



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-11833  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

July 11, 2008

**Decision**

CURRY, Marc E., Administrative Judge:

On February 20, 2008, 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 on March 10, 2008, and requested a hearing. The case was assigned to me on April 10, 2008. On April 30, 2008, a hearing was scheduled for May 29, 2008. During the hearing, which was held as scheduled, I received five government exhibits, 20 Applicant exhibits, marked A through T, and the testimony of Applicant. At the close of the hearing, I left the record open at Applicant's request to allow him to submit additional exhibits. Within the time allotted, he submitted

another exhibit, which I incorporated into the record. The transcript was received on June 16, 2008. Based upon a review of the record, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is a 49-year-old, married man with two children ages 23 and 17. His first marriage ended in divorce in 2002 after a two-year separation. He married his current wife later that year.

In 2000, Applicant retired from the U.S. Army after 24 years of service. He served the first nine years in active duty, and retired as a sergeant first-class (E-7). He has an associate's degree in theology, and is currently working toward a bachelor's degree in theology and business (Tr. 20).

Applicant works for a defense contractor as a logistics specialist. His duties involve testing, issuing, and distributing communications data to the armed services (*Id.*).

Applicant works part-time as an assistant minister for a local church. Also, he mentors troubled youth that are referred to him by the local court system, attempting to "develop them from boyhood to manhood to try to assist them into just doing the right things within the community" (Tr. 62).

Since 1999, Applicant has accrued eight financial delinquencies, as listed in the SOR, in the approximate amount of \$26,000. Approximately \$19,300, as alleged in SOR subparagraph 1.g, represents a tax lien for tax years 1999 and 2001. Through the 1990s, Applicant and his first wife filed joint income taxes. In 1999, his first wife, without his knowledge, withdrew \$20,000 from her 401(k) account.<sup>1</sup> This triggered an unexpectedly high tax debt, which they were unable to satisfy when due (Tr. 43).

In approximately 2000, Applicant started a church (Tr. 35). He used much of his personal income to finance its start-up costs and operation. The venture was ultimately unsuccessful.

In 2001, the Internal Revenue Service (IRS) audited his tax returns for the church. After the audit, the IRS concluded that he owed approximately \$1,600. Before the audit, Applicant anticipated receiving a refund (Tr. 35). He was unable to satisfy the debt on time.

Since 2001, the IRS has been applying Applicant's yearly tax refunds to the delinquency. By December 2007, he owed approximately \$15,600. Through negotiations, Applicant obtained a \$6,000 abatement of interest and penalties, and in May 2006, the IRS applied his 2007 tax refund (\$3,161) to the delinquency (Exhibit T).

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<sup>1</sup>As Applicant and his first wife grew estranged, they increasingly failed to communicate with one another.

Currently, Applicant owes approximately \$1,300 for tax year 1999 and \$2,900 for tax year 2001 (Exhibit T). He has applied for a loan against his 401(k) plan with the intention of using the loan money to satisfy the tax delinquency. As of the date of the hearing, the loan application had been approved (Tr. 37).

The remainder of the SOR delinquencies include four medical bills stemming from a 2005 rotator cuff surgery which disabled him from working for six months (SOR subparagraphs 1.a through 1.d ), two utilities (SOR subparagraphs 1.e and 1.f), and a veterinary bill Applicant incurred when he adopted a sickly, stray cat (SOR subparagraph 1.h). In January 2008, he successfully applied for a \$10,000 consolidation loan, and used it to begin satisfying these delinquencies (Exhibit C, Tr. 44). He has satisfied all of the delinquencies except SOR subparagraphs 1.b and 1.d, which total approximately \$2,300 (Exhibits C, U). He intends to satisfy them within the next six months.

Applicant has been paying approximately \$115 per month on the consolidation loan since January 2008 (Tr. 45). He does not anticipate any future problems paying it because his income has increased slightly in the past year while his monthly credit payments have recently decreased by approximately \$330 monthly<sup>2</sup> (Compare Tr. 47 and Exhibit 4 at 5).

Applicant did not list the tax lien on his February 2007 security clearance application, as required. He was aware of the delinquency since its accrual, and the government had been applying his income tax refunds to its satisfaction since 2001. Applicant did not know that the government had filed a lien against his property for this delinquency until some time after completing the security application when the bank which approved his January 2008 consolidation loan informed him it was on his credit report (Tr. 40). He answered, "yes" to Section 28 of the security clearance application regarding whether he had been more than 180 days delinquent on debt payments in the past seven years, and whether he was currently more than 90 days delinquent on any debts (Exhibit 1 at 37).

### **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 overarching

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<sup>2</sup>Applicant satisfied a loan used to purchase furniture, a debt not alleged in the SOR. Also, his car loan payments have decreased by approximately \$130 monthly.

adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a 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.

## **Analysis**

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

Under this guideline, “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” (AG ¶ 18). Here, Applicant’s delinquencies, accrued between 1999 and 2006, trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The majority of Applicant’s delinquencies constitute tax delinquencies accrued in 1999 and 2001, and medical expenses stemming from a surgery in 2005. The 1999 tax delinquency occurred when his then-wife withdrew \$20,000 from her 401k plan without Applicant’s knowledge, triggering an unexpectedly high tax bill. The 2001 tax delinquency related to unanticipated tax consequences from the failure of Applicant’s church. Since 2007, Applicant has negotiated a \$6,000 abatement of interest and penalties, and obtained a loan that he intends to use to satisfy the remainder, which is currently less than \$5,000.

In January 2008, Applicant obtained a loan that he used to begin satisfying the medical delinquencies, and the other SOR delinquencies. Only two of these SOR delinquencies, collectively less than \$2,500, are outstanding. Applicant has been steadily repaying the consolidation loan, and anticipates satisfying the two remaining delinquencies within the next six months. Since he has consistently addressed his other past due obligations, I am confident he will address these two debts in the near future.

AG ¶¶ 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,” 20(c), “. . . there are clear indications that the problem is being resolved or is under control,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

## **Personal Conduct**

Under this guideline, “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 (AG ¶ 15). Applicant’s security clearance application omission raises the issue of whether AG ¶ 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, “ applies.

In light of Applicant’s disclosure of his other delinquencies in response to other security clearance application questions regarding his delinquencies, I conclude his explanation for omitting the tax lien from his security clearance application was credible. The government has shown Applicant’s answer to Section 27 of the security clearance application was incorrect, but this does not prove he deliberately failed to disclose information about his tax lien. Every inaccurate statement is not a falsification. Rather, a falsification must be deliberate and material. An omission of a tax lien is not deliberate if the person did not know of its existence. Consequently, because Applicant did not know of the tax lien when he completed the security clearance application, AG ¶ 16(a) does not apply, and there are no personal conduct security concerns.

## **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's financial problems were caused by circumstances beyond his control. Since approximately January 2007, he has been resolving them. Because of the organized, methodical manner in which he confronted his delinquencies, and his improved financial circumstances, I am confident he will satisfy the minimal remaining delinquencies. Clearance is granted.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARC E. CURRY  
Administrative Judge