



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-04413
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: Pro Se

May 30, 2008

**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 9, 2005. On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns for financial considerations and personal conduct 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 November 29, 2007.

Applicant answered the SOR in writing on January 8, 2008. He admitted seven and denied one of the financial considerations allegations with explanation. He denied the allegation under Guideline E that he falsified information on his security clearance application. He admitted the allegation under Guideline E that he received a General

discharge (Under Honorable Conditions) from the Navy due to a pattern of misconduct. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 31, 2008. The case was assigned to another administrative judge on February 1, 2008, and reassigned to me on February 13, 2008. DOHA issued a notice of hearing on March 19, 2008, for a hearing on April 30, 2008. I convened the hearing as scheduled. The government offered 14 exhibits, marked government exhibits (Gov. Ex.) 1 through 14, which were received without objection. Applicant testified on his own behalf. Applicant did not submit any exhibits but the record was kept open for him to submit documentation. Applicant timely submitted seven documents, marked App. Ex. A-G, which were admitted to the record without objection from Department Counsel. (Gov. Ex. 15, Letter, dated May 27, 2008) DOHA received the transcript of the hearing (Tr.) on May 9, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

Department Counsel requested that I take administrative notice of MILPERSMAN 1910-140, admitted as Court Exhibit I, which governs separation of Navy members for a pattern of misconduct. I have taken administrative notice of the Navy regulation, which notes that two non-judicial punishments administered during a current enlistment are considered a pattern of misconduct.

### **Findings of Fact**

Applicant is 36 years old and has worked as a technician for a defense contractor for over a year. He left the Navy in 2006 after serving on active duty as an operations specialist and master at arms for over 16 years. He was administratively separated with a general discharge under honorable conditions for a pattern of misconduct. Applicant is a high school graduate and has taken some college level courses. He married another active duty Navy sailor, who is now a senior chief (E-8), in 1990. They have three children. They separated about two years ago and are in the process of divorcing. One of the children lives with Applicant and the other two with his wife. Applicant held a security clearance while on active duty. (Tr. 21-22; Gov. Ex. 1, security clearance application, dated December 9, 2005)

Applicant and his wife had financial and marital problems. When they separated, he moved aboard a ship and sent her all of his pay except \$400 per month. He believed his wife was taking care of the family finances. Applicant deployed with his ship, and on return learned that his wife had not been making mortgage payments. Applicant was advised to file a Chapter 13 bankruptcy and bring their mortgage payments current. Applicant and his wife consulted an attorney and they filed a Chapter 13 bankruptcy on January 4, 1999, as alleged in SOR 1.a. There was a paperwork problem created by their attorney so the petition was dismissed and resubmitted on March 24, 1999. After making a few monthly payments and bringing their mortgage current, on the advice of their bankruptcy attorney, Applicant and his wife converted the Chapter 13 to a Chapter

7 bankruptcy on June 23, 2003. Their debts were discharged in Chapter 7 bankruptcy on October 23, 2003. (SOR allegation 1.b; Tr. 23-26, 52-53; Gov. Ex. 3, bankruptcy documents, dated March 2, 1999; Gov. Ex. 4, bankruptcy documents, dated October 23, 2003)

Additional delinquent debts accumulated after Applicant's debts were discharged in bankruptcy. The SOR lists six delinquent debts totaling \$18,715. These debts include a charged off account to Capital One for \$1,174 (1.c); a charged off account for Washington Mutual/Provident for \$2,232 (1.d); another charged off Capital One account for \$1,074 (1.e); a judgment from Freedom Acceptance for \$3,594 (1.f); a collection account to the Department of Defense for \$10,192 (1.g); and a collection account to Zenith Acquisition for a credit card account of \$450 (1.h). (See, Gov. Ex. 5, credit report, dated December 28, 2005; Gov. Ex. 7, credit report, dated May 7, 2007; Gov. Ex. 9, credit report, dated July 24, 2007; Gov. Ex. 11, credit report, dated October 11, 2007; and Gov. Ex. 12, credit report, dated April 23, 2008) Applicant admitted all of the debts with explanation except the Zenith Acquisition debt in allegation 1.h, which he had no knowledge.

Applicant sought financial counseling but learned his debt load was such that debt consolidation would not assist him. He is now current with his mortgage and car payments. He and his wife are attempting to sell the home they own together. He hopes to pay his remaining debts with his share of the equity in the house, which is calculated at a total of \$97,000. Since separating from his wife, one of their children lives with Applicant and the other two with his wife. Applicant's monthly income from salary and Veteran's Administration disability is \$4,212. His monthly expenses are approximately \$2,075 with a discretionary fund remainder of \$2,137. (Tr. 41-50)

The first Capital One account, SOR allegation 1.c, is for a credit card account charged off for \$1,173, and was included in the Chapter 7 bankruptcy discharge. (Tr. 26-28) The second Capital One account, SOR allegation 1.e, is also for a credit card account and is listed as charged off and also the subject of a judgment for \$910.39. (Gov. Ex. 14, Judgment, dated September 14, 2007) Applicant has discussed the judgment with the creditor and is attempting to reach a settlement. (Tr. 28-29, 53-55; App. Ex. A, Letter, dated May 9, 2008)

The Washington Mutual/Provident account, SOR allegation 1.d, is for a credit card and is charged off for \$2,232. Applicant has written the creditor to settle the account but has not heard from them. (Tr. 31-32)

The Freedom Acceptance account, SOR allegation 1.f, was for computer and stereo equipment. Applicant has been making payments on the account and it is current with a balance of about \$1,737. (Tr. 29-31, 55-57; App. Ex. D, Account statement, dated May 20, 2008; Gov. Ex. 13, Judgment, dated February 27, 2007)

The debt to the Department of Defense for \$10,192, SOR allegation 1.g, was for the balance of a re-enlistment bonus received by Applicant which he is required to

repay because he did not complete the terms of the re-enlistment. Applicant received \$30,000 for a three year re-enlistment. He only served two years of the enlistment before being released from active duty. He is required to repay the portion of the re-enlistment bonus for the time not served. Applicant has contacted the collection agency for the creditor and is attempting to reach a payment agreement. (Tr. 32-35, 57-58; App. Ex. B, Letter, date May 9, 2008)

The Zenith Acquisition account, SOR allegation 1.h, was for a credit card. Applicant at first did have knowledge of the debt. After further inquiry, he acknowledged the debt and is making arrangement to make payments. Applicant has renewed his efforts to pay this account and requested an agreement to make payments. (Tr. 35-36, 58-59; App. Ex. E, Account notice, dated august 18, 2006; App. Ex. G, e-mail, dated May 23, 2008; App. Ex. E, account statement, dated August 18, 2006)

Applicant responded "NO" to question 26 on his security clearance application which asked in the last seven years had he ever been arrested, charged with, or convicted of any offense(s). Records show that in November 2004, while on active duty, Applicant was arrested and charged by civilian authorities with assault and battery. (Government Exhibit 6, Federal Bureau of Investigation report, dated December 29, 2005) Applicant was in an altercation with another person at a party. Police were called but Applicant departed the party before they arrived. He later learned that charges were filed. He was required to go to court but all charges were dismissed. Applicant did not list the offense on his security clearance application because he believed he was not required to do so since the charges were dismissed. When questioned about the offense by security investigators, he told them about the charge and explained he did not think it was required to be reported on the security clearance application since it was dismissed. (Tr. 50-52, 62-63)

Applicant was administratively separated with a General Discharge under Honorable Conditions from the Navy after over 16 years of active duty. He had received two non-judicial punishments during his most recent enlistment. (See, Court Exhibit I) Applicant received a traffic ticket and was required to go to court. He thought his absence from his duty station was approved by his chief through his leading petty officer. His absence was not approved and he received non-judicial punishment. Applicant believes his wife's fellow chief petty officers were working to cause him problems at his wife's request. Applicant was having marital problems and he wanted to be discharged from the Navy and received a second non-judicial punishment. (Tr. 20-21) Applicant is attempting to have the discharge upgraded to Honorable Discharge. (Tr. 60-61; App. Ex. F, Application for review of discharge, undated)

### **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.

## **Analysis**

### **Financial Consideration:**

Under financial considerations, 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to

protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶19(a) (inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (a history of not meeting financial obligations), Applicant accumulated delinquent debts because of an inability to pay his financial obligations. The bankruptcy discharges are not a security concern since bankruptcy is a legal and permissible means of resolving debts. His debts at the time were resolved through the process. However, the facts causing the bankruptcy and the financial actions taken after bankruptcy discharge should be examined to determine financial responsibility and the impact on security worthiness.

Financial Considerations Mitigating Conditions (FC MC) ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply. Some of the delinquent debts have only recently been addressed by Applicant. These debts are still not paid so they are current debts. There are a number of delinquent debts from various sources such as credit cards and a pay advance. Since they are current debts that have not been paid, they cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) has some application to Applicant's situation. Applicant had financial problems after he and his wife had marital problems, and she did not pay their bills as required. Applicant initially failed to take responsible action on the delinquent debts, even though he is now trying to act responsibly towards the debts. Of the six debts listed in credit reports, one was discharged in the bankruptcy, and one is being paid and the account is current. He recently contacted the other creditors. He has not heard from one creditor. He has been trying to make arrangements with the three other creditors, including the creditor for the largest debt. He has not yet made any arrangements and has not started to make any payments on these debts. He has not established responsible action towards his debts under the circumstances, so the mitigating condition does not apply.

FC MC ¶ 20(a) (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) does not apply. Applicant attempted to seek financial counseling, but

determined that it would not be assistance to him. This mitigating condition does not apply since he has not received any formal financial counseling.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) does not apply to Applicant. For FC MC ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. The debts arose because of the marital problems with his wife, his discharge from the Navy, and his wife’s failure to pay all of their debts while he was deployed. Applicant initially failed to make payment arrangements on all of his debts because some he was not aware of and the others he simply neglected. Applicant’s action on most of the debts has been to contact creditors to seek arrangements to pay the debts. Applicant presented no information to show he has a plan to pay the debts or any action taken to make payments. He has not been able to complete arrangements with creditors for payment plans. An applicant is not required to be debt free, but is required to act responsibly in regard to his finances. A promise to make arrangements or make future payments is not sufficient to indicate a good-faith effort to pay debts or an indication of acting responsibly towards the debts. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

## **Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person’s past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance process depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant’s incomplete answer to a question concerning an arrest for assault and battery charge on his security clearance application raises security concerns under Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (the deliberate omission concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations determine security eligibility or trustworthiness).

Applicant denied intentional falsification. He believed he did not have to list his arrest for assault and battery. Since the case was dismissed, he did not consider it an offense. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement

is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant knew of arrest but since the charge was dismissed he believed it was not required to be listed. While the question on the security clearance application is clear, a reader not schooled in legal matters could reasonably believe a dismissed offense is not considered as having happened. Applicant belief is reasonable and shows he did not deliberately fail to provide the correct information with the intent to deceive.

In addition, Applicant's discharge from the Navy for a pattern of misconduct raises a security concern under PC DC ¶ 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, . . .). In regard to this issue, I considered Personal Conduct Mitigating Conditions (PC MC) ¶ 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), and PC MC ¶ 19(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 PC MC ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress). Applicant's discharge was precipitated by his marital problems which caused the pattern of misconduct. He was willing to accept the discharge after many years of service just to be out of the Navy and the influence his wife had on his career through other chief petty officers. His actions could indicate he acted irresponsibly towards his career thus indicating he would act irresponsibly towards protecting classified information. However, his actions were caused more by marital issues than irresponsible conduct. Additionally, an administrative discharge for a pattern of misconduct could be a means of exploitation, manipulation or duress. Applicant's discharge was a one time event and happened under the unusual circumstances of marital problems. It is not likely to recur. He took responsibility and positive steps by applying to have his discharge upgraded. He is not under stress for the discharge and it does not affect his trustworthiness or reliability. I find for Applicant as to Personal Conduct.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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. I considered Applicant’s over 16 years of active duty in the Navy during which he successfully held a security clearance. He is taking positive steps to upgrade his discharge. I considered that his problems were precipitated by marital issues. I considered that he has delinquent debt that he is just by contacting creditors to make payment arrangements. He has not completed the arrangements or made any payments. He has the financial means to repay his debts with his creditors, but he is only now starting the process of payment. Applicant is now attempting to resolve his financial issues, and has the ability to enter a plan to pay his delinquent debts. If he establishes adequate arrangements with creditors and makes payments according to the plans, he may in the future be able to establish responsibly financial behavior.

On balance, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For the reasons stated, I conclude Applicant has not mitigated the security concerns arising from financial considerations. He has mitigated security concerns for 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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For 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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THOMAS M. CREAN  
Administrative Judge