



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



In the matter of: )  
)  
) ISCR Case No. 07-16231  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 30, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant is financially overextended and lacks a track record of financial responsibility. Moreover, he falsified his security clearance application. He failed to mitigate the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 3, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (SF 86). On February 27, 2009, 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 modified and revised.<sup>1</sup> The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline 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, denied, or revoked.

On March 18, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to another administrative judge on May 7, 2009. DOHA issued a notice of hearing on May 19, 2009. Because of scheduling considerations, it was reassigned to me on May 27, 2009. The hearing was convened as scheduled on June 25, 2009. The government offered Government Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits (AE) 1 through 7, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 7, 2009.

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.c and 1.h through 1.n. He denied the remaining SOR allegations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 62-year-old acquisition analyst employed by a defense contractor. He served honorably in the U.S. Army from 1967 to 1969, and is a Vietnam War Veteran. He married his first wife in 1980 and was divorced in 1987. He married his current spouse in July 2000, and they have been separated since May 2005. She filed for divorce in 2008, and they are going through an acrimonious divorce. He has four adult children from other relationships who live independently (Tr. 47).

In June 1995, Applicant received his bachelor's degree in business management. He completed his master's degree in business administration in June 1997 (GE 1). Applicant testified he had access to classified information at the secret level from 1982 to 1987. He then had confidential access for a few years until 2004, while working for another government agency and a government contractor (Tr. 62). He has not had access to classified information since 2004.

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<sup>1</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of the revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

Applicant has been continuously employed since April 1997, except for brief periods of unemployment from May to November 2003 (when he received unemployment benefits), and after being fired from two jobs in March and October 2005. He was underemployed from February to July 2007, when he held two temporary jobs before obtaining his current position in October 2007.

Applicant attributed his current financial problems to three main causes: his periods of unemployment and/or underemployment; his acrimonious separation and divorce, and being overwhelmed by his marital and financial problems (Tr. 168). After his marital separation, Applicant did not care anymore about himself or about being responsible to his creditors (Tr. 168). He stopped paying his legal obligations.

In October 2007, Applicant was hired by his current employer. He started earning approximately \$5,000 a month. He claimed that since then, he has been trying to correct his financial situation by paying his taxes, school loan, and other creditors. He averred he is doing everything he can do under his circumstances to pay his creditors.

In his May 2007, security clearance application, Applicant disclosed having financial problems (being over 90 days delinquent on some of his debts) because of a period of unemployment. His background investigation addressed his financial status and included the review of May 2007, September 2008, and February 2009 credit bureau reports (CBRs), his responses to DOHA interrogatories in 2008 and 2009, and Applicant's security clearance application.

The SOR alleges 16 delinquent and/or charged off accounts, totaling approximately \$139,000, which have been delinquent for a number of years. In his response to the SOR, Applicant denied SOR ¶¶ 1.a, 1.b, 1.e, 1.f, and 1.g (all small medical bills likely for Applicant's failure to make a copayment), claiming that: he was unaware of these debts; he was not sent notice that the debts were in collection; and he did not know who the collector is.

Applicant's divorce papers were filed in September 2008. Applicant is contesting legal responsibility for all the medical bills outlined above because he believes they are his wife's medical expenses (AE 3). During his testimony, Applicant claimed his attorney told him not to pay any debts until the divorce court adjudicates responsibility for the debts. He later qualified this statement by saying that his attorney only told him not to pay the medical bills. He presented no documentary evidence to corroborate his claim.

Additionally, he is contesting responsibility for the two delinquent mortgages alleged under SOR ¶¶ 1.o and 1.p (two different real estate properties). One of the properties has been owned by Applicant's spouse since 1998. However, Applicant and his spouse refinanced the mortgage together. This property was foreclosed. Applicant does not know whether he owes money as a result of the foreclosure. Applicant testified he was a co-signer on both mortgage loans. Thus, he is jointly responsible for both mortgage debts. He presented no evidence to show he was released from his legal obligations with respect to these mortgages.

Concerning the remaining SOR ¶ 1 allegations, Applicant admitted SOR ¶¶ 1.c through 1.h, are his debts, and have been delinquent for a number of years. Applicant testified that his debts became delinquent because of his poor financial management and negligence in keeping up with his bills (Tr. 154-165). He explained that he makes payments to some of his creditors whenever he has money, but his financial situation does not allow him to pay all of his debts.

Applicant started making sporadic payments on some of his delinquent debts around January 2009, and continued until April 2009 (AE 7). There is no record evidence of any effort to settle, pay, or resolve any of his delinquent debts prior to January 2009, or after April 2009. Applicant presented no documentation showing he had paid, properly disputed, or made any efforts to contact his creditors in an attempt to resolve any of his other debts. Applicant never contacted his creditors to resolve his financial obligations because he was overwhelmed by his personal problems and the attorney fees related to his divorce. Applicant is not aware of what is required of him to show that he is reliable, trustworthy, and financially responsible.

Applicant considered filing for bankruptcy around May 2009; however, he never followed through with it. He is waiting for the divorce court to divide the marital assets to determine which debts are his responsibility. He averred numerous times that he is willing to pay those debts that are determined by the court to be his legal obligations. Applicant has not participated in any financial counseling and has no budget in place.

I find that SOR ¶¶ 1.a, 1.b, 1.e, 1.f, and 1.g are contested medical debts. I further find that the remaining SOR debts are Applicant's debts as established by the admitted CBRs, his answers to the interrogatories, and his testimony at the hearing.

Applicant's May 2007, security clearance application required him to make a detailed disclosure of all his employment activities during the last seven years (Section 11); to disclose whether he had been fired from a job (Section 22); and to disclose any foreign travel (Section 18). Applicant deliberately omitted two periods of employment. The first from December 2004 to March 2005 with company A, and then from August 2005 to October 2005 with company B. Moreover, Applicant failed to disclose that he had been fired from both company A and company B, and that he had traveled overseas as part of his employment with both companies.

Applicant vehemently denied his omissions were deliberate or with the intent to mislead. He initially testified he never knew he had been fired, and that he was never given a reason for his termination (Tr. 29). He testified he is an honest and trustworthy person, and that he had no reason to lie. During the later part of his testimony, Applicant admitted that in October 2005, while overseas performing on a contract his company had with the government, he was told to take the first flight back to the United States. Shortly thereafter, his supervisor in the United States called him overseas to ask him why he was fired. Applicant claimed he was never informed of the reasons why he was

fired. Nevertheless, Applicant testified he was told by his U.S. supervisor that he was no longer working for the company, and to take the next plane home (Tr. 180-183).

I find Applicant's claims that his omissions were an innocent oversight not to be credible. Applicant is a well-educated and mature person with experience working for the government and government contractors. He knew or should have known that he was terminated from both jobs under adverse circumstances. Furthermore, his contradictory testimony shows his omissions were not an oversight. I find Applicant's omissions were deliberate and made with the intent to mislead.

At his hearing, Applicant presented character statements from two supervisors. Applicant is considered to be a valued employee. He has established a reputation for providing first-class service to his clients. His witnesses believe him to be a responsible, dedicated, and honest person. Both references recommended Applicant receive access to classified information.

Applicant expressed remorse for his financial problems. He claimed that he was overwhelmed by his financial and personal problems and deliberately ignored his financial obligations. After starting his current job, he claimed he has been making efforts to resolve his financial problems. He presented little documentary evidence of such efforts.

Applicant highlighted that he is a Vietnam War Veteran, and that he has served the U.S. government well in prior jobs, and in his current position. He believes that his financial problems do not make him a security risk or concern. There is no evidence that Applicant ever compromised or caused others to compromise classified information.

### **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 required 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 controlling adjudicative goal is a fair, impartial, and commonsense 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>2</sup> 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).

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, the security concern is that 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. AG ¶ 18.

The SOR alleged 16 delinquent and/or charged off debts that have been delinquent for a number of years. I conclude that SOR ¶¶ 1.a, 1.b, 1.e, 1.f, and 1.g are

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<sup>2</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). “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).

contested medical debts. The remaining SOR debts are Applicant's debts as established by the admitted CBRs, his answers to the interrogatories, and his testimony at the hearing.

Other than the above mentioned medical bills and the payments Applicant made from January to April 2009, he presented little documentary evidence that he has paid, settled, or properly disputed any of the alleged debts. Nor did he present documentary evidence of efforts to resolve his financial obligations. It is not clear from his testimony whether Applicant has the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. Moreover, in the recent past, Applicant's personal and financial problems overwhelmed him to the point that he was no longer interested in addressing his legal obligations. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant established circumstances beyond his control, which contributed to his inability to pay his debts, i.e., his periods of unemployment and underemployment, and his contentious separation and divorce. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented little evidence of debt payments, contacts with creditors, and settlement or negotiations to resolve his SOR

debts. Because of his failure to address even his small SOR debts, I also find he is not financially responsible. Considering the evidence as a whole, his financial problems are not under control. He has not participated in financial counseling, and he does not seem to have a viable financial plan to resolve his financial predicament or to avoid similar financial problems in the future.

AG ¶¶ 20(a), (c), (d), and (e) do not apply because Applicant's financial problems are not yet under control. He also failed to show he made good-faith efforts to resolve his debts. His actions cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 20(f) does not apply.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant has not demonstrated his financial responsibility by taking sufficient actions to resolve his debts.

### **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security/trustworthiness concern stating:

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 deliberately falsified material facts on his security clearance application when he failed to disclose that he had been employed by two different companies within the last seven years, that he left his employment from both companies under adverse circumstances, and that he travelled overseas while employed by those companies. In reaching this conclusion, I considered Applicant's age, education, job experience, and his contradictory explanations.

Applicant's actions create security concerns under two disqualifying conditions. His behavior triggers the applicability of disqualifying conditions 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."

AG ¶ 17 lists seven conditions that could mitigate the personal conduct 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, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find none are fully established by the record evidence. Applicant falsified his security clearance application. It was not until after he was confronted that he admitted his omissions. His falsification is a serious offense (felony), it is recent, and casts doubt on his reliability, trustworthiness, and judgment.

### **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 relevant 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a Vietnam War Veteran. He is a mature and well-educated man. He is considered to be a valuable employee who is dependable, reliable, and trustworthy. He believes that his financial problems do not make him a security risk or concern. There is no evidence he has ever compromised or caused others to compromise classified information. Applicant expressed remorse for his financial mistakes and promised to pay his creditors. He established some circumstances beyond his control, which contributed to his inability to pay his debts. These factors show some responsibility, good judgment, and mitigation.

Notwithstanding, Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented little documentary evidence of debt payments, contacts with creditors, and settlement or negotiations of debts. Applicant has been employed since 1997, except for the previously mentioned periods of unemployment from May 2003 to November 2003, and in March 2005 and October 2005. Applicant is undergoing an acrimonious divorce and his personal and financial situation has overwhelmed him. Instead of showing financial responsibility and judgment, he deliberately ignored his financial obligations. His recent efforts to resolve his debts are not sufficient to establish a track record of financial responsibility. His financial problems are not under control. He has not participated in financial counseling and he does not seem to have a viable plan to avoid similar financial problems in the future. Moreover, Applicant deliberately falsified his security clearance application.

### **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.b, 1.e, 1.f, and 1g:	For Applicant
Subparagraphs 1.c, 1.d, 1.h - 1.p:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 1.a - 1.c:

Against Applicant

**Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge