



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



In the matter of: )  
)  
) ISCR Case No. 08-02563  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

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

February 24, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on August 28, 2007. On August 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on September 4, 2008. DOHA issued a Notice of Hearing on November 5, 2008, and the hearing was held on November 19, 2008. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the government’s case. Applicant testified and placed exhibits AE A through AE C in evidence. In the time allowed for Applicant to submit additional

documentation following the hearing, he submitted AE D through AE H without objection. DOHA received copy of the transcript on December 2, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

The SOR lists seven delinquent debts totaling \$13,962.00. SOR 1.h. is a duplicate entry of SOR 1.c.<sup>1</sup> Applicant admitted all debts except for 1.f., which he indicated he settled in May 2008. The second guideline (paragraph 2, personal conduct) lists two allegations that Applicant admitted. Applicant is 53 years old, single, and has been employed as a mail room clerk, scheduler for video teleconferences, and back-up receptionist, with his employer since May 2001.

### **Financial Considerations**

In January 2001, Applicant was laid off by a travel agency, and was unemployed until March 2001, when he was assigned by a temporary employment agency to work at his current employer. In May 2001, Applicant was hired full time by his current employer. Applicant indicated he was making payments on the delinquent accounts, but not minimum payments, and the creditors contacted him (GE 2; Tr. 28), pressing him for the minimum payment. He claims he responded to the creditors, but either got no reply from them, or they refused to negotiate with him (Tr. 31). Initially Applicant did not pay the SOR 1.c. or SOR 1.e. creditors because they told him to wait to be contacted by the collection agencies (Tr. 29). Later in his testimony, Applicant stated that because the collection agencies did not contact him in the first year of the debts' delinquency, he did believe the debts were a real priority (Tr. 49). Most of the accounts listed in the SOR became delinquent in 2001 and 2002, however, one credit card account fell delinquent in August 2000.

In September 2007, Applicant had a heart attack. He was treated at the hospital from September 9 through September 11, 2007, and advised he could return to work in 14 to 21 days (GE 2). During his cardiac recovery from September through November 2007, Applicant decided to put his health before his overdue debts. He also decided to pay his medical bills before his delinquent accounts, but is willing to pay both old and new accounts (*Id.*)

SOR 1.a. \$4,768.00. This credit card account became delinquent in November 2000 (GE 3). Applicant believes that the collection agency that handles this debt contacted him in October 2007. He began making payments of \$52.00 a month on this account in August 2008, and is still making the monthly payment (GE 2, AE H). The present past due amount is \$1095.00 (AE H). Applicant's documented monthly payment for about a year supports a finding in his favor regarding this account.

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<sup>1</sup> SOR 1.h. is found in Applicant's favor.

SOR 1.b. \$3,602.00. This account fell delinquent in July 2003, and has not been paid. This account is resolved against Applicant.

SOR 1.c. \$1,857.00. (This is the same account as SOR 1.h.) The last activity on this account was October 2001. A finding against Applicant is based on his lack of action to address this debt.

SOR 1.d. \$90.00. Applicant stated this medical debt (and the medical company that provided the service) was purchased by the hospital that treated him for his heart attack (Tr. 47). With no evidence of payment, this debt is resolved against Applicant.

SOR 1.e. \$408.00. This is a department store account that became delinquent in October 2002, and has not been paid. Applicant remains responsible for this account.

SOR 1.f. \$1,090.00. Applicant believes he was contacted by a collection agency for SOR 1.f. in January 2008, though he has no proof. The collection agency demanded \$1,090.00, and SOR 1.f. posts the same delinquent amount. He settled the debt for \$852.00 by making a \$300.00-dollar lump sum payment in February 2008, and three monthly payments of \$184.00 between March and May 2008 (GE 2). Having no other information to determine whether SOR 1.f. is the same account, as identified by the collection agency, I find that Applicant settled the account, although there is no documentation of monthly payments for April and May 2008. Since Applicant submitted the response to interrogatories on May 21, 2008, the May payment may not have been processed in time for Applicant to include the payment in his response to the interrogatories. While he had ample time to submit the April payment, I find that Applicant nonetheless settled this account.

SOR 1.g. \$1,517.00. This account became delinquent in October 2002. No action has been taken on this account. AE G is a contact notice from a collection agency dated November 7, 2008. This account is resolved against Applicant.

### **Personal Conduct**

On June 21, 2006, Applicant intentionally provided false information about his delinquent debts in his security clearance application (SCA). On the form, he answered "No" to question 28.a. requiring information about debts over 180 days old in the last seven years. Applicant answered "No" to question 28.b., requiring information about whether an applicant is over 90 days delinquent on any debt.

On November 30, 2004, Applicant provided an earlier SCA (AE A). In that SCA, he answered "No" to having debts over 180 days delinquent, but answered "Yes" to having debts over 90 days delinquent. Applicant then listed one debt. In late November 2005, Applicant filled out a new SCA that was lost by an organization that contracted to administer security forms. This company lost the contract and was replaced by a new company to administer the security forms. In GE 1, Applicant's "No" answers to

questions 28a. and 28.b. of the June 21, 2006 SCA (SOR 2.a. and 2.b.) were triggered by frustration rather than an attempt to misrepresent himself on the security form. He knew he had debts, but he could not respond with details.

At the hearing, Applicant Provided more information about not being able to provide the details of his indebtedness. He claimed he sought advice from his employer and the military office (location of his employment) while he was beginning to complete the SCA (SOR 2.a. and 2.b). There was no place on the form for additional comments, and no one had a contact number for the organization that administered the SCA (Tr. 24-25). Applicant was unofficially told that since he could not provide detailed information, answering "No" to the financial questions would get the SCA into the system. Applicant then stated:

I was not - - the way it was presented was that - - unfortunately, it was all unofficially told to me; said this. But that it was that since I couldn't provide the answers immediately, that by saying no, it would get the form into the system without a hiccup. That then the process through of figuring out or being investigated or gone through, when they came to that about the financial things, that if they chose to question information about that, that then they would come and ask me what (Tr. 35-36).

Applicant has never had financial counseling. In 2001, he investigated debt counseling but discovered it was too expensive (Tr. 33). He also checked into financial counseling through his employer, but has pursued no counseling since his heart attack in September 2007. Applicant has never obtained a copy of his credit report (Tr. 34).

### **Character Evidence**

Applicant submitted his performance reviews for October 2001 through September 30, 2007, which indicate he has met or exceeded his performance requirements (AE D). The security force/protection officer has known Applicant since 2004, and has observed him comply with all security regulations (AE E). The chief of information management, has known Applicant since 2001 when he recommended Applicant be hired (AE F). The chief knows that Applicant's hard-work and team player attitude has earned him additional responsibilities (*Id.*)

### **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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

## **Analysis**

### **Financial Considerations (FC)**

18. *The Concern.* "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

Though most of Applicant accounts fell delinquent in 2001, GE 3 reflects that at least one of the debts fell delinquent in late 2000. Applicant says he made payments to several of the creditors in 2001 until the creditors contacted him with demands for at least the minimum payment. Even if he had made the payments, he still exercised poor judgment by accepting the creditors' advice to wait for the collection agencies to call him, particularly during his uninterrupted employment between May 2001 and his heart attack in September 2007. Applicant has paid two creditors listed in the SOR, but still owes five creditors \$7,474.00. FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*) apply.

The mitigating conditions have been evaluated. FC mitigating condition (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*) applies in part. Most of the accounts became delinquent over six years ago. However, the lack of evidence into Applicant's financial habits makes it impossible for me to conclude that his ongoing financial problems will not persist or deteriorate in the future.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control*) receives no consideration. Though unanticipated unemployment is an event that is clearly outside a person's control, Applicant's job loss occurred more than six years ago, and lasted less than three months. The long period of undisturbed employment since his only documented job loss has provided him with additional opportunities to address the overdue debts without having to worry about a disruption of income.

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 under control*) receives limited consideration based on Applicant's successful efforts in settling two of the debts. Settling debts however, is only one area of financial responsibility that arises after the debt has become delinquent. The most important area in the management of financial matters is to avoid getting entangled in financial problems by paying debts on time, and instituting sound financial habits that eliminate the chances of future problems. Applicant has not received counseling, and there is insufficient evidence to support a conclusion the debts will not recur.

Applicant receives some consideration under FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Though he did not initiate the repayment of overdue creditors, he did negotiate a payment schedule which he honored throughout the repayment plan. However, additional weight cannot be assigned to Applicant's settlement of the two of seven creditors because of his deliberate falsification of his SCA on June 21, 2006, and SCA in November 2004. Having examined the record in its entirety, Applicant has not provided sufficient

evidence that he has his debts under control. The FC guideline is found against Applicant.

### **Personal Conduct (PC)**

15. *The Concern.* “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.”

Given the fact that Applicant’s “No” answers to both debt questions (28.a., 28.b.) of his SCA in June 2006 were admittedly deliberate, PC DC 16.a. (*deliberate omission, falsification of relevant facts from any personnel security questionnaire used to determine security clearance eligibility or trustworthiness*) applies.

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 due to Applicant’s failure to come forward with the intentional omission until August 2006, when he answered the allegations of intentionally omitting material financial information.

PC MC 17.c. (*the offense was 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*) is not applicable even though the intentional omission occurred more than two years ago. The omission cannot be considered minor as Applicant tried to conceal his debts entirely with his “No” answers to questions 28 and 29 of his SCA. Significantly, in his SCA in November 2004, Applicant submitted false information about his debts when he answered “Yes” that he had debts, but then listed only one debt.

PC MC 17.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*) has only limited application. While Applicant acknowledged that he deliberately omitted information from the SCA, there is no evidence of action taken by Applicant to preclude the behavior from recurring in the future. Having weighed the adverse information under the PC guideline with the favorable information under the guideline, including the character evidence from Applicant’s job, Applicant’s mitigating evidence is insufficient to find in his favor under the PC guideline.

## Whole Person Concept (WPC)

I have examined the evidence under the disqualifying and mitigating conditions of the FC and PC guidelines. I have also weighed the circumstances of this case within the context of nine variables known as the whole person concept:

(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 the participation was 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.

I have considered the facts of this case in light of the disqualifying and mitigating conditions of the FC guideline, and also in light of the general factors of the whole person concept. Applicant was 46 years old when he lost his job in early 2001. The unemployment was short because he found a full time job in May 2001, and has sustained continuing employment since that time. In 2001, Applicant knew he had overdue accounts because he remembered making some partial payments to the creditors. He even acknowledged he had creditors in November 2004.

Six years passed between Applicant's hire (May 2001) and the appearance of his medical condition in September 2007. In that period, Applicant could have worked out a payment plan with some of the rising number of creditors. However, he decided to accept the advice of the creditors and wait on the collection agencies to contact him. He should understand by now that his decision has caused him to fall deeper in debt. Applicant exercised good judgment in paying on or settling the SOR 1.a. and 1.f. creditors. However, he is not really certain that those creditors are the same as the ones identified in the SOR. Given the lack of evidence demonstrating initiative by Applicant to resolve his accounts with the remaining five creditors, I am unable to conclude he has his finances under control. Applicant's two attempts to under report and then deny he had debts altogether warrants a finding against Applicant under the FC and PC guidelines.

## 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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.  
Subparagraph 1.b.

For Applicant  
Against Applicant



Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	Against Applicant
Subparagraph 1.h.	For Applicant

Paragraph 2 (Personal Conduct, Guideline E):                    AGAINST APPLICANT

Subparagraph 2.a.	Against Applicant
Subparagraph 2.b.	Against 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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Paul J. Mason  
Administrative Judge