



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 08-01190 |
| SSN:                             | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 22, 2009

**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 1, 2007. On February 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 acknowledged receipt of the SOR on February 11, 2009. He answered the SOR in writing on March 1, 2009, and requested a hearing before an administrative

judge. DOHA received the request shortly thereafter. Department Counsel was prepared to proceed on April 15, 2009, and I received the case assignment on April 16, 2009. DOHA issued a notice of hearing on April 24, 2009, and I convened the hearing as scheduled on May 28, 2009. The government offered 15 exhibits (GE) 1 through 15, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted five exhibits (AE) A through E, which were received and admitted into evidence without objection. The record closed on May 28, 2009. DOHA received the transcript of the hearing (Tr.) on June 5, 2009.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.s of the SOR, with explanations. He denied the factual allegations in ¶¶ 2.a and 2.b of the SOR.<sup>1</sup> He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 31 years old, works as technician for a Department of Defense contractor. He began working for this contractor in August 2005. Applicant's supervisors and managers describe him as an excellent employee, who is dependable, reliable and honest. All state that he properly handles classified information and that he is trustworthy. They recommend him for a security clearance.<sup>2</sup>

Applicant served in the United States (U.S.) Army for more than seven years. His service included a tour of duty in Korea and in Iraq. The Army awarded him a number of medals and ribbons, including two good conduct medals, Army Commendation Medal, National Defense Medal, Global War on Terrorism Expeditionary Medal, Korean Defense Service Medal, Global War on Terrorism Service Medal, and others. While in the Army, he held a security clearance without any violations.<sup>3</sup>

Applicant and his fiancée have lived together since 2000. They have two sons, ages 7 and 2. Her 11-year-old daughter lives with them. His fiancée does not receive child support from her daughter's father. Applicant attended college and is now taking on-line college courses, working towards his bachelor's degree. His fiancée worked as a cook until she was laid off in January 2009. She is not receiving unemployment

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<sup>1</sup>When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part).

<sup>2</sup>GE 2 (Applicant's security clearance application) at 5, 11; AE B; AE C; AE D; AE E; Tr. 44, 49, 67.

<sup>3</sup>GE 2, *supra* note 2, at 24, 26-27; GE 3 (Applicant's military discharge paper - DD form 214); Tr. 44.

compensation nor has she returned to work. His fiancée is also attending college through an on-line program and has applied for financial benefits under the GI bill.<sup>4</sup>

After his discharge from the Army, Applicant sought employment where he lived on the west coast, but could not find employment. He did not work for three or four months. His current employer offered him a job in July 2005. He moved, with his family, to the east coast at a significant cost, which he paid.<sup>5</sup>

Applicant completed a financial statement on August 1, 2008. His personal financial statement showed a net monthly income of \$5,226. With the loss of his wife's monthly income and his travel pay, his current net monthly income is \$3,200. He has incurred a net monthly income loss of \$2,000. Applicant listed his monthly expenses at \$3,850 on his personal financial statement. He no longer pays child care expenses, so his net monthly expenses now total about \$3,550. He acknowledged that he does not have enough money each month to pay his expenses. Applicant will complete his truck payments by the end of 2009. He anticipates applying that \$500 a month to debt payment.<sup>6</sup>

The SOR lists numerous debts, which are listed at least once on each credit report and sometimes more than once because the debt is under other creditor's names. After reviewing the credit reports dated July 12, 2007, July 29, 2008, August 8, 2008, January 17, 2009, February 25, 2009, and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:<sup>7</sup>

| <b>SOR ¶</b> | <b>TYPE</b>   | <b>AMOUNT</b> | <b>STATUS</b>           | <b>EVIDENCE</b>            |
|--------------|---------------|---------------|-------------------------|----------------------------|
| 1.a          | Medical bill  | \$ 50         | Paid                    | Attachment to SOR response |
| 1.b          | Electric bill | \$ 565        | Payment plan, paid \$50 | <i>Id.</i> ; Tr. 54-55     |
| 1.c          | Medical bill  | \$ 50         | Paid                    | Attachment to SOR response |
| 1.d          | Electric bill | \$ 245        | Paid                    | <i>Id.</i>                 |

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<sup>4</sup>Tr. 46, 48, 50-52.

<sup>5</sup>*Id.* at 45-46, 49.

<sup>6</sup>GE 6 (Applicant's response to Interrogatories, including credit report, dated August 2, 2008) at 6; Tr. 59-61.

<sup>7</sup>GE 4 (Credit report, dated July 12, 2007); GE 6, *supra* note 6, credit report, dated August 2, 2008); GE 7 (Credit report, dated August 8, 2008); GE 8 (Credit report, dated January 17, 2009); GE 9 (Credit report, dated February 25, 2009).

|      |                 |         |        |                               |
|------|-----------------|---------|--------|-------------------------------|
| 1.e  | Cell phone bill | \$ 331  | Paid   | <i>Id.</i>                    |
| 1.f. | Store account   | \$ 630  | Unpaid | Response to SOR<br>Tr. 56     |
| 1.g  | Store account   | \$ 370  | Unpaid | <i>Id.</i>                    |
| 1.h  | Telephone bill  | \$ 151  | Paid   | Attachment to<br>SOR response |
| 1.i  | Jewelry store   | \$1,473 | Unpaid | Response to SOR<br>Tr. 56     |
| 1.j  | Credit debt     | \$ 945  | Unpaid | <i>Id.</i>                    |
| 1.k  | Credit card     | \$ 738  | Unpaid | <i>Id.</i>                    |
| 1.l  | Bank debt       | \$1,125 | Unpaid | <i>Id.</i>                    |
| 1.m  | Store account   | \$3,353 | Unpaid | <i>Id.</i>                    |
| 1.n  | Credit card     | \$ 301  | Unpaid | <i>Id.</i>                    |
| 1.o  | Cable bill      | \$ 70   | Unpaid | <i>Id.</i>                    |
| 1.p  | Credit account  | \$ 234  | Unpaid | <i>Id.</i>                    |
| 1.q  | Credit account  | \$ 352  | Unpaid | <i>Id.</i>                    |
| 1.r  | Cell phone      | \$ 240  | Unpaid | <i>Id.</i>                    |
| 1.s  | Cell phone      | \$ 377  | Unpaid | <i>Id.</i>                    |

Applicant met with a financial counselor once. His stepmother helped him develop a budget and suggested that he pay some of his smaller debts, which he has done.<sup>8</sup> He does not want to file for bankruptcy as a way to resolve his debts. He knows he needs to improve his credit by paying his debts.<sup>9</sup>

When he completed his e-QIP, Applicant answered “no” to the following questions:

#### Section 28. Your Financial Delinquencies

- a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?

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<sup>8</sup>Department counsel raised a question about a judgement entered against Applicant in 1998. The judgment is not listed in the SOR and the July 2002 credit report shows this debt as paid. GE 15 at 4.

<sup>9</sup>Tr. 62-66, 69.

b. Are you currently over 90 days delinquent on any debt(s)?

Applicant acknowledges that he knew he was 90 days past due on his truck payments and had two other unpaid debts at the time he completed his security clearance application. He did not know about most of his debts as he was not receiving any letters from creditors. He admitted that he did not start his e-QIP until near the end of the 30 days in which he had to complete it. Because he had little time to complete his e-QIP, he could not obtain his credit report and complete all the information on his debts. He states that after calling his security officer and explaining his problem, the security officer told him to answer “no” to these questions and advised that he could provide information to the investigator. The employer’s assistant facility security officer denied providing this instruction to Applicant, but had no recall of a telephone call from Applicant on this issue.<sup>10</sup>

Applicant met with the investigator. He states that he gave his credit report to the investigator. The investigator’s report indicates that the investigator reviewed Applicant’s debts with him during the interview. The report does not reflect the source of the information about Applicant’s debts or who provided the information. However, the investigator noted that Applicant planned to request his credit report to address certain debts about which Applicant was unclear. When he completed his SF-86 in 2001, Applicant identified existing financial problems, but did not in his SF-86 completed 18 months earlier in 2000.<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 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.

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<sup>10</sup>*Id.* at 14, 36-37, 69, 76-77, 79, 80-83.

<sup>11</sup>*Id.*; GE 5 (Interview summary); GE 10 (SF-86, dated April 2000) at 10; GE 13 (SF-86, dated December 2001) at 9.

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.

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 conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise

security concerns. Applicant accumulated delinquent debts and has been unable to pay many of these debts for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant has a long history of accumulating debts, many of which remain unpaid. His debts are old and recent, and did not occur under unusual circumstances. This mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s wife lost her job in January 2009 and remains unemployed. He no longer travels for his employer. The loss of her income and his travel pay has reduced their net monthly income. Applicant currently pays his monthly bills, but without his wife’s income he cannot pay his old debts. He acts responsibly by paying his monthly expenses and by making an effort to keep these expenses current. This mitigating condition has partial applicability in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant met with a financial counselor once. With the help of his stepmother, he developed a budget and paid some of his small debts. His current expenses are under control, but he has not resolved many of the debts listed in the SOR. I conclude these potentially mitigating conditions have some applicability.<sup>12</sup>

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

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<sup>12</sup>AG ¶¶ 20(e) and 20(f) are not raised in this case.

Under AG ¶ 16, the following conditions could raise a security concern in this case and may be disqualifying:

(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;

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The government established that Applicant omitted a material fact from his SF-86 when he answered "no" to the questions about debts currently delinquent over 90 days and debts delinquent over 180 days in the last seven years. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. In his response and at the hearing, Applicant strongly denies, however, that he had an intent to hide information about his finances. When a falsification allegation is controverted, the government has the burden of proving the omission was deliberate. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>13</sup> For DC ¶ 16(a) to apply, the government must establish that Applicant's omission, concealment or falsification in his answer was deliberate.

Applicant denied intentionally leaving out information about his past due debts and current financial problems. At the time he completed his e-QIP, Applicant had knowledge of some past due debts and he has so admitted. Because Applicant knew he owed debts, the government has established that Applicant intentionally hid his debt problems. The disqualifying condition in AG ¶ 16(a) applies.

I have reviewed the mitigating conditions under AG ¶ 17 and find that none are applicable in this case. He has not mitigated the government's security concerns under Guideline E.

### **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

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<sup>13</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).



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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served honorably in the Army and is highly respected by his supervisors for his work. He is an excellent and reliable employee. He paid a few small debts. However, since his wife lost her job in January 2009, household income has declined significantly. While routine monthly bills are paid, Applicant has no resources to repay his past debts until he completes his payments on his truck or his wife returns to work. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. At this time, the amount of his unpaid debts raises security concerns. (See AG ¶ 2(a)(1).) In addition, his failure to be forthright about his finances when completing his e-QIP, raises a security concern.

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 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:         | For Applicant     |
| Subparagraph 1.b:         | Against Applicant |
| Subparagraph 1.c:         | For Applicant     |
| Subparagraph 1.d:         | For Applicant     |

