



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-08074
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Phillip D. Cave, Esquire

November 25, 2008

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on December 6, 2005. On September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on November 13, 2007, and requested a decision in his case be made administratively (on the record of documents presented). On February 28, 2008, he changed his position by deciding that he wanted a hearing. DOHA issued a notice of hearing on April 22, 2008 for a hearing on May 30, 2008. The hearing was postponed, and the case file was transferred to the undersigned on July 10, 2008 because of caseload considerations.

DOHA issued a notice of hearing on July 28, 2008 and the hearing was held on August 12, 2008. At the hearing, eight exhibits (GE 1 through 8) were admitted in evidence without objection to support the government's case. Applicant testified and submitted seventeen exhibits. (AE A-AE Q) In the time allowed for Applicant to furnish additional documentation, he submitted AE R1 through R98. The additional documentation relates to pending litigation he has with another company, official documents related to formation of his company (Company C) in 1995, and dissolution documents of that company. There is a dispute letter addressed to the creditor in SOR 1.d. dated August 11, 2008, and a request for a title check dated August 15, 2008 in connection with the past due account set forth in SOR 1.e. DOHA received a copy of the transcript of the proceedings on August 19, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The SOR has 10 allegations under the financial considerations guideline, totaling about \$83,000.00. Most of the debts became delinquent in 2004 and 2005 (GE 4, 5, 6). In his answer, he has admitted four of the accounts. In response to SOR 1.b., he stated he was settling the account. He also admitted he owed the accounts identified in SOR 1.f., 1.g., and 1.j. He denied the remaining accounts, asserting they were corporate accounts belonging to his company, Company C (AE R21).

Applicant retired from the United States (U.S.) Coast Guard receiving an Honorable Discharge in June 1977. He has been married to his second wife since December, 2003. They have a 21-year-old-disabled child. Applicant's wife, a nurse, remains at home providing care for the child. Applicant has been working for his current employer as a business development director since October 2005. Since September 2007, he has been in layoff status. He seeks a security clearance.

In 1985, Applicant developed a remote control surveillance boat that he wanted to market to the United States (U.S.) military agencies. In 1988, Applicant formed Company A. The purpose of the company was to develop the boat for sale to the U.S. government. Applicant also established two patents. In 1989, Company A sold its first boat to the U.S. Navy (Tr. 29). In 1992, Company A was sold to Company B, a foreign business, and Applicant was designated managing director of the company. Company B then went bankrupt, and Applicant formed Company C in 1995 (Tr. 31), appointing himself president to continue to obtain contracts for his unmanned boat. Company C executed more than 41 contracts between 1995 and 2000 (Tr. 33).

Some time in 2000, Company C experienced a severe reduction in business, beginning with a 15-ship contract cancellation by a Middle Eastern customer (Tr. 36). Also, another element of the Navy was developing the same kind of unmanned boat that Applicant believed was a copy of his technology (Id.).

To keep his failing business functioning, Company C sold a boat to Company D. To increase their business, Company C sought overseas contracts, and found continuing interest in their boat from the Middle Eastern countries.

Other adverse events impacted Applicant's business (Company C) In early 2002, he filed for marital dissolution; the marriage was dissolved on June 26, 2002, and Applicant was ordered to repay a \$19,000.00 loan to his first wife. In June 2002, Company C lost a big contract from a country in the Far East. Third, in the same month Applicant had a heart attack, and spent 1 ½ weeks in intensive care (Tr. 49).

Because of Applicant's health, coupled with his company's loss of its contracts, and the stress generated from his competition in the U.S. Navy for boat contracts, Applicant decided to close Company C (AE R21). Company C's business actually closed down in September, October and November 2002, At the time, Applicant asserts he was trying to pay off some of Company C's corporate debts. Applicant noted that company credit cards were a major reason Company C was able to continue business; these cards were in Company C's name, with Applicant's signature appearing on bills as Company C's president (Tr. 54).

In May 2003, Applicant started working for Company E as a business developer, and they asked him to enter a partnership to market his boat technology (Tr. 57-59). In December 2003, Company F purchased Company E, and signed a contract with a country in the Middle East to sell Applicant's boat. As a part of this contract, Company F entered into an agreement to pay Applicant \$750,000 for his boat technology; they did pay him \$50,000.00, but he never received the balance (Tr. 68). Applicant is seeking in litigation about \$517,000.00 from Company F, which constitutes the balance owed him, minus certain expenses (AE R9).

In March 2004, Company F purchased Applicant's product line in defunct Company C, and also took control of the company's records. Applicant asserts that included among those records are the documents verifying that Company C, not Applicant, was liable for the credit card debt (answer to SOR).

The ten debts shall be discussed in the order they appear in the SOR. The total amount of indebtedness is approximately \$83,000.00.

SOR I.a., Judgment, \$8,892.00. Applicant has no idea how the judgment came in existence. He filed a response to the judgment on May 31, 2007. (Tr. 120; AE Q) The court entered a final judgment against Applicant on November 30, 2007 (GE 7, 8). Applicant still owes this debt.

SOR 1.b. medical debt, \$221.00. AE M indicates this debt became delinquent in 2005, with a balance of \$221.00 as of March 2008. Applicant admitted the debt in his answer to the SOR, but stated at the hearing he was disputing the debt (Tr. 80). Applicant was asked why his testimony contradicted his answer to the SOR. Before ultimately stating he was not disputing his answer, Applicant initially explained that he

was laid off his job in September 2007, and had been paying much closer attention to his expenditures (Tr. 125). I find Applicant still owes this debt.

SOR 1.c. Credit Card debt. \$2,486.00. Applicant explained this was a corporate credit card with his current employer. The amount represented expenses for attending a trade show (Tr. 129). He made a payment on the debt in March 2007 (GE 2), and paid the card off in August or September 2007 (AE M). I find for Applicant.

SOR 1.d. Credit card account, \$10,400.00. According to AE M, the account was deleted from Applicant's credit report. I find for Applicant under this allegation.

SOR i.e. Bank debt for mobile home. Applicant contends it was a business debt, but supplied no documentation in support. Applicant officially disputed the debt in May 2006. He executed a record check on August 15, 2008, requesting a title history for a vehicle (AE R94). I find for Applicant under this allegation.

SOR 1.f. Credit card, \$10,503.00. This account was deleted from Applicant's credit report (AE K). I find for Applicant.

SOR 1.g. Tire account, 2,081.00. In his answer, he admitted he owed this account. At the hearing, Applicant claimed the account was taken off his credit report. (Tr. 81) Later in his testimony, he accepted responsibility for the debt because he had no documents to show otherwise (Tr. 136). I find Applicant owes this debt.

SOR 1.h. Credit card, \$13,988.00. Applicant believed the debt could be a duplicate of SOR i.d., a debt that was deleted from Applicant's credit report (AE M). I find for Applicant.

SOR 1.i. Credit card, \$17,370.00. Applicant claimed this was a business debt of Company C. However, he provided no evidence of whether the debt was deleted from his credit report, or that the debt is no longer being reported. I find against Applicant. I find Applicant owes this debt.

SOR 1.j. Cellular phone account. \$622.00. In his answer to the SOR, Applicant admitted he owed the account and was working to have the debt resolved through an offered settlement. At the hearing, he was disputing the debt (Tr. 85). The overdue account was verified in AE K. I find Applicant still owes the debt.

### **Character Evidence**

Mr. A1, along with five other individuals, provided a written character statement in which he lauded his relationship with Applicant based on working with him in government contracts related to Applicant's boat technology. Based on Applicant's professionalism, Mr. A1 recommends him for position of trust with the government. Mr. B1 has known Applicant for two years, and considers him truthful.

Mr. C1 wrote that he worked with Applicant closely from 1994 to 1998 when Applicant was president of Company C. According to Mr. C1, Applicant has always demonstrated fairness and honesty. Mr. D1 worked with Applicant from 1992 to 2000, when Applicant was president of first Company A and then Company C., and Mr. D1 was a government program manager from 1992 to 2000. Mr. D1 considers Applicant dependable and recommends him for a position of trust.

Mr. E1 knew Applicant professionally from 1991 to 1993, then again in 2005, when their professional careers brought them together. While admiring Applicant assume difficult stands with his employer at the time, Mr. E1 never explained what those positions were. Mr. E1 concluded by stating Applicant is trustworthy. Mr. F1 met Applicant in the late 1980s, and was impressed with his boat technology. With Mr. F1's recommendation in hand, Applicant's current employer hired him. Based on his frequent contact with Applicant, Mr. F1 recommends him for a position of trust.

Having weighed and balanced the entire record, particularly Applicant's testimony disputing past due debts that he admitted in his answer to the SOR, I find Applicant's overall credibility weakened by the conflicting testimony in those areas. Applicant's unemployment situation does not supply a reasonable excuse for not providing candid answers about his debts. Applicant still owes the debts identified in SOR 1.a., 1.b., 1.g., 1.i., and 1.j. totaling \$29,186.00. I find for Applicant under SOR 1.c., 1.d., 1.e., 1.f., and 1.h.

## **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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 sensible, 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.I.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 Considerations (FC)**

18. The Concern. "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 1 9.c. (*a history not meeting financial obligations*) are applicable to this case. Applicant incurred most of the overdue debt in 2004 and 2005 (GE 4, 5, 6), and still owes more than \$29,000.00.

Evidence of financial problems may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*). This condition provides some mitigation) because most of the debts became delinquent more than four years ago. However, Applicant's lack of candor about several of the debts, i.e., disputing SOR 1.b. debt after admitting he owes the debt and receiving documented verification) casts doubt on his reliability and trustworthiness, notwithstanding his glowing character evidence complimenting his good judgment and honesty for the last 20 years.

FC MC 20.b. *(the conditions that resulted in the financial problem were largely beyond the person's control and individual acted responsibly under the circumstances)* may apply in those circumstances where events outside the person's control contributed to the financial difficulty. Applicant's divorce, health condition, competition, loss of business, and current unemployment, have been thoroughly evaluated. The record shows that his marital dissolution occurred in June 2002. Applicant's health condition improved to a level where he resumed working in May 2003. Applicant did not demonstrate responsible action regarding the unpaid debts until May 2006, when he requested certain debts be removed from his credit report. However, the only debt in the SOR he paid was SOR 1.c. debt, and the payoff did not occur until the debt had gone to collection (AE M). When he received documentation he owed the SOR I.b. debt, he changed his position by disputing it rather than, to simply state at the hearing that he did not pay the debt because he was unemployed, and did not have the money. On balance, the limited mitigation Applicant receives under FC MC 20.a. and 20.b. is insufficient to overcome his financial indebtedness.

FC MC 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)* FC MC 20.d. and *(the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)* shall be addressed together because there is no evidence of financial counseling, and no evidence the outstanding delinquent debts in SOR I.a., I.b., I.g., 1.i., and 1.j. have been paid, or that they are debts of Company C. There has been no action to pay the debts.

FC MC 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 evidence of actions to resolve the issue)* applies in those situations where an applicant has a reasonable dispute, and has provided documented proof to substantiate the basis for the dispute. Applicant provided documentation in May 2007 denying that SOR I.a. debt is his responsibility. The court reviewed his documentation but rejected it in their final judgment in November 2007. The documentation shows there is no basis for Applicant's dispute of SOR 1.b. Applicant has no reasonable basis to dispute the tire account in SOR I.g., particularly after he admitted the account was his. The absence of documentation provides little basis for Applicant's contention that SOR 1.i. account is not his account. Applicant indicated in his answer to the SOR that the cellular phone account (SOR I.j.) was his responsibility, yet disputed the account at the hearing. Overall, Applicant's evidence is insufficient to meet his burden of persuasion under the financial considerations guideline.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FI guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the 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 extent to which the participation was 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. AG ¶ 2(a)

I have considered the disqualifying and mitigation conditions in light of all the facts and circumstances surrounding the case, and the whole person concept. Applicant is 56 years old. His professional accomplishments appear in the documentation. I have reviewed the unanticipated events that occurred in his life to cause or exacerbate his financial problems. Applicant incorporated a company to manufacture and sell his unmanned surveillance boat. A series of events emerged at the same time in 2002 that forced him to dissolve his company at the end of 2002. At least four years have passed since Company C closed. I have found that certain accounts identified in SOR 1.d., i.e., I.f., and I.h. were business debts that he is not responsible for. I found that he paid the SOR I.c. account in 2007. These debts were found in his favor based on documentation he provided that showed the debts were deleted or paid. On the other hand, the accounts in SOR I.a., I.b., I.g., I.i., and I.j. are resolved against him due to the lack of documentation to support his claim they were not his debts or were business debts. Those debts total about \$29,000.00. With respect to I.b., I.g., and I.i., Applicant's conflicting positions regarding his responsibility for these debts undercut his credibility, and generate ongoing concerns for a continuation of financial troubles in the future.

Overall, I have carefully evaluated the respect Applicant's colleagues have demonstrated for him in the past 20 years. This favorable character evidence is creditable, but insufficient to surmount the security concerns engendered by his continuing financial delinquencies. Having considered the entire record and all the exhibits, Applicant has not met his ultimate burden of persuasion under the financial considerations guideline.

## **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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	For Applicant
Subparagraph 1.i.	Against Applicant
Subparagraph 1.j.	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.

Paul J. Mason  
Administrative Judge