



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



In the matter of: )  
)  
) ISCR Case No. 07-14984  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole Noel, Esq., Department Counsel  
For Applicant: Michael L. Copes, Esq.

November 5, 2008

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial issues and personal conduct. Eligibility for access to classified information is denied.

On April 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations and Guideline 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 April 29, 2008, and elected to have the case decided on the written record in lieu of a hearing. It is unclear when Applicant's response was received by DOHA. On June 18, 2008, Department Counsel requested a hearing before an Administrative Judge. Paragraph (¶) E3.1.7 of the Directive provides

that Department Counsel has 20 days from receipt of Applicant's answer to the SOR to request a hearing. Applicant was informed at the hearing that Department Counsel may have requested a hearing more than 20 days after receipt of his answer. He affirmatively waived the issue and did not object to his case being handled at a hearing.<sup>1</sup>

The case was assigned to me on August 22, 2008. DOHA issued a notice of hearing on August 27, 2008, scheduling the hearing for September 15, 2008. On September 11, 2008, the hearing was cancelled because of the threat of severe weather. Another notice of hearing was issued on September 22, 2008. I convened the hearing as scheduled on October 9, 2008. The Government offered Exhibits (GE) 1 through 4, which were received without objection. The Government also offered an SOR Debt Summary chart as a form of demonstrative evidence. The chart is marked Hearing Exhibit (HE) I and it was accepted for that limited purpose. Applicant testified on his own behalf but did not submit any documentary evidence. DOHA received the transcript of the hearing (Tr.) on October 16, 2008.

### **Findings of Fact**

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since about May 2005. He is a high school graduate. He served in the U.S. Army from 1989 to 1992. He is married with three children, ages seven, four, and two.<sup>2</sup>

The SOR lists 15 debts. Applicant admitted to owing the debts in SOR ¶¶ 1.a, 1.e, 1.f, and 1.i. He admitted to SOR ¶¶ 1.g and 1.n, but indicated the debts were duplicates of the debts in SOR ¶¶ 1.a and 1.f. He admitted to SOR ¶ 1.m, but provided information to dispute the debt. He denied the remaining allegations. Individual debts are addressed below.

Applicant admitted owing the medical debt of \$802, as alleged in SOR ¶ 1.a. In his answer to the SOR, he stated that he contacted the creditor more than a year before the answer to work out a payment plan and was told they could not find his file. He stated that he would immediately re-contact the creditor and settle the debt. He has not made any payments on the debt. The debt in SOR ¶ 1.n is a duplicate of the debt in SOR ¶ 1.a.<sup>3</sup>

Applicant denied owing the medical debts of \$5,633 and \$944, as alleged in SOR ¶¶ 1.b and 1.c. He stated that he did not know what the debts were for, but he thought the \$5,633 debt may have been for the birth of one of his children. The credit reports that list these debts do not identify a creditor. They simply list them as "medical." In the

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<sup>1</sup> Tr. at 6.

<sup>2</sup> Tr. at 24-25; GE 1.

<sup>3</sup> Tr. at 30, 34; Applicant's response to SOR.

absence of additional information, there is insufficient evidence to find that Applicant is responsible for these debts.<sup>4</sup>

Applicant denied owing the debt of \$370 to a collection company on behalf of a cellular telephone services company, as alleged in SOR ¶ 1.d. He stated that he called the telephone company in about August 2008, to dispute the account. He did not provide any documentation in support of the dispute. The debt is listed on all the credit reports in evidence.<sup>5</sup>

Applicant admitted owing the \$4,853 debt to a collection company, on behalf of a financial institution, as alleged in SOR ¶ 1.e. In his answer to the SOR, he stated that he made attempts to settle the debt and was continuing to work with the creditor to resolve the issue. He has not made any payments on the debt. At the hearing he stated that he never had any dealings with the financial institution named in the SOR.<sup>6</sup>

SOR ¶¶ 1.f and 1.g allege delinquent debts of \$1,371 and \$2,501 to the same bank. Applicant admitted owing both debts, but stated that he believed they were duplicates and represented the same debt. He stated that he had one account with the bank about eight to ten years ago and that the debt resulted from when he was laid off work. He further stated that when he tried to work out a payment plan, the creditor was “rude and threatening toward [him],” and called a former employer and told the employer that he was a “crappy human being.” At the hearing Applicant identified the former employer that was contacted. He listed on his Questionnaire for Sensitive Positions (SF 86), that he worked for this employer between September 1999 and July 2001, and again between October 2002 and May 2005. Both debts, with different account numbers, are listed on all the credit reports in evidence. The date of last action for the debts is listed on the reports as between November 2001 and May 2002.<sup>7</sup> I find that Applicant is responsible for both debts.

Applicant denied owing the debt of \$1,978 to a collection company on behalf of a financial institution, as alleged in SOR ¶ 1.h. He stated that he did not know what the debt was, but that he would look into it and if it was legitimately his, then he would settle the debt. He did not provide any documentation in support of the dispute. The debt is listed on all the credit reports in evidence.<sup>8</sup>

SOR ¶ 1.i alleges a delinquent debt of \$604 to a collection company. Applicant admitted owing this debt. The same debt is also listed in SOR ¶ 1.o as a debt of \$358 to a different collection company. The difference in amounts is apparently due to accrued

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<sup>4</sup> Tr. at 30; Applicant's response to SOR; GE 2-4.

<sup>5</sup> Tr. at 28; Applicant's response to SOR; GE 2-4.

<sup>6</sup> Tr. at 30-31, 36, 37, 51-52; Applicant's response to SOR.

<sup>7</sup> Tr. at 31-33, 52-53; Applicant's response to SOR; GE 1-4.

<sup>8</sup> Applicant's response to SOR; GE 2-4.

interest or penalties. The debt was apparently transferred or sold to the company named in SOR ¶ 1.i, as the company in SOR ¶ 1.o does not appear on the later two reports, but the company named in SOR ¶ 1.i appears on all the reports. Applicant denied owing the debt. He stated that he called the collection company named in SOR ¶ 1.o, in about August 2008, to dispute the account, but was given the “runaround.” They finally told him that they would investigate the debt and send him a response via e-mail. He has not received a response. I find that the debt in SOR ¶ 1.o is a duplicate of the debt in SOR ¶ 1.i. Applicant has not made any payments on the debt which he admitted was his responsibility.<sup>9</sup>

Applicant denied owing the debt of \$179 to a collection company on behalf of a telephone services company, as alleged in SOR ¶ 1.j. A debt of \$28 to the same collection company on behalf of the same telephone services company is alleged in SOR ¶ 1.k. Applicant stated that he never had any dealings with this telephone company. He called the telephone company in about August 2008, and they told him they had no record of his account. He also stated that he disputed the account on-line with the credit reporting agencies. The debts are listed on the March 14, 2007 credit report indicating the last action on the debts was in 2000. The debts are not listed on the later two reports.<sup>10</sup>

SOR ¶ 1.l alleges a delinquent debt of \$1,096 to a collection company for a medical debt. Applicant denied owing this debt. The debt is not listed on the two most recent credit reports.<sup>11</sup>

Applicant admitted to the debt of \$8,421, as alleged in SOR ¶ 1.m, but provided additional information to suggest that he was not responsible for the debt. He stated that he bought a truck in about 2001, and the next day the engine blew. The dealer replaced the engine but it stopped working about a week later. After further attempts to resolve the issue, he returned the truck. He stated that he never heard back from them. The debt is not listed on the two most recent credit reports.<sup>12</sup>

Applicant attributed his financial problems to a series of low-paying jobs between 1998 and 2000, and that he did not get back on his feet until 2005. He stated that the debts were accrued eight or more years ago. He has not made payments on any of the debts in the SOR. When asked why, he responded “I have no excuse for it.” He stated that he has been traveling for work for large periods of time since he received the SOR. He has never received financial counseling. Applicant earns about \$65,500 annually and his wife earns about \$6,000 a year working part-time. He has a surplus of about \$400 to \$500 per month, after paying his monthly expenses. He stated that he will pay

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<sup>9</sup> Tr. at 29, 33; Applicant’s response to SOR; GE 2-4.

<sup>10</sup> Tr. at 26-29; Applicant’s response to SOR; GE 2-4.

<sup>11</sup> Applicant’s response to SOR; GE 2-4.

<sup>12</sup> Tr. at 33-34; Applicant’s response to SOR; GE 2-4.

the debts that he acknowledges are his responsibility or are proven to be his responsibility.<sup>13</sup>

Applicant submitted an SF 86, certified as true on February 9, 2007. Question 28A asked, “Last 7 yrs, over 180 days delinquent on any debts?” Question 28B asked, “Currently over 90 days delinquent on any debts?” He answered “No” to both questions. He was questioned by an investigator for his background investigation on two occasions sometime after he submitted his SF 86. He testified that he did not remember if they discussed his delinquent debts.<sup>14</sup>

Applicant denied intentionally falsifying the SF 86. He stated that he “was unaware or had forgotten about these debts.” He stated that he was given a very short time to complete that application and he was under the impression that he had no outstanding debts that were under seven years old.<sup>15</sup> I find that Applicant had delinquent debts that were less than seven years old when he submitted the SF 86. I further find that Applicant knew this fact when he certified the SF 86 as true. After considering all the evidence, observing Applicant’s demeanor, and gauging his credibility, I find that he intentionally falsified his responses to Questions 28A and 28B of the SF 86 by failing to list his delinquent debts.

### **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 to be used 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, Administrative Judges apply the guidelines 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

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<sup>13</sup> Tr. at 38-49.

<sup>14</sup> Tr. at 49-50; GE 1.

<sup>15</sup> Tr. at 45-46, 53-54; Applicant’s response to SOR; GE 1.

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 the 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 adverse 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 ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above 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 has not made payments on any of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He attributed his financial problems to low-paying jobs in about 1998 to 2000. These are conditions that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant started working for his current employer in 2005, and that is when he indicated that he was back on his feet financially. He has not made an effort to pay his delinquent debts since then. There is insufficient information for a finding that he has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not received financial counseling. There are not clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable. He has not made a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable.

Applicant disputed owing several debts. He did not provide documented proof to substantiate the basis of the dispute. However, several of the debts he disputed are not listed on the most recent credit reports. AG ¶ 20(e) is applicable to those debts.

## **Guideline E, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following is 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.

Applicant intentionally falsified his SF 86 in 2007. The above disqualifying condition has been established.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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; and

(f) the information was unsubstantiated or from a source of questionable reliability.

I have considered all the potential mitigating conditions. Applicant submitted his SF 86 in 2007. He denied falsifying his SF 86, but I did not find his testimony credible. Applicant has not provided 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) the 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 military service to our country. However, he has allowed debts to go unpaid for years without any effort at addressing them and he intentionally provided false information about his finances on his SF 86.

Overall, the record evidence leaves me with questions and 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 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

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

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of 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