



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-09609
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro Se*

June 29, 2009

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant certified his Electronic Questionnaires for Investigations Processing (e-QIP) on June 4, 2008. On January 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In a response signed on February 18, 2009, Applicant admitted 2 of 10 Guideline F allegations and denied the single Guideline E allegation. He declined a hearing on the record in favor of an administrative determination. On March 13, 2009, Department Counsel submitted a File of Relevant Materials (FORM), including 6 attached items. Applicant received the FORM on March 26, 2009. He chose not to submit any

additional information in response to the FORM within the 30 days provided. The case was forwarded for assignment to an Administrative Judge on June 16, 2009. I was assigned the case on June 17, 2009. Based upon a review of the case file, submissions, and exhibits, I find Applicant mitigated the security issue raised under Guideline E, but failed to meet his burden with regard to security issues arising under Guideline F. Security clearance is denied.

### **Findings of Fact**

Applicant is a 64-year-old security specialist working for a defense contractor. He earned a bachelor of business administration degree in management and received an honorable discharge from the United States military after four years of service. Married for 30 years, he has two grown children.

The facts of record are scant. Applicant lives in a two-bedroom apartment with his wife and two grown children. He owns a nine-year-old truck and a four-year-old vehicle. Applicant submitted evidence regarding two of the allegations contained in the SOR, 1.a and 1.j. In opting not to have a hearing, Applicant chose that an administrative determination be made solely on the written record.

In 1995, Applicant required a quintuple bypass heart surgery and a 30-day recuperation period. When he returned to his workplace, it was at a reduced salary. His health insurance covered all medical expenses. The time off and reduced income, however, led him to default on some credit cards.

From September 2002 until April 2004, Applicant held a string of often short-term positions, often as a courier or in security.<sup>1</sup> In 2004, he began working for his current employer. In January 2008, he suffered a heart attack, followed by subsequent heart attacks in February 2008 and in April 2008. He was treated at the same hospital for all three incidents. His health insurance coverage was not as comprehensive as it was in 1995 and he was unable to pay all of his hospital bills. Other bills were incurred as he was away from work. He has only been able to address his current bills with the aid of his two grown children, both of whom are employed.<sup>2</sup>

The January 2009 SOR references 10 allegations, each representing a delinquent debt or lien noted in either Applicant's June 17, 2008, or October 17, 2008, credit report. Those allegations, Applicant's comments in his SOR Response, and pertinent information from the credit reports referenced in the SOR are as follows:

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<sup>1</sup> The limited record does not reveal what Applicant did between 1996 and 2002.

<sup>2</sup> FORM, Item 3, SOR Response at 1.

1.a – **2006 Tax Lien** (approximately \$11,914) – *IN REPAYMENT* – Applicant admits this allegation. He demonstrated, however, that he has paid the balance owed down to approximately \$3,900 as of February 1, 2009, through a repayment plan.<sup>3</sup>

1.b – **2008 Medical Balance** (approximately \$11,948) – *UNADDRESSED* – Applicant admits this balance from his 2008 hospitalizations. Currently unable to make payments toward this balance, he plans to address it once his payments to the IRS are complete.

1.c – **Collection Entity** (approximately \$445) – *UNADDRESSED* – Applicant denies this allegation, noting that he has never heard of the collection agent named in the SOR. The SOR fails to plead the matter with specificity inasmuch as it does not identify that the account is a medical collection, but that fact is clearly noted in the underlying credit reports. The account referenced reflects that it was opened in September 2002 and shows a date of last activity in April 2002.

1.d – **Credit Card Collection** (approximately \$2,864) – *UNADDRESSED* – Applicant denies this allegation, writing the “account is at least twelve years old. It should not be on my credit report and should not be considered since it is well beyond the seven year scope of the investigation.” The credit report notes that the account was opened in 1998 and reflects a date of last activity in March 2002.<sup>4</sup>

1.e – **Credit Card Collection** (approximately \$5,432) – *UNADDRESSED* – Applicant denied this allegation with the same comment noted above. The credit report notes that the account was opened in 1998 and also reflects a date of last activity in March 2002.

1.f – **Credit Card Collection** (approximately \$2,666) – *UNADDRESSED* – Applicant denied this allegation with the same comment noted above. The credit report notes that the account was opened in 1999 and reflects a date of last activity in August 2002.

1.g – **Creditor** (approximately \$1,755) – *UNADDRESSED* – In denying this allegation, Applicant wrote “This account is not on my credit report. I don’t know what it is and as

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<sup>3</sup> FORM, Item 3, SOR Response at 5, Attachment A (IRS Monthly Statement, dated Jan. 21, 2009).

<sup>4</sup> It is unclear how Applicant concluded the “scope of investigation” is limited to a seven year window. The e-QIP, Section 28(a), inquires “In the last 7 years, have you been over 180 days delinquent on any debt(s),” but Section 28(b) inquires “Are you *currently* over 90 days delinquent on any debt(s) (emphasis added)?” There is no absolute bar to consideration of delinquent obligations originating outside that seven year window of inquiry that remain delinquent. Additionally, there is no general law or policy that references to a non-lien account are automatically deleted after appearing on a credit report for 7 or 12 years. The Fair Credit Reporting Act (FCRA) states that *past due* accounts can only continue on a credit report for seven years past delinquency. Generally speaking, with regard to Equifax, a delinquent account becomes poised for removal seven years from the date of last activity, not necessarily from the date the account was opened. That is its method of establishing its FCRA Compliance Date. In contrast, TransUnion and Experian now note an established removal date, which is typically seven years after the FCRA Compliance Date.

far as I know I do not owe it.” No evidence was provided showing this account has been deleted. The date of last activity on the account is shown as September 2002.<sup>5</sup>

1.h – **Telecommunications Provider** (approximately \$699) – *UNADDRESSED* – Applicant denies this allegation, but admits having had an account with the noted provider’s predecessor. He wrote that he requested his service be cancelled because of poor reception, but that a customer retention specialist would not comply. He asserts that the company kept the account open “until a sizeable debt was incurred and then cancelled the service and began collection proceedings. This is an artificial debt incurred through unscrupulous business practices and I do not owe it. In any case, this debt is over seven years and should not be considered since it is beyond the seven year scope of this investigation.” The account, however, is shown as opened in May 2007 with a date of last activity in June 2007.

1.i – **Credit Card Collection** (approximately \$3,097) – *UNADDRESSED* – Applicant denies this allegations, noting “I have never done business with this [entity] and do not know if I incurred this or not. If I did, this account is at least twelve years old. It should not be on my credit report and should not be considered since it is well beyond the seven year scope of this investigation.” Applicant provided no evidence that he has disputed this account’s inclusion on his credit report. The account is shown as opened in September 1997 with a date of last activity in October 2002.

1.j – **Telecommunications/Cable Provider** (approximately \$103) – *PAID* – Applicant denies this allegation, showing that the account balance was previously paid and that he is currently a customer in good standing with this provider.<sup>6</sup>

In executing his June 2008 e-QIP, Section 28(a) and (b) (“Your Financial Delinquencies”), Applicant denied currently being over 90 days delinquent on any debt(s). He similarly denied having been over 180 days delinquent on any debt(s) in the last seven years. In response to Section 27(c) (“Your Financial Record”), he answered affirmatively that he had a lien placed against his property for failing to pay taxes or other debts in the last seven years. He supplemented this admission with a full description of the action, noting that he was in repayment on an installment agreement.<sup>7</sup>

In concluding his four page SOR Response, Applicant wrote: “I am a financially responsible person. If you consider only my indebtedness within the last seven years specified in the e-QIP questionnaire, the only problem I have encountered is with [the hospital in which he thrice received treatment in 2008] and I will start paying that as soon as I am financially able.” He concluded by noting: “In short, I do not pose a security risk and my application for a security clearance should be approved.”

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<sup>5</sup> This allegation is generic and has not been pled with sufficient specificity. Consequently, it fails to give Applicant sufficient notice as to whom he owe the amount alleged.

<sup>6</sup> FORM, Item 3, SOR Response at 6, Attachment B (Account Summary).

<sup>7</sup> FORM, Item 4 (e-QIP) at 29-30.

## 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. Under AG ¶ 2(c), this 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>8</sup> The burden of proof is something less than a preponderance of evidence. <sup>9</sup> The ultimate burden of persuasion is on the applicant. <sup>10</sup>

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

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<sup>8</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>9</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>10</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>11</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>12</sup> The decision to deny a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>13</sup> Nor does it reflect badly on that person’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) and Guideline E (Personal Conduct) to be the most pertinent to the case. Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth where applicable and discussed below.

## **Analysis**

### **Guideline F – Financial Considerations**

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.<sup>14</sup> The Directive sets out several potentially disqualifying conditions under this guideline.

Here, Applicant’s credit reports reflect a number of delinquent accounts which represent approximately \$40,000. He demonstrated substantial repayment on the debt noted in allegation 1.a for \$11,914 and full payment of a prior delinquent balance on the account noted in allegation 1.j for \$103. That leaves approximately \$27,900 left unaddressed, including approximately \$12,000 in 2008 medical bills. Applicant admits he is currently unable to make payments on other accounts until he has completed paying off the IRS lien noted in allegation 1.a. Such facts and such an inability give rise to Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and FC DC AG ¶ 19(c) (“a history of not meeting financial obligations”). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Executive Order 10865 § 7.

<sup>14</sup> Revised Adjudicative Guideline (AG) ¶ 18.

The facts present situations tending to mitigate Applicant's acquisition of debt.<sup>15</sup> Although he held a string of mostly short term positions from 2002 through 2004, there is no indication of adverse conditions or unemployment during this period. In 2008, however, he faced three successive heart attacks and related hospitalizations. This also required time away from work and from generating income. Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior 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 to debts related to this period and his subsequent ability to honor his obligations.

Aside from his 2008 medical bills and his tax lien, toward which Applicant has been in repayment, Applicant still has about \$17,000 in delinquent debt. Most of that \$17,000 is in credit card debt and have dates of last activity in 2002.<sup>16</sup> There is no evidence he sought financial counseling. Moreover, having chosen an administrative determination, there was no opportunity to elicit testimony as to what occurred in 2002 to cause their delinquency. Based on the facts presented, however, it is clear that they significantly post-date his 1995 hospitalization, pre-date his recent 2008 medical emergencies, and remain unaddressed. Also lacking is information tending to mitigate the fact that his delinquent debts continued to be unaddressed through 2008. Consequently, FC MC AG ¶ 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") does not apply.

In light of Applicant's success in diligently repaying his IRS tax lien, FC MC AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts") applies to a limited degree.

### **Guideline E – 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.<sup>17</sup>

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<sup>15</sup> While Applicant's 1995 multiple bypass surgery, protracted recovery, and reduced salary were clearly beyond his control, Applicant provided no nexus between these events and the debts at issue in the SOR.

<sup>16</sup> Contrary to Applicant's comments and assertions, none have a date of last activity within seven years of the SOR and none were over a dozen years old at that time.

<sup>17</sup> AG ¶ 15.

On his e-QIP, Applicant denied being currently over 90 days delinquent on any debts. He also denied having had any debts that were delinquent for over 180 days in the past seven years. His SOR response indicates he answered “no” based on an incorrect understanding of either the questions, credit bureau reporting, his personal financial situation, or the scope of the security clearance application investigation when he completed the e-QIP. A misunderstanding, however, is not the equivalent of an intent to mislead, falsify, or conceal. This is especially true in light of his comprehensive answer to Section 27, which gave notice of financial issues and evidenced both candor and an attention to detail. Similarly, there is no indication that he yet understands why, given his misconceptions, his answer was incorrect. Therefore, none of the available disqualifying conditions apply and security concerns are mitigated.

### **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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole person” factors. Applicant is a mature man who earned a college degree, maintained a marriage of 30 years, and raised two children. He lives simply and exercises parsimony. Several serious medical conditions have demanded immediate medical care and protracted periods of recovery. Each such bout was costly and impacted both his ability to work and to generate income. Related debt is a significant percentage of his overall delinquent debt. It is apparent that he is not unwilling to meet his obligations, but is simply unable.

What stands in stark contrast to Applicant’s 2008 medical debt and his IRS tax lien, on which he has been making regular payments, is the balance of his delinquent



debt. It represents nearly half of the delinquent debt at issue. Either because of his inability to identify some of the accounts noted in his credit report, or because he believes debts older than seven years are somehow barred from consideration, the origin of those delinquent debts is unstated. Also unstated is why they were neglected from the time they first became delinquent in 2002 until, at least, his 2008 hospitalizations. Unexplained, those delinquent debts remain enigmatic and financial security concerns remain unmitigated.

Applicant's SOR response indicates he misunderstands the provisions of FCRA or fails to appreciate the parameters of the security clearance application process. Based on that response, Applicant did not indicate his delinquent debts because he thought they were outside the scope of the investigation. Given that incorrect belief, his negative answers in Section 28 were appropriate. There is no indication of fraud. Indeed, his answer to Section 27 provided detailed information regarding his tax lien, thus providing investigators sufficient information upon which to conclude finances were an issue. In light of these facts, Applicant mitigated personal conduct security concerns.

The ultimate burden is on an applicant to mitigate security concerns raised in the SOR. As noted, this is a difficult task to accomplish through an administrative determination. While Applicant mitigated personal conduct security concerns, financial concerns remain. Consequently, it is not clearly consistent with national security to grant him a security clearance. As previously stated, a security clearance denial is not necessarily a determination as to the loyalty of an applicant, nor does it reflect badly on that person's character. It is merely an indication that the applicant failed to meet the strict guidelines established for issuing a security clearance. Clearance is denied.

### **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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.  
Administrative Judge