



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-10396
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Pro Se

May 8, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on August 29, 2006. On November 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, 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.

On January 2, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on February 11, 2008. The case was assigned to me on February 14, 2008. On March 11, 2008, a Notice of Hearing was issued, scheduling the hearing for March 27, 2008. The case was heard on that date. The Government offered eight exhibits which were admitted as Government Exhibits (Gov) 1 – 8 without objection. The Applicant offered 11 exhibits which were admitted as Applicant Exhibits (AE) A – J without objection.

Applicant testified. The transcript was received on April 9, 2008. The record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.c, 1.e - 1.f, 1.h – 1.r, and 2.a -2.b. He denied the allegations in ¶¶ 1.d, 1.g, 2.c, and 2.d. Although he admitted to allegations in ¶¶ 2.c and 2.d in his answer to the SOR, he admitted with an explanation that he had no intent to omit the information. As such, I consider that he denies these allegations.

Applicant is a 47-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as a systems analyst with his employer since June 2006. He has approximately three years of college credit. He is married and has eight children, ranging in ages between 3 to 27-years-old. Two children were born during his first marriage. Two children were born during his second marriage. Four children were born during his current marriage. He has been married to his current wife for 18 years. (Tr at 4, 24, 77; Gov 1.)

On August 29, 2006, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1). A subsequent background investigation revealed that Applicant had the following delinquent accounts: a \$1,258 collection account (SOR ¶ 1.a; Gov 2 at 10; Gov 4 at 7); a \$755 balance owed as a result of an automobile repossession in December 2005 (SOR ¶ 1.b; Gov 2 at 11; Gov 4 at 6); a past due child support account in the amount of \$48,784 (SOR ¶ 1.c; Gov 2 at 2, 12, 43; Gov 4 at 7); a \$58 gas bill placed for collection in October 2005 (SOR ¶ 1.d; Gov 2 at 12; Gov 4 at 4, 13); a \$189 gas bill placed for collection in October 2004 (SOR ¶ 1.e; Gov 2 at 12; Gov 4 at 8, 12 ); a \$732 delinquent cell phone account placed for collection in August 2007 (SOR ¶ 1.f; Gov 2 at 12); a \$126 account placed for collection in July 2005 (SOR ¶ 1.g; Gov 2 at 12, Gov 4 at 11, 13); a \$491 account placed for collection in June 2006 (SOR ¶ 1.h; Gov 2 at 12-13, Gov 4 at 4, 11, 13); a \$155 delinquent cell phone account placed for collection in March 2006 (SOR ¶ 1.i; Gov 2 at 13, Gov 4 at 4, 11); a \$444 delinquent water company account placed for collection in August 2005 (SOR ¶ 1.j; Gov 2 at 13, Gov 4 at 5, 11, 13); a \$165 utility account placed for collection in September 2005 (SOR ¶ 1.k; Gov 2 at 13, Gov 4 at 4, 11); a \$188 medical account placed for collection in March 2005 (SOR ¶ 1.l; Gov 2 at 13, Gov 4 at 8, 11, 14); a \$368 medical account placed for collection in March 2005 (SOR ¶ 1.m; Gov 2 at 13, Gov 4 at 8, 12, 13); a \$64 medical account placed for collection in March 2005 (SOR ¶ 1.n; Gov 2 at 13, Gov 4 at 9, 12, 14); a \$75 delinquent cable bill placed for collection in April 2004 (SOR ¶ 1.o; Gov 2 at 13, Gov 4 at 6, 12, 13); a \$126 account that was placed for collection in July 2005 (SOR ¶ 1.p; Gov 2 at 2, Gov 4 at 6); a \$307 delinquent account placed for collection in October 2006 (SOR ¶ 1.q; Gov 4 at 9-10); and a \$1,187 charged off account owed to an online university (SOR ¶ 1.r; Gov 2 at 32; Gov 4 at 9-10).

Applicant provided proof that the debts alleged in SOR ¶¶ 1.d and 1.g are paid. (Tr at 28; AE A; AE B.) Payments towards the delinquent child support account alleged in SOR ¶ 1.c are garnished from Applicant's pay check. The garnishment is \$86.54 per pay period, \$173 monthly. One half of Applicant's tax refund is applied to his delinquent child support. The child support is owed to his two children from his first marriage. (Tr at 28-35; Gov 2 at 43.) Applicant claims the cable bill alleged in SOR ¶ 1.o should have been transferred to his bill in El Paso. (Tr at 37-38.) No documentation was submitted verifying this.

Applicant disputes the debt alleged in SOR ¶ 1.r. He states that he signed up for a class with this university. Before taking the class, he was transferred to another state. He claims that he should not be responsible for a class he did not take. He is attempting to resolve this account. (Tr at 25, 39-43; Gov 2 at 32; AE I.)

None of the other delinquent debts are resolved yet. Applicant has made no arrangements to pay the other debts. (Tr at 37, 38-39.) He does not make enough income to pay his delinquent accounts. He and his family live pay check to pay check. (Tr at 48; Answer to SOR.) He states that his financial difficulties are the result of two divorces. His wife is unable to work because of their young children. She tried working but child care was too expensive. (Tr at 44.) In 1996, he and his wife were working for a faith-based children's home. They were not paid for a period of seven months. In 2001, he was unemployed for approximately nine months. (Tr at 73.)

In September 2007, Applicant attended consumer credit counseling. He was advised that he had insufficient income to pay his debt and to file for bankruptcy. Applicant chose not to file for bankruptcy. (Tr at 46-47; AE J; Gov 2 at 35-42; Answer to SOR.) He is attending financial counseling through a biblical based counseling agency. (Tr at 46-47; Answer to SOR.) He applied for a loan from his 401(k) account which has a balance of approximately \$2,700. The loan was denied due to policy reasons. (Tr at 51; AE K.)

Applicant's net monthly income is approximately \$2,204. (AE H.) His total monthly expenses are approximately \$2,040, leaving him little additional income to apply towards his delinquent debt. (AE 2 at 30.)

Between 1980 and 1989, Applicant served on active duty in the United States Army. He rose to the rank of Sergeant (E-5). He was a drill sergeant in his last duty position. On May 13, 1988, he caught one of his female trainees smoking and drinking. He threatened her with disciplinary action and subsequently had sexual intercourse with her. He threatened another female trainee with non-judicial punishment if she told anyone about his actions with the other female trainee. (Gov 5.)

After an investigation, court-martial charges were preferred. On August 5, 1988, Applicant got into an argument with his wife. He assaulted her by punching her in the stomach and face with his fist, pulling her hair, and pushing her into a washing machine. (Gov 2 at 21-29.)

On November 28, 1988, Applicant was tried by general court-martial for a violation of Article 92, UCMJ, Dereliction of Duty; Article 134, UCMJ, Adultery, Communicating a Threat and Solicitation to Commit Sodomy; and Article 128, UCMJ, Assault. He was acquitted of the Solicitation to Commit Sodomy charge and convicted of all other charges. He was sentenced to a Bad Conduct Discharge, 18 months confinement and reduced to Private (E-1). (Gov 7.) He served approximately ten months at a retraining facility. On October 5, 1989, he was released on parole. On May 27, 1990, he successfully completed parole. (AE 2 at 46-52; Answer to SOR.)

On August 29, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in relation to his security clearance. He answered, "yes" to Section 19, Your Military Record which asks "Have you ever received other than an honorable discharge from the military?" If the answer is affirmative, applicants are required to provide the date and type of discharge. Applicant indicated that he was discharged in October 1989 with a discharge characterized as "Other Than Honorable." (Gov 1.) It is alleged that he deliberately falsified his response by not listing his Bad Conduct Discharge.

In his answer to the SOR, Applicant states that he did not intend hide his Bad Conduct Discharge, He misunderstood the question and was not specific. He understood the question required him to state whether he had an honorable or other than honorable discharge. At hearing, he testified that he did not understand the difference between a Bad Conduct Discharge and an other than honorable discharge. He was not trying to mislead the government.(Tr at 60-62.)

On the same eQIP application, dated August 29, 2006, Applicant answered "No" in response to 23(a) Your Police Record, which asks "Have you ever been charged with or convicted of any felony offense? (Include those under Uniform Code of Military Justice)." (Gov 1.) It is alleged he deliberately failed to disclose that he was charged with Communicating a Threat and Solicitation to Commit Sodomy. In his answer to the SOR, Applicant stated that he read the question too quickly and assumed it was asking about civilian offenses rather than military offenses. At hearing, Applicant testified that he was not aware that the communicating a threat was a felony. He was aware that solicitation to commit sodomy was a felony but he was acquitted of that charge. He did not think that the offenses he was convicted of were felonies because he was sent to a retraining brigade as opposed to a prison. Since being released from parole, he has served jury duty and is allowed to vote. He did not really understand what a felony is aside from it being very serious. He is aware that it is more serious than a misdemeanor. (Tr at 67-72.)

Applicant's minister states that Applicant is involved in the coordination of a number of events and is a member of the Saturday Men's Bible Study. He states Applicant is a man of high integrity and character. Applicant is a man who loves God, his family, and his church. (AE D at 1.) Another church pastor describes him as trustworthy and dependable. (AE D at 2.) His manager states that Applicant maintains

a level of commitment and dedication unsurpassed by others in the organization. Applicant's honesty, professionalism, and can do attitude has earned him the respect of soldiers, co-workers, and management. He trusts him to the fullest. (AE C at 3.) Another manager describes him as "organized, efficient, and extremely competent." (AE C at 4.) An assistant manager states that "He is a constant professional in his appearance, presentation, and attitude." (AE C at 5.) Applicant has attended numerous training to enhance his job skills. (AE D.)

In addition to volunteering for his church, he volunteers with the Lion's Club and coaches a women's softball team. (Tr at 77; Answer to SOR.) He does not dispute the horrible mistake he made while serving in the US Army. He regrets it to this day. He indicates that it has been 18 years since he has been in trouble with the law. He has nothing to hide and hopes to be granted a security clearance in order to allow him to continue working. (Answer to SOR.)

### **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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has a history of not meeting financial obligations. He is still paying delinquent child support for his two oldest children who are now both adults. This is the debt with the largest balance in the amount of \$48,784. The SOR alleged 17 additional delinquent debts, with an approximate balance of \$6,688. Applicant’s income is insufficient to pay his delinquent debts and meet his daily living expenses.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (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) is not applicable. Aside from the child support debt, the majority of Applicant’s debts became delinquent within

the past five years. Although Applicant resolved the debts alleged in SOR ¶¶ 1.d, and 1.h, and is paying his delinquent child support, most of the debts are unresolved. With his wife not working, Applicant does not have the means to resolve the debt.

FC MC ¶ 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) applies, in part. Applicant's two divorces more than likely caused a financial burden in the past. However, neither divorce is recent. He has been married to the same woman for the past 18 years. Applicant suffered several periods of unemployment. However, he has been steadily employed for the past several years. It cannot be concluded that all of Applicant's financial problems were beyond his control. For this reason, FC MC ¶ 20(b) is given little weight.

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) does not apply. Although Applicant attended two different financial counseling classes. He has no plan in place to resolve his delinquent accounts. In fact, he is unable to pay his debts due to a lack of income. It is unlikely that his financial problems will be resolved in the near future.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies, in part, with respect to SOR ¶¶ 1.c. 1.d. and 1.g. However, 15 unresolved delinquent debts remain. Applicant is unable to pay these debts based on his current income.

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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) does not apply. Although Applicant disputes the debt alleged in SOR ¶¶ 1.r, he has provided insufficient evidence to demonstrate that the dispute will be resolved in his favor.

## **Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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.

Personal conduct concerns are raised because Applicant listed that he received an other than honorable discharge in response to section 19 on his e-QIP application. Personal Conduct Disqualifying Condition (PC DC) ¶ 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) potentially applies to this allegation. Applicant explained that he misunderstood the question and he did not know the difference between an other than honorable discharge and a bad conduct discharge. I find he had no intent to mislead the government about the characterization of his discharge. Applicant does not have legal training and more than likely did not understand the nuances dealing with discharge characterizations. The fact that he did not list that he received an honorable discharge should have been sufficient notice for the government to inquire about his military background. SOR ¶ 2.c is found for Applicant.

PC DC ¶ 16(a) potentially applies to Applicant's negative reply to section 23(a) on his e-QIP application, which asks whether he was ever charged or convicted of a felony offense. I find Applicant's explanations credible as to why he did not answer in the affirmative. He has no legal training. The question does not provide the definition of a felony. At hearing, Applicant was asked to describe what a felony meant. He admitted that he did not know other than it was more serious than a misdemeanor. SOR ¶ 2.d is found for Applicant.

The allegations in SOR ¶¶ 2.a and 2.b were all charged during the same court-martial. While these allegations are more appropriately alleged under the criminal conduct guideline, one can conclude that Applicant's past conduct raises the general concern under personal conduct. He was convicted of dereliction of duty, adultery, communicating a threat, and assault. As a drill sergeant his conduct was reprehensible. He violated the trust the U.S. Army placed in him to care for his subordinates as well as his family. His conduct showed questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations. On the other hand, it has been over 18 years since Applicant completed the terms of his sentence and parole. Since that time, he has maintained a clean criminal record. 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) applies. Applicant is active in his community and has a favorable work record. While the offenses he was convicted of while in the military were serious, his present conduct does not cast doubt on his reliability, trustworthiness and good judgment. SOR ¶¶ 2.a and 2.b are found for Applicant.

### **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. I considered Applicant’s favorable work evaluations, his clean criminal record for over 20 years, and his efforts to resolve some of the accounts. However, a majority of his delinquent accounts remain unresolved and are unlikely to be resolved in the near future. While the personal conduct concerns are mitigated by finding of a lack of intent to deceive and the passage of time, the record evidence leaves me with doubts as to Applicant’s eligibility and suitability for a security clearance based on his financial situation. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under financial considerations.

### **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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant

Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	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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ERIN C. HOGAN  
Administrative Judge