



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



In the matter of:

ISCR Case No. 07-09546

Applicant for Security Clearance

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro Se*

March 6, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by the falsification of his Questionnaire for Sensitive Positions and by his history of not meeting his financial obligations. Eligibility for access to classified information is denied.

On November 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, Financial Considerations and E, Personal Conduct. 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 answered the SOR in writing on December 6, 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 January 10, 2008. 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 security concerns. Applicant received the FORM on January 22, 2008, and responded in an undated response with two attached letters. Department Counsel did not object to Applicant's response. I received the case assignment on February 27, 2008. Applicant's response contained an ambiguous reference to a hearing. I asked Department Counsel to contact Applicant to ensure that he wanted his case decided on the written record in lieu of a hearing. Applicant replied with a fax letter on February 28, 2008, certifying that he did not want a hearing.

## **Procedural and Evidentiary Rulings**

### **Motion to Amend SOR**

Department Counsel moved to amend the SOR by adding the following allegation:

1.m. You are indebted to [creditor] for a delinquent account that has been charged off in the approximate amount of \$1,115. As of November 7, 2006, this debt had not been paid.

Two credit reports were submitted as evidence. The credit report of November 7, 2006, lists the above debt and shows "account transferred to another office," and "\$1115 CHG-OFF." However, it does not show a balance. The credit report of August 15, 2007, shows the above debt as "account transferred or sold" and lists a balance of zero. It is unclear who the debt was transferred to or the current status of the debt. I do not find that the requested amendment is in conformity with the evidence admitted. The motion to amend the SOR is denied.<sup>1</sup>

## **Findings of Fact**

In his Answer to the SOR, dated December 6, 2007, Applicant admitted all the factual allegations in the SOR, but indicated that the debts in SOR ¶¶ 1.a and 1.k were duplicates. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 40-year-old employee of a defense contractor. His education is not listed in the FORM. Applicant served in the U.S. Army Reserve from 1985 to 1993 and active duty Army from 1993 to 1999. He was honorably discharged as a Sergeant (E-5). Applicant is married and has two stepchildren, ages 25 and 18.<sup>2</sup>

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<sup>1</sup> If the motion had been granted, the allegation would have been concluded in Applicant's favor.

<sup>2</sup> Item 4.

Applicant has an extensive amount of delinquent debt. He was married in 2003. He and his wife accepted offers for credit cards. They wanted to purchase a house and thought that using the credit cards would help them build their credit and would assist them in obtaining a mortgage. Applicant admitted that they “messed up and received too much credit and used the credit wrongly.” He stated that after “trying to make the payments [they] fell behind and the service charges and late fees were more than [they] could handle.”<sup>3</sup>

The SOR lists 12 debts totaling approximately \$18,254. Applicant admitted all the debts listed in the SOR, but indicated that the debts in SOR ¶¶ 1.a and 1.k were duplicates. SOR ¶ 1.a lists an unpaid judgment of \$569, awarded in July 2006 to a collection company. SOR ¶ 1.k lists a delinquent debt of \$569 owed to a different collection company on behalf of a financial institution. After reviewing the evidence, I find they represent the same debt. After that duplication is eliminated, 11 debts remain, totaling approximately \$17,685. The credit reports in the FORM corroborate the debts.<sup>4</sup> There is no evidence that any of the debts have been paid.

Applicant started talking with a credit card assistance program in October 2007. He was accepted into the program in December 2007. The company will negotiate with Applicant’s creditors on his behalf. His monthly allocation into the program is \$337, which will disburse the funds to Applicant’s creditors.<sup>5</sup>

Applicant submitted a Questionnaire for Sensitive Positions (SF 86), signed and certified as true on October 20, 2006. Applicant answered “NO” to all the pertinent financial questions on the SF 86, including Questions 27D, 28A, and 28B. Question 27D asked, “Last 7 yrs, judgements not paid?” Question 28A asked, “Last 7 yrs, over 180 days delinquent on any debts?” Question 28B asked, “Currently over 90 days delinquent on any debts?” Applicant admitted the three 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>6</sup> In this case there are no additional explanations in Applicant’s response to the SOR, only the words “I admit.” Department Counsel’s written argument in the FORM states that Applicant “deliberately” falsified material facts on the questionnaire. When Applicant submitted his response to the FORM, he discussed his finances in some detail. He did not discuss the questionnaire at all, but he stated that he had no idea his “credit was so bad and was so delinquent.” He also stated that he and his wife “started this process in October and received a credit report in November and realized how horribly bad [they] had failed.”<sup>7</sup>

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<sup>3</sup> Applicant’s response to FORM.

<sup>4</sup> Items 5 and 6.

<sup>5</sup> Applicant’s response to FORM.

<sup>6</sup> ISCR Case No. 02-21087 (App. Bd. Aug. 19, 2005).

<sup>7</sup> Item 4; Applicant’s response to FORM.

Applicant submitted the SF 86 in October 2006. He had a number of debts that were placed for collection well before the SF 86 was submitted. After considering all the evidence, including Applicant's admissions in his responses to the SOR and the FORM, I find Applicant knew he had delinquent debts when he submitted the SF 86, and that he intentionally falsified Questions 28A and 28B. I do not find sufficient evidence that Applicant was aware of the judgment awarded against him or that he intentionally falsified Question 27D.

Applicant stated that he was ashamed and embarrassed that this has happened. He has never been arrested and he has a perfect driving record.<sup>8</sup>

### **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.

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<sup>8</sup> Applicant's response to FORM.

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 ¶ 10. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for some time. He admitted that he and his wife used credit cards excessively and were unable to pay them. The evidence is sufficient to raise the above potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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 currently has delinquent debt totaling more than \$17,000. His overall conduct with his creditors casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. He and his wife used credit cards and spent more than they could afford to pay. That does not qualify as a condition that was largely beyond his control. AG ¶ 20(b) is not applicable. Applicant was accepted in a credit card assistance program in December 2007. It is too early in the process to know if Applicant will adhere to the program. There are not yet clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is partially applicable. Applicant has not yet done enough to show a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable. SOR ¶¶ 1.a and 1.k are duplicates. AG ¶ 20(e) is applicable to SOR ¶ 1.k.

#### **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 conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(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;

16(a). The intentional falsification of Applicant's SF 86 in October 2006, raises AG ¶

AG ¶ 17 provides conditions that could mitigate security concerns:

(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;

(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, judgment, or willingness to comply with rules and the individual

has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I have considered all the potential mitigating conditions. Applicant submitted his SF 86 in October 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 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. Applicant served honorably in the U.S. Army. He has clean criminal and driving records. However, he has a history of shirking his financial responsibilities, and he intentionally provided false information on his security clearance questionnaire.

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.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant



Paragraph 2, Guideline E:                      AGAINST APPLICANT

Subparagraph 2.a:                              For Applicant  
Subparagraphs 2.b. and 2.c:                  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