



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



In the matter of:	)	
	)	
	)	
SSN:	)	ISCR Case No. 07-03730
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 9, 2008

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

On August 14, 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, 1990), 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 August 28, 2007. He answered the SOR in writing on September 8, 2007, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 18, 2007. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on October 31, 2007. As of December 10, 2007, he had

not responded. I received the case assignment on December 13, 2007. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### Findings of Fact

In his Answer to the SOR, dated September 8, 2007, Applicant admitted all the factual allegations in the SOR.

Applicant is a 24-year-old employee of a defense contractor. He is a high school graduate. He is married and has a six-year-old daughter.<sup>1</sup> Applicant has an extensive amount of delinquent debt. He admitted to all the debts listed in the SOR. There is no evidence that any of the debts have been paid. Individual debts are discussed below.

The credit bureau reports (CBR) of August 30, 2006 and April 9, 2007, both list a delinquent debt to a collection agency in the amount of \$351, as alleged in SOR ¶ 1.a. Both credit reports list the date of last activity (DLA) as March 2003. The collection agency was assigned the debt for collection by a wireless telephone provider. In his interview with an Office of Personnel Management (OPM) investigator on September 28, 2006, Applicant stated that he would contact the wireless telephone provider and make payment arrangements.<sup>2</sup>

SOR ¶¶ 1.b and 1.f allege medical debts of \$231 and \$283. The CBR of August 30, 2006, lists these debts as collected by a collection agency. The CBR of April 9, 2007, does not list the name of the creditor. The CBRs list the DLA as March 2003, and January 2005. Applicant told the investigator that he was not sure what these accounts were for, but that if they were his accounts he would make arrangements to pay the accounts.<sup>3</sup>

Applicant purchased a motorcycle in about March 2004. His mother co-signed for the loan. Applicant lost his job, and his mother called the loan company and told them to take the motorcycle, initiating a voluntary repossession in about May 2004. The CBRs list a remaining balance of \$5,927, as alleged in SOR ¶ 1.c.<sup>4</sup>

SOR ¶ 1.d alleges a debt to a loan company of \$307. Both CBRs list this debt with a DLA of March 2005. Applicant told the investigator that he agreed with this account but could not recall who the exact creditor was. He stated he would attempt to contact the creditor and pay the debt.<sup>5</sup>

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<sup>1</sup> Item 4.

<sup>2</sup> Items 5-7.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

The two CBRs list a delinquent debt to a furniture store, as collected by a collection company, for \$2,381 and \$2,183. SOR ¶ 1.e alleges the debt with the lesser amount. The DLA for the debt to the furniture store is listed as March 2005. Applicant stated in his background interview that he and his mother bought furniture and he thought that his mother was paying on this account. He told the investigator that he would call his mother and check on the status of the account. He said if his mother had not been making payments that he would make the payments in the future.<sup>6</sup>

SOR ¶ 1.g alleges a debt to a collection company for \$997, on behalf of an apartment building. The DLA on the CBRs is October 2005. Applicant told the OPM investigator this debt was for an apartment lease he co-signed for his cousin. He stated he was unaware his cousin had not maintained payments, and he would contact his cousin and make sure the payments were made continuously and on time.<sup>7</sup>

The two CBRs list a delinquent debt to a bank in the amount of \$4,408 for a returned check, as alleged in SOR ¶ 1.h. The DLA is December 2005. Applicant told the OPM investigator that he obtained a loan and gave the proceeds to his brother so that his brother could complete school. He stated he placed the check in the creditor bank and was told that it would take three days to clear. Applicant told the investigator that having been made aware of the balance that he would make some type of arrangement to pay the creditor.<sup>8</sup>

The CBR of April 9, 2007, lists two medical debts, as alleged in SOR ¶¶ 1.i and 1.j, for \$335 and \$1,888. The name of the actual creditor is not listed. The DLA for both debts is November 2005. SOR ¶¶ 1.k through 1.m allege three debts to a collection agency, for debts of \$1,437, \$742, and \$248. The debts are listed on the CBR of April 9, 2007, all with a DLA of August 2005.<sup>9</sup>

Applicant submitted an Electronic Questionnaire for National Security Positions (SF 86) signed on May 2, 2006, and initialed on July 19, 2006. Applicant answered “NO” to all the pertinent financial questions on the SF 86. Question 28a asked, “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” Question 28b asked, “Are you currently over 90 days delinquent on any debt(s)?” In his background interview, Applicant denied intentionally falsifying the questionnaire. He admitted the two falsification allegations in the SOR. An admission to a falsification allegation is not absolutely binding on an Administrative Judge, particularly where there is an additional explanation that serves to undercut the admission.<sup>10</sup> In this case there are no additional explanations in Applicant’s response to the SOR, only the words “I admit.” Applicant

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Item 6.

<sup>10</sup> ISCR Case No. 02-21087 (App. Bd. Aug. 19, 2005).

submitted the SF 86 in 2006. He had a number of debts that were placed for collection in 2005, or earlier. He had explanations about why he did not know that certain of the debts were delinquent. I find that his explanations do not adequately explain his failure to disclose that he had delinquent debts. After considering all the evidence, including Applicant's statement to the investigator and his admissions in his response to the SOR, I find Applicant knew he had delinquent debts when he submitted the SF 86, and that he intentionally falsified these two questions.

## **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 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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The evidence of Applicant’s delinquent debts is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all the potential mitigating conditions, and especially considered AG ¶ 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,” 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,” AG ¶ 20(c) “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,” AG ¶ 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” and AG ¶ 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.”

There is no evidence that Applicant paid any of the debts as alleged in the SOR. He did not dispute owing any of the debts. Applicant blamed the repossession of the motorcycle on the loss of his job. He did not provide any information on how long he was unemployed. He stated that his mother did not make payments on the furniture they bought together and that his cousin must not have paid the rent on the apartment Applicant co-signed for him. These events are conditions, which if credible, could be considered as beyond Applicant's control. Applicant did not explain all his debts or what if any affect his unemployment had on his finances. There is also no evidence that he acted responsibly under the circumstances. Applicant has not shown a good-faith effort to repay overdue creditors or otherwise resolve debts, and there is no clear indication that the problem is being resolved or is under control. I do not find any of the mitigating conditions to be fully applicable.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,
- (b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Applicant's intentional falsification of his security clearance application raises two disqualifying conditions. They are AG ¶ 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" and AG ¶ 16(e) "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing."

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered all the potential mitigating conditions and I especially considered AG ¶ 17(a) “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” AG ¶ 17(b) “the refusal or failure 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) “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” 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,” and AG ¶ 17(e) “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” Applicant submitted his SF 86 in mid-2006. He deliberately failed to disclose significant delinquent debt. Applicant has not submitted sufficient credible information to establish any of the mitigating conditions.

### **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 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 has a history of shirking his financial responsibilities. He intentionally provided false information on his security clearance questionnaire. He provided very little additional information about his job performance or background.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his financial issues 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
Subparagraphs 1.a-1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. and 2.b:	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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Edward W. Loughran  
Administrative Judge