



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-00967
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: Pro Se

January 21, 2009

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 31, 2007. On August 15 2008, 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 August 26, 2008, and September 29, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 27, 2008. The case was assigned to me on November 17, 2008. On December 3, 2008, a Notice of Hearing was issued, scheduling the hearing for December 17, 2008. The case was heard on that date. Appellant did not receive the notice within 15 days as required by the Directive. He waived the 15 day notice requirement. (Tr at 10.) The Government offered five exhibits which were admitted as

Government Exhibits (Gov) 1 – 5. The Applicant testified and offered nine exhibits which were admitted without objection as Applicant Exhibits (AE) A - I. The record was held open until January 9, 2009, to allow Applicant to submit additional documents. He timely submitted a five page document that was admitted as AE J. The transcript was received on December 23, 2008. 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 admits all of the SOR allegations.

Applicant is a 47-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed as a mail carrier with his company since October 2006. He has a high school diploma and some college. He is married and has four children, ages 20, 17, 15, and 11. (Tr at 5-6, 55, 58-59; Gov 1.)

On August 31, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in order to apply for a security clearance. Applicant answered “No” in response to question 28(a) “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” He also answered “No” in response to question 28(b) “Are you currently over 90 days delinquent on any debt(s)?” (Gov 1.)

A subsequent background investigation revealed that Applicant has the following delinquent accounts: a \$217 account placed for collection in February 2003 (SOR ¶ 1.a: Gov 2 at 5; Gov 4 at 8; Gov 5 at 2); a \$19 account placed for collection in March 2003 (SOR ¶ 1.b: Gov 2 at 4; Gov 4 at 6); an \$851 department store account placed for collection in January 2004 (SOR ¶ 1.c: Gov 2 at 4; Gov 4 at 5; Gov 5 at 2); a \$4,031 credit union loan charged off in October 2004 (SOR ¶ 1.d: Gov 2 at 3; Gov 4 at 4; Gov 5 at 2); a \$5,165 balance owed from an automobile repossession that was charged off in January 2005 (SOR ¶ 1.e: Gov 2 at 4; Gov 4 at 7; Gov 5 at 2); and a \$67 account placed for collection in March 2005 (SOR ¶ 1.f: Gov 2 at 3; Gov 4 at 3; Gov 5 at 2).

Additional delinquent accounts consist of a \$336 medical account placed for collection in February 2005 (SOR ¶ 1.g: Gov 4 at 5; Gov 5 at 1); a \$490 account placed for collection in February 2005 (SOR ¶ 1.h: Gov 4 at 5; Gov 5 at 1); a \$1,825 account placed for collection in December 2006 (SOR ¶ 1.i: Gov 2 at 4; Gov 4 at 6); a \$493 medical account placed for collection in May 2007 (SOR ¶ 1.j: Gov 4 at 4; Gov 5 at 1); a \$615 credit card account placed for collection in October 2007 (SOR ¶ 1.k: Gov 2 at 4; Gov 4 at 5; Gov 5 at 1); a \$166 utility account placed for collection in October 2007 (SOR ¶ 1.l: Gov 2 at 4; Gov 5 at 1); and a \$665 account placed for collection in February 2008 (SOR ¶ 1.m: Gov 5 at 1).

Applicant’s financial problems were caused by several periods of unemployment he experienced beginning in 2003. In December 2003, he was laid off from a job at a tire factory. He had worked for the company for 14 ½ years. He was unemployed until July 2004. He was hired to be a grass cutter. His pay did not match his income from his

previous job. In 2006, he was hired by a defense contractor. On June 8, 2006, he was laid off for about a month. He was rehired by the same defense contractor. He worked for about three weeks and was laid off again. He found a job two weeks later with another defense contractor. He was hired by his current employer in October 2006. (Tr at 22-26, 39-40, 44-45; Gov 1; AE B.)

Applicant has been married for 10 years. His wife is unable to work due to health issues. He occasionally helps out his wife's aunt financially. She has eight children. One of the children is getting fitted for braces on his legs. (Tr at 55-57, 59-61.)

At hearing, Applicant showed that he entered into a debt settlement agreement with a company who specializes in settling debts. The agreement began in August 2008. He has made five monthly payments so far to the plan, including \$650 in service fees. Included in the agreement are the debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.i. (Tr at 27-28, 35, 48, 52-53; AE A; AE E.) Of those debts, he provided proof that the \$851 debt alleged in SOR ¶ 1.c was settled for a lesser amount on December 8, 2008. (Tr at 27-29, AE C.)

The debts alleged in SOR ¶¶ 1.g, 1.h, and 1.j are medical accounts. Applicant believes that these debts were for routine medical checkups incurred by his family when he had no health insurance. At hearing, Applicant provided proof that he paid a \$115 medical account. It is unclear if this account is connected to any of the medical accounts alleged in the SOR. (Tr at 30, 55-57; AE D.)

He made no payments towards any of the other debts alleged in the SOR. He intends to start paying those debts during the first of the year. He intends to apply his tax refunds towards the debts. (Tr at 41, 48-49, 54.) He has attended some financial counseling. (Tr at 47-48; AE J at 1-2.)

In 2007, Applicant's home went into foreclosure. He was unable to keep up with the mortgage payments due to his periods of unemployment. The home was sold after foreclosure and no balance was owed as a result of the sale. (Tr at 23, 50-51; AE B.)

Applicant's net monthly income from his full-time position is \$2,740. His wife receives a monthly disability payment of \$500. He receives \$300 a month from his service as a part-time pastor at his church. His household total monthly income is \$3,540. His expenses include rent \$710, renter's insurance \$63, school supplies \$140, electricity \$210, gas/heating \$100, telephone \$162, car insurance \$175, life insurance \$29, groceries \$400, car payment \$304, gasoline \$120; personal loan \$40; dental \$120, medical \$14. His monthly expenses total \$2,587. He pays a \$400 monthly tithe to his church. (Tr at 57-58, 67; AE H.)

In his two responses to the SOR, dated August 26, 2008, and September 29, 2008, Applicant admitted to falsifying his security clearance questionnaire by omitting his delinquent accounts that were over 180 days delinquent and debts that were over 90 days delinquent. He asked for forgiveness. He stated he was stressed at the time he

filled out the security clearance questionnaire. He needs his job and reacted without thinking. He knew that his inability to satisfy debts and meet financial obligations would count against him and he really needed his job in order to support his family. (Answers to SOR, dated August 26, 2008, and September 29, 2008.)

During the hearing, Applicant testified that he had difficulty understanding the security clearance questionnaire. He was stressed out and apologizes for the mistake. He did not intend to omit his delinquent accounts on his security clearance questionnaire. He knew he had delinquent debts at the time he completed the security clearance questionnaire but answered “no” without thinking about it. Upon further questioning, he admitted that he answered “no” because he was concerned about not getting a security clearance and his ability to keep his job without a security clearance. He fully disclosed his delinquent accounts when interviewed by an investigator during his background investigation. He intends to be fully truthful when completing future security clearance questionnaires. (Tr at 22, 42, 62-65.)

Applicant’s pastor wrote a letter on his behalf. In 1998, he was assigned to serve as Applicant’s mentor when Applicant became a candidate in ministry. Applicant is currently a licensed local pastor in good standing. Applicant is a trustworthy person, a person of sound integrity, high morals and good conduct. (AE F.)

Applicant’s supervisor states that he is a loyal and excellent employee. He works well with others and has a pleasant attitude. He is an outstanding person. (AE I.) Four of Applicant’s co-workers prepared a joint statement. They have worked with Applicant over the past year and a half. Applicant is a man of good character and good work habits. He is trustworthy and a good family man. (AE G.)

### **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 encountered financial

difficulty since 2003. The SOR alleged 13 delinquent accounts, an approximate total balance of \$14,940.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

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. Applicant has had financial problems for the past five years. He did not begin to resolve his delinquent debt until this year. While he entered into a repayment plan to resolve four of his accounts, he has taken no action to resolve nine of the accounts. Applicant's financial issues are ongoing.

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, due to Applicant's several lay offs over the past five years. In December 2003, he was laid off by a company whom he worked for 14½ years. He was unemployed for seven months and has not found a job that matched his previous salary at this company. In June 2006, he was laid off for a month, rehired and laid off three weeks later. He was unemployed for two weeks until he found employment with another defense contractor. He is the sole breadwinner of his family. His wife's health prevents her from working. He was unable to keep up with the bills which resulted in several delinquencies including the foreclosure of his home in 2007 and an automobile repossession. However, this mitigating condition is given less weight because Applicant waited to address his delinquent accounts even though he has been continuously employed since the fall of 2006. There were several debts alleged in the SOR that were close to or under \$200 (SOR ¶¶ 1.a, 1.b, 1.f, and 1.i) which he should have been able to resolve. For this reason, FC MC ¶ 20(b) is given less 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) applies, in part. Applicant has attended financial counseling and is beginning to take steps to resolve his financial situation. However, it will take some time to resolve his financial situation.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR

¶¶ 1.c, 1.d, 1.e, and 1.i. He entered into an agreement with a debt settlement company in August 2008, in order to resolve these debts. He has made payments to the plan over the past five months. These were his four largest debts. The debt alleged in ¶ 1.c has been resolved. However, nine delinquent debts remain unresolved. While Applicant intends to resolve these debts in the coming year using his tax return and his income, he has taken no action to resolve these accounts.

While Applicant suffered through several periods of unemployment over the past five years and has made some progress in resolving several of his debts, the majority of his delinquent accounts remain unresolved. He has not mitigated the concerns raised under Guideline F.

## **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 failed to list his financial delinquencies in response to sections 28(a) and 28(b) on his security clearance questionnaire dated August 31, 2007.

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 in Applicant's case. For PC DC ¶ 16(a) to apply, Applicant's omission of his judgments and delinquent accounts must be done with a deliberate intent to deceive. Applicant admitted in his answer to the SOR and during the hearing that he did not list his delinquent accounts because he was concerned that his financial situation would effect his ability to granted a security clearance and that he might lose his job. He intentionally omitted his delinquent accounts on his security clearance questionnaire.

PC DC ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in the country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence

service or other group) applies with respect to Applicant's omission of his financial problems on his security clearance questionnaire. His deliberate concealment of his financial situation created a potential vulnerability to exploitation, manipulation, or duress.

The personal conduct concern can be mitigated. The following Personal Conduct Mitigating Conditions (PC MC) potentially apply to Applicant's case:

PC MC ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) does not apply. Although Applicant states that he discussed his delinquent debts when he was interviewed in conjunction with his background investigation, he did not make a prompt good-faith effort to correct the falsification prior to the interview. His interview occurred two months after he completed the security clearance questionnaire.

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. There is no question that Applicant's deliberate falsification of his security clearance questionnaire was serious. Applicants for security clearances are expected to be truthful with the government at all times. In his answer to the SOR and at hearing Applicant expressed extreme remorse for his omissions and stated that he intends to be completely truthful on future security clearance questionnaires. He felt extreme pressure as the sole breadwinner for his family when completing the security clearance questionnaire. While this does not justify his deliberate falsifications, it was evident during the hearing that he had learned a lesson from this experience. His supervisor, co-workers, and pastor attest that he is a man of good character and trustworthiness. Applicant's deliberate omission on his security clearance questionnaire appears to be an aberration from his usual character.

PC MC ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) applies. Applicant subsequently fully disclosed his financial situation during his background investigation. His honest admission that he deliberately omitted his delinquent debts on his security clearance questionnaire shows that he has integrity and is willing to admit his mistakes.

While Applicant's deliberate omission of his security clearance questionnaire was serious, his subsequent honesty and full disclosure of his financial situation mitigate the concerns raised under personal conduct. The personal conduct concern is 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 that Applicant’s financial problems were affected by his several periods of unemployment within the past five years. I considered that Applicant has taken steps towards resolving his delinquent accounts. However, no steps have been taken to resolve nine of the 13 delinquent accounts. It is too soon to conclude that his financial issues have been resolved due to the amount of his unresolved delinquent debt. He did not mitigate the concerns raised under financial considerations. Personal conduct concerns are mitigated because Applicant’s falsification of his security clearance questionnaire, although very serious, was a one-time incident which was a departure from his overall character. His subsequent honesty admitting to the deliberate omissions, his expressed remorse, and the statements from his pastor, supervisor, and co-workers attesting to his character for trustworthiness mitigate the concerns raised under 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:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For 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:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Subparagraph 2.b:

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