



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



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-05017

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro Se*

March 6, 2008

**Decision**

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines F (Financial Considerations, E (Personal Conduct) and J (Criminal Conduct). Clearance is denied.

**Statement of the Case**

On November 7, 2006, Applicant submitted a Electronic Questionnaires for Investigations Processing (e-QIP) also known as Security Clearance Application (SF 86). On July 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised. The SOR alleges security concerns under Guidelines F (Financial), E (Personal Conduct), and J (Criminal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a sworn statement signed on August 14, 2007, and elected to have his case decided on the written record in lieu of a hearing. A letter was attached to the answer with some explanatory information. A complete copy of the file of relevant material (FORM), dated December 6, 2007, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided a letter with additional information dated February 22, 2008. The case was assigned to me on January 8, 2008.

### **Findings of Fact**

Applicant admitted in his response to the SOR six of the nine allegations of specific delinquent debts in the SOR relating to financial issues. He also admitted two allegations of a bankruptcy in 1997. He denied three delinquent debts for medical services. He admitted two allegations relating to personal conduct concerning failure to register for Selective Service and to disclose the delinquent debts in answer to Question 38 of his SF 86. He also admitted the same allegation relating to failure to register with Selective Service in the allegation of criminal conduct. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 33 years old who works for a defense contractor. He does not now hold a security clearance but seeks one to qualify for a position in the federal government.

### **Financial Considerations**

The security concern under Guideline F of the Directive is that Applicant incurred debts totaling over \$17,000 which became delinquent and have not been resolved. In addition he filed for Chapter 7 bankruptcy in 1997 which was discharged in 1998.

The letter enclosed with Applicant's answer stated some reasons why the three medical debts (SOR ¶¶ 1.e., 1.f., and 1.g.) were incorrect. However, no evidence was provided to substantiate his claim or dispute. All of the remaining delinquent debts are unresolved.

### **Personal Conduct**

Question 38 of Applicant's SF 86, asked if he had any debts that were 180 days delinquent in the past seven years. Applicant answered, "No" to this question notwithstanding the fact that there were such debts. He does not deny that he knew of the delinquent debts.

Also alleged under Guideline E is Applicant's failure to register under the Selective Service System as required by 50 U.S.C. Appendix 453. He admitted he failed

to register when he turned 18 years of age, but offered the explanation that he had a young family and was unfamiliar with U.S. laws. However, the record indicates that he did not have a family at that time. He did attempt to register after he was 26 years old, but registration is not permitted after that age.

## **Criminal Conduct**

The same facts relating to failure to register are alleged under Guideline J since such failure to register is a criminal offense punishable by a \$10,000 fine and imprisonment for five years, if the prosecution is made within five years of a person attaining the age of 26. (Item 9).

## **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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence," demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

### **Analysis**

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

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

AG ¶ 18 articulates the security concern relating to financial problems:

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 ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.”

Applicant’s history of delinquent debt is documented in his credit report (Items 5 and 7). At least six of the debts remain unresolved. The majority of his delinquent debts remain delinquent. He has provided insufficient documentation to show significant progress resolving his debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19 (c).

Five Mitigating Conditions (MC) under AG ¶¶ 20(a)-(e) have been considered. They are:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and,

(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.

Applicant provided a letter attached to his answer which indicates he has had some discussions with a credit counseling service. However, this is insufficient to establish mitigation under AG ¶ 20(c). His statement about contesting some of his medical bills is insufficient to warrant application of AG ¶ 20(e) to those debts because he did not provide "documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." No other mitigating conditions apply.

### **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.

AG ¶ 16 describes three conditions that could raise a security concern and may be disqualifying in this case. With respect to his failure to disclose information about his delinquent debts on his SF 86, AG ¶ 16(a) provides:

(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,

Specifically, his omission of delinquent debt information from his SF 86, constitutes a deliberate omission or falsification of relevant and material facts from his SF 86. Such conduct raises a security concern. AG ¶ 16(a) applies.

With respect to his failure to register with the Selective Service and falsification of his SF 86, the pertinent disqualifying conditions are AG ¶ 16(d)(3), a pattern of rule violations and AG ¶ 16(e)(1), which states, “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.” Certainly such conduct violates important civil rules in our society, and is conduct a person might wish to conceal as it adversely affects a person’s professional and community standing. AG ¶¶ 16(d)(3) and 16(e)(1) both apply.

AG ¶ 17 provides seven MCs that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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.

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability; and,

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions in AG ¶ 17 apply. Applicant's falsification of his SF 86 on November 6, 2006, is sufficiently recent as to be disqualifying. He did not promptly inform the government of the falsification. He admitted the false statement at issue, and the falsification of his SF 86 is substantial and casts doubt on his current reliability, trustworthiness, and good judgment. He failed to register with Selective Service when he reached age 18 and did not attempt to do so for eight years when he could have done so until reaching the maximum age to register.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying, ¶ 31(a), "a single serious crime," and ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted." Failure to register with the U.S. Selective Service System is a serious crime. Applicant admitted he failed to register without good cause. AG ¶¶ 31(a) and 31(c) apply.

AG ¶ 32 provides four MCs that could potentially mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and,
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Insufficient evidence has been offered to establish that any of the MC's are applicable in this matter.

## **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.

Applicant did not provide sufficient evidence to mitigate the disqualifying conditions previously discussed through application of the whole person concept. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to financial considerations, personal conduct and criminal conduct.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors" and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

### **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 E: Subparagraphs 1.a. to 1.k.:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a. and 2.b.:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline J: Subparagraph 2.a.:	AGAINST APPLICANT Against Applicant



## **Conclusion**

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

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Charles D. Ablard  
Administrative Judge