unpaid debt and Applicant's admissions of known debt (i.e., he started paying on the judgment debt "a while back," the finance company sent him a bill for the automobile loan debt in SOR ¶ 1.c, everything just piled up), lead me to conclude that Applicant falsified his clearance application. AG ¶ 16(a) applies.

In Applicant's favor, he responded to DOHA interrogatories by furnishing a requested credit report that discloses a significant amount of unpaid debt. He did not deny much of the debt when he answered the SOR. However, for mitigating condition AG ¶ 17(a) to apply, the efforts to correct the omission, concealment or falsification must be prompt and before confrontation ("the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts"). The record suggests the government learned of Applicant's indebtedness through its check of Applicant's credit on July 21, 2006 (Item 9). Although the government knew about Applicant's financial problems promptly, there is no indication that Applicant notified the government of any of his debts before he responded to the financial interrogatories in June 2007. AG ¶ 17(a) is not applicable.

The government must be able to rely on the representations of those persons granted access, and any lack of candor raises serious doubts in that regard. The record is silent about the circumstances under which Applicant completed either the e-QIP (Item 4) or SF 86 (Item 5). There is no evidence that Applicant relied in good faith on the improper or inadequate advice of an authorized person, such as security personnel at work or legal counsel (see AG ¶ 17(b)), or of such unique circumstances (see AG ¶ 17(c)) that would negate the reasonable inference of deliberate falsification.⁴ Furthermore, while Applicant has apologized for the "wrong answer" (Item 3), he has yet to acknowledge the knowing falsity of his responses to the financial inquiries. Therefore, I am also unable to apply AG ¶ 17(d) ("the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur").

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

⁴AG 17(b) applies where "the refusal to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully." AG ¶ 17(c) applies where "the offense is so minor, or such time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment."

of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial difficulties are due in significant part to non-covered medical costs, but this does not relieve him of his obligation to deal with his creditors in a responsible manner. As of January 2007, debts were still being referred for collection and most continue to go unpaid. Applicant also demonstrated an unacceptable tendency to put his interests ahead of his obligation of candor, and he has not yet shown that his representations can be completely relied on. I am unable to conclude that it is clearly consistent with the national interest to grant or continue a security clearance for him.

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 ⁵
Subparagraph 1.c:	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 ⁶
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

⁵Applicant has paid three \$50 debts that were assigned for collection in November 2001, October 2002, and January 2004 (Item 6, Item 8). He still owes at least the \$1,216 alleged in SOR ¶ 1.b.

⁶Applicant denies the two debts in ¶¶ 1.h and 1.l owed to the same assignee. The credit bureaus report the debts as unpaid and Applicant has not disproved his legal responsibility.

Subparagraph 1.n:	Against Applicant ⁷
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	(Same debt as ¶ 1.j)

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
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Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge

⁷The July 2006 credit report (Item 9) lists additional medical debt by account number but with no information as to the creditor. Applicant admitted the debt in his Answer (Item 3), however.