



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-01582
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

February 6, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 1, 2007. On July 12, 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 11, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 14, 2008. The case was assigned to me on November 19, 2008. On December 3, 2008, a Notice of Hearing was issued, scheduling the hearing for December 19, 2008. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified. The record was held open until January 9, 2009, to allow Applicant to submit

documents. No documents were submitted. The transcript was received on December 29, 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 admitted all of the SOR allegations under Guideline F, Financial Considerations and denies all of the allegations under Guideline E, Personal Conduct.

Applicant is a 38-year-old employee with a Department of Defense contractor seeking a security clearance. He has been employed with his company since October 2007. He has a high school diploma, some college and technical school credit. He is separated from his wife and has a son, age 13. (Tr at 5, 19-20; Gov 1.)

On June 1, 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 answered "Yes" in response to question 28(b) "Are you currently over 90 days delinquent on any debt(s)?" He listed a \$246.50 debt owed to an auto finance company. He did not list any other delinquent debts. (Gov 1.)

A subsequent background investigation revealed that Applicant has the following delinquent accounts: a \$2,263 judgment entered against Applicant in 1997 (SOR ¶ 1.a: Gov 2 at 3); a \$53 cable television bill placed for collection in August 2004 (SOR ¶ 1.b: Gov 4 at 2; Gov 5 at 4); a \$30 medical account placed for collection in September 2005 (SOR ¶ 1.c: Gov 4 at 2); a \$635 account placed for collection in September 2005 (SOR ¶ 1.d: Gov 2 at 14; Gov 3 at 6; Gov 5 at 11); a \$2,360 account placed for collection in November 2005 (SOR ¶ 1.e: Gov 2 at 9; Gov 4 at 3; Gov 5 at 6); a \$1,637 electronic store account placed for collection in November 2005 (SOR ¶ 1.f: Gov 4 at 3); a \$450 judgment for a medical account entered against Applicant in January 2006 (SOR ¶ 1.g: Gov 2 at 4); and a \$940 account placed for collection in January 2006 (SOR ¶ 1.h: Gov 4 at 3).

Additional delinquent debts include: an \$830 account placed for collection in May 2006 (SOR ¶ 1.i: Gov 4 at 3); a \$945 credit card account placed for collection in June 2006 (SOR ¶ 1.j: Gov 2 at 10; Gov 3 at 3; Gov 4 at 2; Gov 5 at 3); a \$1,364 jewelry store account placed for collection in July 2006 (SOR ¶ 1.k: Gov 2 at 12; Gov 3 at 5; Gov 4 at 2-3; Gov 5 at 10); a \$100 credit union account for collection in August 2006 (SOR ¶ 1.l: Gov 2 at 10; Gov 3 at 5; Gov 4 at 2; Gov 5 at 4); a \$1,345 credit card account placed for collection in December 2006 (SOR ¶ 1.m: Gov 2 at 13; Gov 3 at 6; Gov 4 at 2; Gov 5 at 10); a \$3,488 account that is delinquent since January 2007 (SOR ¶ 1.n: Gov 2 at 3; Gov 4 at 3; Gov 5 at 4); and a \$460 account placed for collection in March 2007 (SOR ¶ 1.o: Gov 2 at 14; Gov 3 at 6; Gov 5 at 5, 11).

Additional delinquent debts include: a \$2,370 account placed for collection in May 2007 (SOR ¶ 1.p: Gov 2 at 11; Gov 4 at 2; Gov 5 at 8-9); a \$1,381 account placed for collection in May 2007 (SOR ¶ 1.q: Gov 4 at 2; Gov 5 at 3, 10, 12); a \$1,681 account owed after a vehicle was repossessed in May 2007 (SOR ¶ 1.r: Gov 2 at 11; Gov 3 at 5; Gov 4 at 4; Gov 5 at 8); a \$350 medical account placed for collection in May 2007 (SOR ¶ 1.s: Gov 3 at 6; Gov 5 at 10); a \$266 medical account placed for collection in June 2007 (SOR ¶ 1.t: Gov 3 at 6; Gov 5 at 11); a \$150 medical account placed for collection in June 2007 (SOR ¶ 1.u: Gov 3 at 6; Gov 5 at 11); a \$150 medical account placed for collection in June 2007 (SOR ¶ 1.v: Gov 3 at 6; Gov 5 at 11); a \$150 medical account placed for collection in June 2007 (SOR ¶ 1.w: Gov 3 at 6; Gov 5 at 11); a \$150 medical account placed for collection in June 2007 (SOR ¶ 1.x: Gov 3 at 6; Gov 5 at 12); and a \$407 medical account placed for collection in June 2007 (SOR ¶ 1.u: Gov 3 at 6; Gov 5 at 12).

Applicant experienced financial problems due to several periods of unemployment or underemployment. He was unemployed in 1995. He was unemployed between December 2006 and April 2007. He was unemployed between August 2007 to October 2007. (Tr at 21.)

Applicant and his wife are in the process of a divorce. They separated two years ago. Applicant has custody of his son. His son was diagnosed with a mental disorder. He was in a residential facility for awhile but now lives with Applicant. In 2005, Applicant's hours were reduced to 24 hours a week. Part of the reason for the reduction in his hours was Applicant needed to care for his son. (Tr at 19-22; 29.)

On October 17, 2007, Applicant was interviewed by an investigator pursuant to his background investigation. He told the investigator that he had plans to pay off all of his debts by June 2008. (Gov 3.)

At hearing, Applicant stated that he intends to resolve his delinquent accounts. He notified his creditors when he was unemployed. He has been continuously employed since October 2007. He has not made any payments towards his delinquent accounts. . He has not attended financial counseling. He received some settlement offers from his creditors but has not made any repayment agreements yet. (Tr at 23-25.) He thinks the debt alleged in SOR ¶ 1.b, a \$53 cable bill, was paid. He has a current account with the same company. The record was held open to allow him to submit documentation verifying that this debt was paid in full. (Tr at 28.) No additional documents were submitted. He has not paid any of the other debts. (Tr at 29.)

Applicant's car was repossessed last year because he was not able to maintain the payments on the car loan. His wife supports herself. She takes no responsibility for any of the debts. (Tr at 31-32.)

Applicant's monthly take home pay is approximately \$2,732. His mortgage is \$1,087. Other expenses include utilities \$120, car insurance \$40, cable television \$60; phone \$100; groceries \$400, son's medicine \$60. His total monthly expenses are

\$1,867. Provided the figures Applicant gave during the hearing are accurate, after expenses, he has approximately \$865 left over each month. He testified that he had approximately \$500 left over each month after expenses. (Tr at 26, 33-36.) When he was interviewed in October 2007 pursuant to his background investigation, the numbers provided for his income and expenses indicated that he has approximately \$550 left over each month after expenses. (Gov 3 at 7-8.)

Applicant has no open credit card accounts. He is current on federal and state taxes. He never considered filing for bankruptcy. He thinks he will be able to pay his debts in the future as long as he remains employed. (Tr at 36-37.)

Applicant states that he had no intent to deceive the government when he completed his security clearance application (e-QIP). He thought questions 28(a) and 28(b) were referring to active delinquent accounts as opposed to accounts that were several years old. He learned a lesson and intends to list all of his delinquent accounts on future security clearance applications. (Tr at 40-41.)

### **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 2004. The SOR alleged 25 delinquent accounts, an approximate total balance of \$23,955.

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 a long history of financial problems. One of his accounts was placed in collection status as recently as May 2007. He has not begun to resolve his delinquent accounts. His financial problems 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, in part, due to Applicant's several periods of unemployment from 2005 to 2007. He and his wife are in the process of filing for divorce. His son's medical issues caused a further financial strain on his finances. However, he has been continuously employed since October 2007. He has not taken steps to resolve his delinquent accounts even though he has approximately \$500 left each month after expenses that he could apply towards his delinquent accounts. While Applicant has had some challenging times over the past four years, I cannot conclude that he has acted responsibly under the circumstances because he has not taken steps to resolve his delinquent accounts. He was on notice that his delinquent accounts would be an issue by at least October 2007 when he was interviewed during his background investigation. He told the investigator that he had a plan to resolve all of the delinquent accounts by June 2008. As of December 2008, Applicant presented no plan for paying his delinquent accounts during the hearing. For this reason, this mitigating condition 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) does not apply. Applicant has not attended financial counseling. It would be helpful for him to do so in order to develop a plan to resolve his delinquent accounts.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. While Applicant intends to resolve his delinquent accounts, he has taken no action to resolve any of the accounts. Though he claims that he resolved the debt alleged in SOR ¶ 1.b, he provided no proof that the debt was resolved. Applicant did not make a good-faith effort to resolve his delinquent accounts.

Applicant has not mitigated the concerns raised under Guideline F. Guideline F is found against Applicant.

## **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 application, dated June 1, 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. I find Applicant did not deliberately intend to falsify his security clearance application. He misunderstood the question. He believed that he was required to list his recent financial delinquencies as opposed to older debts. He has learned a lesson and intends to disclose his delinquent accounts on future security clearance applications. I find his explanation credible.

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. While Applicant has had circumstances that were beyond his control which contributed to his financial problems, he has been continuously employed for over 14 months and has no plan in place to resolve his delinquent accounts even though he has \$500 in discretionary funds left over each month after expenses. It is too soon to conclude that his financial issues have been resolved due to the significant amount of his unresolved delinquent debt and the lack of action taken towards resolving the accounts on his part. He did not mitigate the concerns raised under financial considerations. Personal conduct concerns are mitigated because Applicant did not intend to falsify 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against 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:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	Against Applicant
Subparagraph 1.y:	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