



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-03138
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: Pro Se

August 12, 2009

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 4, 2007. On February 19, 2009, 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. 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 April 7, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 28, 2009. The case was assigned to me on June 1, 2009. On June 18, 2009, a Notice of Hearing was issued, scheduling the hearing for July 14, 2009. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. The Applicant testified and offered three exhibits which were admitted without objection as Applicant Exhibits (AE) A - C. The record was held open until July

28, 2009, to allow Applicant to submit additional documents. He timely submitted a 21-page document that was admitted as AE D. Department Counsel's response to AE D is marked as Hearing Exhibit (HE) I. The transcript was received on July 31, 2009. 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 denied all of the SOR allegations.

Applicant is a 38-year-old engineer with a Department of Defense contractor seeking to maintain his security clearance. He has been employed with his company since May 2005. He has a bachelor of science degree in chemical engineering. He served in the Air National Guard from 1995 to 2005. He enlisted, attended Officer Training School (OTS), and achieved the rank of First Lieutenant. He is single and has no children. (Tr at 5-6, 40; Gov 1.)

On September 4, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in order to apply for a security clearance. Applicant answered "yes" in response to question 28(a) "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" He listed a mortgage foreclosure in February 2003. He did not list any other debts. (Gov 1.)

A subsequent background investigation revealed that Applicant has the following delinquent accounts: a \$153 cell phone account placed for collection in October 2006 (SOR ¶ 1.a: Gov 2 at 51; Gov 3 at 2; Gov 4 at 4); a \$1,475 account placed for collection in March 2005 (SOR ¶ 1.b: Gov 4 at 4); a \$2,595 credit card account placed for collection in July 2004 (SOR ¶ 1.c: Gov 2 at 50; Gov 3 at 2; Gov 4 at 4); a \$3,878 credit card account placed for collection in September 2007 (SOR ¶ 1.d: Gov 2 at 50; Gov 4 at 4); a \$2,673 cell phone account placed for collection in August 2007 (SOR ¶ 1.e: Gov 2 at 50; Gov 3 at 1; Gov 4 at 5); a \$3,260 electronics department store account placed for collection in December 2003 (SOR ¶ 1.f: Gov 2 at 51; Gov 3 at 3; Gov 4 at 6); a \$3,576 credit card account placed for collection in June 2007 (SOR ¶ 1.g: Gov 2 at 52; Gov 4 at 8); a \$2,474 debt owed to an apartment complex placed for collection in September 2005 (SOR ¶ 1.h: Gov 2 at 52; Gov 3 at 1; Gov 4 at 8); a \$60 medical account placed for collection in September 2007 (SOR ¶ 1.i: Gov 4 at 11); and a \$483 telephone account placed for collection in June 2005 (SOR ¶ 1.j: Gov 2 at 50; Gov 3 at 3).

Six months after graduating from college in 2000, Applicant purchased a home. His first job was a contract job which he believed was going to last for several years. He earned approximately \$80,000 a year. After one year, the contractor cancelled the project. He was unemployed for approximately two months. He found a job but earned half of what he was making in his previous job. His reduced income and money mismanagement resulted in a mortgage foreclosure in 2003 and several delinquent accounts. (Tr at 30-32; Gov 2 at 8)

Applicant claims that he tried to pay off some delinquent accounts but ran into some unscrupulous credit collection agencies. While he admits that he incurred several delinquent accounts, he will not pay the collection agencies who now own the debts. He has made no attempt to dispute any of the accounts with the credit reporting agencies. He is concerned that any contact with creditors who own his older debts will extend the amount of time they will be listed on his credit reports. His plan is to wait for the debts to be removed after seven years on his credit report. (Tr at 33, 36, 50, 56) (Section 605 of the Fair Credit Reporting Act provides that accounts placed for collection or charged to profit and loss that are more than seven years old are to be excluded from consumer credit reports.)

Applicant disputes the debt alleged in SOR ¶ 1.h which is a \$2,474 debt owed on an apartment lease. Applicant lived in the apartment complex. He broke his lease early because he accepted employment in another state. Applicant did not have a transfer clause in his lease. The apartment complex agreed to accept another tenant, commonly referred to as a sub-lessee. The new tenant did not pay rent and moved out before Applicant's lease was up so they held him responsible for the remainder of the lease. He refuses to pay this debt. (Tr at 37-39)

Applicant disputes the debt alleged in SOR ¶ 1.e which is a \$2,673 cell phone account that was placed for collection. Applicant arranged for a female acquaintance to have a cell phone on his account. The account was in his name only. It was agreed that the female acquaintance would pay her portion of the bill. She did not pay her portion of the bill. (Tr at 59-60)

Applicant claims that all of the disputed debts are old. The statute of limitations for enforcement of the debts is four years in the state where he previously resided and is four years in the state where he currently resides. Applicant is repaying all of the debts that he does not dispute. Only two undisputed debts remain, his school loans and a credit card, neither of which are alleged in the SOR. (Tr at 22-23) He paid off one student loan account. (AE D at 20)

In response to interrogatories dated October 10, 2008, Applicant completed a personal financial worksheet. He listed his net monthly income as \$3,780.88. He listed his monthly expenses as \$1,445. He listed his monthly debt payments as \$683.65. After his expenses and debts were paid, he had approximately \$1,652.23 left over each month. (Gov 2 at 34)

During the hearing, Applicant indicated that since completing the personal financial worksheet, his salary has increased. A pay statement dated June 30, 2009, indicates Applicant's gross bi-weekly pay is approximately \$2,407.69, which is \$4,915.38 monthly. (Tr at 72; AE A) He indicated that his rent is \$400, his groceries are \$200 a month and his utility and car expenses are less but provided no figure. He has two cell phone accounts which cost him \$150 a month. He does not own real estate. His cars are paid for. He owns a 1999 truck, a 1988 car, and a 1998 18 foot boat. He is

current on taxes and is not delinquent on any of his current debts. (Tr at 72-79) He has approximately \$32,552.84 in a 401(k) plan. (Tr at 26; AE D at 12-19)

At the close of the record, none of the accounts alleged in SOR ¶¶ 1.a – 1.j were resolved.

Applicant claims that he did not list his delinquent accounts in response to section 28(a) of the e-QIP application because he was uncertain that he needed to list debts which he disputes. He claims he misunderstood the question. He listed his mortgage foreclosure in response to the question. On November 13, 2007, he fully disclosed the delinquent accounts that he disputes to the investigator conducting the background investigation. (Tr at 66-69; Gov 2 at 30) He disagrees with the investigator's comments in the summary of the unsworn interview that stated that Applicant failed to list his delinquent debts out of concern it could cause him to lose his security clearance and lose his job. (Tr at 69; see Gov 2 at 12)

Applicant's most recent performance appraisal covering the period of June 1, 2008, to June 1, 2009, rated his overall performance as "very good". He scored a "4" on a scale with "5" being the highest rating. (AE C) His awards and decorations while serving in the Army National Guard include the National Defense Service Medal, the Army Service Ribbon, Governor's Unit Citation, and the Army Achievement Medal. He also received several certificates and awards. (Tr at 41, AE D at 2-11, 20)

### **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 overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 encountered financial difficulties after graduating from college in 2000. The SOR alleged 10 delinquent accounts, an approximate total balance of \$20,627.

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 over the past nine years. Although his current financial situation is relatively stable, ten delinquent accounts remain unresolved. Applicant took no steps to resolve any of the delinquent accounts. While he claims the collection agencies are unscrupulous, he admits that he may have incurred these debts. He did not formally dispute these accounts with the credit reporting agencies.

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 two-month period of unemployment after his first job, and his significantly reduced income when he obtained employment. However, I cannot conclude Applicant acted responsibly under the circumstances because he has ignored the delinquent debts that he incurred during this timeframe. He was able to save \$32,000 in his 401(k) account, but deliberately ignored his early financial obligations. 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. All ten delinquent accounts remain unresolved.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant's plan to resolve his delinquent accounts is to passively wait until the debts are removed from his credit report after seven years. He also claims that most of the debts are beyond the statute of limitations and are unenforceable. He has not made a good-faith effort to resolve his delinquent accounts.

With regard to Applicant's statute of limitations argument, the DOHA Appeal Board has long held that:

Security clearance decisions are not controlled or limited by any statute of limitation. Absent an explicit act of Congress to the contrary, the federal government is not bound by state law in carrying out its functions and responsibilities. A security clearance adjudication focuses on evaluating an applicant's judgment, reliability and trustworthiness. Even if a

delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy debt in a timely manner. ISCR 02-14950 at 4 (App. Bd. May 15, 2003) See also ISCR 06-18900 at 5 (App. Bd. June 6, 2008); ISCR 03-04779 at 4 (App. Bd. July 20, 2005); ISCR Case No. 01-09691 at 2-3 (App. Bd. March 27, 2003).

Applicant's plan to resolve his delinquent accounts is to wait for them to be removed from his credit report after seven years in accordance with Section 605 of the Fair Credit Reporting Act. However, the Appeal Board has held that the fact that debts will be removed from applicant's credit history in the near future does not preclude their review for security purposes:

...the removal of those debts from his credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant's credit history does not turn on whether Applicant's debts could or could not be legally listed on a credit report after the passage of seven years. ISCR 02-14950 at 4 (App. Bd. May 15, 2003); See ISCR Case 98-0111 at 3 (App. Bd. November 13, 1998).

For the reasons mentioned above, Applicant has not demonstrated a good-faith effort to resolve his debts.

FC MC ¶20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue) does not apply. Although Applicant disputes all of the accounts alleged in the SOR, he has not expressed a reasonable basis to dispute the legitimacy of his past-due debts. He never formally disputed any of these accounts with the credit reporting agencies. He did not provide sufficient documentary evidence to support that any of these debts were not his responsibility.

With regards to the \$2,673 cell phone debt, alleged in SOR ¶ 1.e, Applicant made an error in judgment by allowing a friend to have a cell phone on his account. The cell phone company was not a part of this agreement. The account was in his name only. He is responsible for the debt.

Not enough information is provided about the apartment lease debt that is alleged in SOR ¶ 1.h. It is not clear that Applicant was released from the terms of his original lease when he found a person to sublet the apartment. Since the new tenant did not pay the rent and moved out before the end of his lease term, the apartment company may have a legitimate right to hold him responsible for the unpaid remainder of his lease term as well as any damages. Applicant did not provide sufficient evidence to support his dispute with this debt.

While Applicant appears to have the means to resolve his delinquent accounts, he has decided to passively wait for the statute of limitations and for the seven-year period when the debts will be removed from his credit report. 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 all of his financial delinquencies in response to sections 28(a) on his electronic questionnaires for investigations processing, dated September 4, 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) is relevant to Applicant's case. For PC DC ¶ 16(a) to apply, Applicant's omission of his delinquent accounts must be done with a deliberate intent to deceive. Applicant's interpretation of the question was to list delinquent debts that he did not dispute. He listed his mortgage foreclosure in response to the question. Once the question was clarified upon meeting with the investigator in November 2007, Applicant fully discussed all of his delinquent accounts, the majority of which he disputes. Although the personal subject interview which was prepared by the investigator who interviewed Applicant infers Applicant admitted to intentionally omitting his delinquent debts on his security clearance application out of fear of losing his security clearance and, as a result, his job, it is not given much weight because it is unsworn and Applicant disputes the summary of the investigator's interview. In addition, the interviewer did not testify during the hearing and was not subject to cross examination. Based upon the weight of the evidence, I find Applicant's explanation for not listing all of his delinquent accounts to be 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) 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 commonsense 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 Applicant's favorable work performance and his ten years of honorable service in the Army National Guard. However, Applicant did not present sufficient evidence to explain, extenuate, or mitigate the security concerns raised under financial considerations. He did not formally dispute any of his delinquent accounts with the credit reporting agency. In fact, he admits that he incurred the delinquent debts. Rather than honoring his past financial obligations, Applicant intends to wait until they are removed from his credit report in accordance with the Fair Credit Reporting Act. 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. Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

### **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

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interests 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