



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



In the matter of:	)	
	)	
XXXXXXXXXX,XXXXX	)	ISCR Case No. 07-13951
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esq., Department Counsel  
For Applicant: *Pro Se*

August 13, 2008

**Decision**

TUIDER, Robert J., Administrative Judge:

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

**Statement of the Case**

On February 20, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 29, 2008, 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.<sup>1</sup> The SOR alleges security concerns under Guidelines F (Financial

<sup>1</sup>On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R,

Considerations) and E (Personal 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.

On February 22, 2008, Applicant responded to the SOR allegations. Applicant submitted an undated supplemental response, and elected to have his case decided on the written record in lieu of a hearing. DOHA received his second undated response on April 8, 2008. A complete copy of the file of relevant material (FORM), dated April 30, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>2</sup> Applicant did not submit any information within the 30-day time period after receiving a copy of the FORM. The case was assigned to me on July 22, 2008.

### **Findings of Fact**

Applicant denied all of the SOR allegations, and submitted explanations with his Answer. After a thorough review of the record, I make the following findings of fact:

Applicant is a 60-year-old flight line mechanic, who has worked for his defense contractor employer since August 1970. His February 2007 e-QIP indicates that he was granted a top secret clearance in April 1982.<sup>3</sup>

Applicant was previously married from August 1968 to May 1989. That marriage ended by divorce. He has been married to his second wife since May 1993. Applicant has two adult children, a son and a daughter.

Applicant's background investigation addressed his financial situation and included the review of his e-QIP,<sup>4</sup> his March 2007 consolidated report of credit,<sup>5</sup>

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*Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

<sup>2</sup> Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated Apr. 30, 2008; and Applicant acknowledged receipt on May 20, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

<sup>3</sup> Item 6. Applicant's e-QIP is the source of personal information pertaining to Applicant, unless otherwise stated.

<sup>4</sup> *Id.*

his October 2007 Answers to Interrogatories with Attachments,<sup>6</sup> his September 2007 report of credit,<sup>7</sup> and his April 2008 report of credit.<sup>8</sup> The government established by evidence presented that Applicant has four delinquent debts totaling \$37,986. According to Applicant's credit reports, his financial problems began around 2002 – 2003. Applicant offered no documentation that any of his debts have been paid, that he has set up payment plans, nor has he submitted any evidence that he contacted any creditors. In his Answer, Applicant explained that his wife "lost over 300,000 dollars" from her 401k, that his mother, who was living with him and paying him \$600 per month passed away, that his adult daughter and her children moved in with him during her divorce, and that he helped support them.<sup>9</sup> The details surrounding these events are limited. The record does not contain any documentation corroborating Applicant's explanations nor does the record contain any character evidence.

Applicant answered "No" to questions 28(a) and 28(b) (asking whether in the last seven years he had been 180 days delinquent on any debt, and whether he was currently 90 days delinquent on any debts, (respectively)). He failed to disclose the debts alleged in SOR ¶¶ 1.a through 1.d. Applicant denied that he deliberately provided false responses to these questions. Applicant claims that "[he] didn't know [he] owed any of them (creditors)."<sup>10</sup> I note at a minimum that his bank repossessed his boat in 2002 leaving a \$25,151 deficiency after the bank auctioned the boat off. Applicant claims "I never heard from them (the bank) again."<sup>11</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

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<sup>5</sup> Item 7.

<sup>6</sup> Item 8.

<sup>7</sup> Item 9.

<sup>8</sup> Item 10.

<sup>9</sup> Item 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

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 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,"<sup>12</sup> 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).<sup>13</sup>

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<sup>12</sup> See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>13</sup> "The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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

### Guideline F, Financial Considerations

Under Guideline F (Financial Considerations),<sup>14</sup> the Government’s concern is that an Applicant’s “[f]ailure 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.”

Applicant has a history of failing to meet his financial obligations dating back to 2002. Since then, he has accumulated at least four delinquent debts totaling approximately \$37,986. He presented no evidence to show he has taken any action to resolve his debts. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Considering the record evidence as a whole,<sup>15</sup> I conclude that none of the mitigating conditions apply. Applicant presented no evidence documenting efforts taken to contact creditors, or to resolve any of the debts since he acquired them. Nor is there any evidence that he has participated in any financial counseling. I

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<sup>14</sup> Guideline ¶ 18.

<sup>15</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

specifically considered Financial Considerations Mitigating Condition (FC MC) Guidelines ¶ 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, and conclude it does not apply.*

He presented no evidence to show he dealt responsibly with his financial obligations before, or especially after receipt of the SOR (i.e., paid debts, settlements, documented negotiations, payment plans, budgets, financial assistance/counseling). Applicant's financial history and lack of favorable evidence preclude a finding that he has established a track record of financial responsibility, or that he has taken control of his financial situation. Based on the available evidence, his financial problems are likely to be a concern in the future. Moreover, his financial problems are recent, not isolated, and ongoing.

Under Guideline E (Personal Conduct),<sup>16</sup> 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.

Applicant's explanation for failing to disclose truthful responses to questions 28(a), and 28(b) is not credible. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, his level of education, his employment history, the number and value of the debts, his long term disregard of the debts, and the lack of credibility of his excuses. He knew the importance of accurate completion of his security clearance application, and nevertheless failed to provide information that was material to making an informed security decision. Disqualifying Conditions (DC) 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . .*, and DC 16(e): *personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress . . .*, apply.

I specifically considered all Guideline E Mitigating Conditions (MC) and conclude that none apply. Applicant's falsification is recent, and his limited favorable information is not sufficient to apply any of the MCs. Additionally, for the same reasons outlined under the discussions of Guidelines F, incorporated

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<sup>16</sup> Guideline ¶ 15

herein, I conclude Applicant's behavior shows questionable judgment, lack of reliability, and untrustworthiness.

To conclude, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the financial considerations and personal conduct security concerns. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does not support a favorable decision.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his 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. – 1.d.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a. – b.:	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. Clearance is denied.

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ROBERT J. TUIDER  
Administrative Judge