



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



In the matter of:

ISCR Case No. 08-03954

Applicant for Security Clearance

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel

For Applicant: *Pro Se*

October 30, 2008

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 19, 2006. On June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F, and personal conduct under Guideline E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on June 30, 2008.

Applicant answered the SOR in writing on July 14, 2008. He admitted seven and denied seven of the allegations under Guideline F and denied the allegations under Guideline E. He provided an explanation for his admissions and denials, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 22, 2008, and the case was assigned me on August 25, 2008.

DOHA issued a notice of hearing on September 2, 2008, scheduling a hearing on October 7, 2008. I convened the hearing as scheduled. The government offered four exhibits, marked government exhibits (Gov. Ex.) 1 through 4, which were received without objection. Applicant submitted 17 documents, marked Applicant Exhibits (App. Ex.) A-Q, which were received without objection. Applicant testified on his behalf. The record was left open for Applicant to submit additional documents. Applicant timely submitted five additional documents marked App. Ex. R-V. The government did not object to the admission of the documents (See Gov. Ex. 5, Department Counsel Letter, dated October 20, 2008), and the documents are admitted into the record. DOHA received the transcript of the hearing (Tr.) on October 15, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted

### **Findings of Fact**

Applicant is 33 years old and has been an electronics security technician for a defense contractor for about three years. He enlisted in the Army at age 19 and served for over nine years reaching the grade of sergeant (E-5). He was discharged in July 2003 with an honorable discharge. He later enlisted in the Air Force Reserves where he still serves as a sergeant (E-5). Upon discharge, he started working for the defense contractor (Tr. 54-58; Gov. Ex. 1, e-QIP, dated January 19, 2006). Applicant married on November 27, 1998, and separated from his wife in May 2007. She left their home and Applicant does not know where she is located (Tr. 62-63). Applicant's monthly net pay is \$3,600, with monthly expenses of \$2,900, leaving \$700 monthly in discretionary or disposable funds. He also receives about \$200 per month in Reserve pay (Tr. 112-117).

Applicant submitted a security clearance application in May 2005 while working for the defense contractor. Applicant received a blank SF 86 which he completed with the required information. He left employment with the defense contractor shortly thereafter for a company that did not require a security clearance. The defense contractor stopped the processing of the application for security clearance. About six months later in November 2005, Applicant returned to work for the defense contractor and the process of requesting a security clearance started again. The defense contractor security staff used the information provided by Applicant on the May 2005 SF 86 to complete a new e-QIP security clearance application dated December 23, 2005. At the request of the security staff, Applicant updated his employment and residence information. Applicant signed new signature pages on January 19, 2006. Applicant did not see or review the data on the application itself (Tr. 56-61; Gov. Ex. 1, Electronic Questionnaire for Investigation Processing (e-QIP), dated February 14, 2006; App. Ex. N. Company Memorandum, dated August 12, 2008; App. Ex. P, Adjudication History, dated August 12, 2008).

The security clearance application has a negative response to question 27d which asked in the last seven years did he have any judgments unpaid. In response to question 28a asking if Applicant had any debts in the last seven years over 180 days

delinquent, one debt was listed. There was a negative response to question 28b asking if he presently had any debts over 90 days delinquent. Applicant presented his credit report from February 18, 2004. The report lists his debts as "pay as agreed" with no past due debts. His student loans are listed as deferred. The account listed on the security clearance application that was more than 180 days past due is listed on the credit report as a collection account that was paid with a zero balance (App. Ex. P, Credit Report, dated February 18, 2004).

Applicant's supervisor notes that Applicant has a strong work ethic and is dedicated to his country and job. The supervisor acknowledged that Applicant's security clearance application was based on the one he initially submitted before leaving the company. When he returned and the application was resubmitted, it was not updated by the company. This was an oversight on the part of the company and the error was not noted until the application had been submitted. In his opinion, Applicant has handled the issues to the best of his ability (App Ex. Q, Letter, undated).

Credit reports show that Applicant has the following delinquent debts; a judgment for rent of \$407 (SOR 1.a); another judgment of \$2,502 for rent to the same landlord (SOR 1.b); a judgment on a pay day loan of \$582 (SOR 1.c); a credit card account in collection for \$2,390 (SOR 1.d); a credit card in collection for \$1,998 (SOR 1.e); a bank service fee on an account in collection for \$512 (SOR 1.f); a charged off jewelry store account for \$599 (SOR 1.g); a credit card in collection for \$6,780 (SOR 1.h); an account in collection for \$475 (SOR 1.i); student loans in collection for \$34,765 (SOR 1.j); a loan in collection for \$4,887 (SOR 1.k); a telephone account in collection for \$984 (SOR 1.l); and two bank accounts to the same bank in collection for \$368 and \$192 (SOR 1.m and 1.n) (See Gov. Ex. 2, Case Information Judgments, dated June 13, 2008; Gov. Ex. 3, Credit Report, dated April 21, 2008; Gov. Ex. 4, Credit Report, dated February 1, 2006). Applicant admitted delinquent debts alleged in SOR 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, and 1.l. Applicant denied delinquent debts alleged in SOR 1.a, 1.b, and 1.c stating that they were paid. He denied delinquent debt SOR 1.k since it is a duplicate of the delinquent debt listed in SOR 1.h. He denied delinquent debts SOR 1.m and 1.n since they are the same debts that are noted in delinquent debt SOR 1.f (See Response to SOR, dated July 14, 2008).

Delinquent debts SOR 1.a and 1.b are for judgments granted for back rent on Applicant's apartment. When he left the Army and began working for the defense contractor, Applicant had difficulty meeting his financial obligations. His wife did not work so there was only one income. He did not pay his rent on time so his landlord entered judgments against him for past due rent in May, October, and December 2005. The judgments were dropped when Applicant paid the rent satisfying the debts (Tr. 22-25, App. Ex. B, Notice of Satisfaction, dated February 2006; App. Ex. C, Notice of Satisfaction, dated June 9, 2006). Applicant also satisfied a judgment entered against him by a pay day loan company (Tr.20-22; App. Ex. A, Notice of Satisfaction, dated December 21, 2004).

Applicant initially consulted a credit counselor at the bankruptcy court. Upon the advice of the credit counselor, he consulted an attorney but subsequently could not afford to hire the attorney to file the bankruptcy action for him (Tr. 45-46, App. Ex. K, Counseling certificate, dated February 27, 2006, App. Ex. M, Attorney letter, dated April 21, 2006). Applicant again sought counseling for bankruptcy from the court in August 2008, and an action plan was discussed (Tr. 46-47; App. Ex. L (Counseling certificate, dated August 4, 2008)). This time Applicant was able to hire the attorney and a petition for Chapter 13 bankruptcy was filed (Tr. 87-88, 105-110; App. Ex. J, Attorney Letter, dated October 6, 2008; App. Ex. R, Attorney letter, dated October 17, 2008; App. Ex. S, Payment to Attorney, dated October 16, 2008). Included in the list of creditors for the Chapter 13 bankruptcy are the bank loan for \$2,390 (Tr. 25-26; SOR 1.d), another bank loan in collection for \$1,998 (Tr. 26; SOR 1.e), the jewelry store debt for \$599 (Tr. 32; SOR 1.g), a furniture loan for \$6,780 (Tr. 32-33, SOR 1.h (this is the same debt as noted in SOR 1.k, See App. Ex. E, Letter of transfer, dated December 16, 2006)), and the telephone debt (Tr. 41-42, 91-92; SOR 1.l).

Applicant settled for \$385.15 the \$512 collection account for a bank (SOR 1.f). This debt is an accumulation of the debts listed at SOR 1.m and 1.n (Tr. 25-32, 82-86, App. Ex. D, Letter, dated August 1, 2008; App. Ex. T, Cancelled Check, dated July 12, 2008; App. Ex. V, Bank Statement, dated September 1, 2008). The debt at SOR 1.i has been settled and paid (Tr. 33-35; App. Ex. F, Letter, dated September 11, 2008; App. Ex. U, Cancelled Check, dated August 1, 2008; App. Ex. V, Bank Statement, dated September 1, 2008).

Applicant's student loans were transferred to the United States Department of Education for processing. The total amount of the loans is \$40,427.14. Applicant has been making the required payments of \$293.09. His account is current (Tr.35-41, 92-95; App. Ex. G, Department of Education notice, dated September 14, 2008; App. Ex. H, Account statement, dated September 15, 2008, App. Ex. I, Account summary, dated September 14, 2008).

## **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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Financial Consideration:**

Under financial considerations, 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 (AG ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an Applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An Applicant is not required to be

debt free, but is required to manage his finances in such a way as to meet his financial obligations. The delinquent debts that Applicant admits and are listed in credit reports are a security concern raising Financial Consideration Disqualifying Conditions (FC DC) ¶ 19(a) "inability or unwillingness to satisfy debts", and FC DC ¶ 19(c) "a history of not meeting financial obligations". Applicant had difficulty meeting his financial obligations after he left active duty with the Army and started working in the civilian community.

I considered 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." It has some application. Since three of the delinquent debts are duplicates of other debts listed in the SOR, there are only 11 delinquent debts. Of the eleven debts, five have been paid, five are being paid under a Chapter 13 bankruptcy, and one, the student loan, is being paid. The debts still being paid are current debts. Applicant frequently encountered financial problems since there were a variety of debts from furniture bills, credit card bills, past due rent, bank loans, jewelry store debt, student loans, and a cell phone bill that he was unable to pay. Applicant initially encountered financial difficulty, but he is now solidly employed in the civilian workforce and his debts are under control. His financial problems should not recur.

FC MC ¶ 20(b) "the conditions that resulted in the financial problems 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" also applies. Applicant encountered financial problem when first entering the civilian workforce. He has taken positive steps to resolve those issues. He paid some of the debts and has filed a Chapter 13 bankruptcy plan to assist in paying his remaining delinquent debts. He acted responsibly under the circumstances to control and manage his debts.

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" applies. Applicant twice sought counseling from the bankruptcy court as well as an attorney. He followed their advice and filed a Chapter 13 bankruptcy to assist him in paying the debts he had not already paid. His financial problems are being resolved and are under control.

FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts" applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. Applicant is current on paying his student loans. Applicant paid five of the delinquent debts. He filed a Chapter 13 bankruptcy which will pay the remaining five loans. Bankruptcy is a legal and permissible means of resolving indebtedness. By filing for Chapter 13 bankruptcy, Applicant did not try to

avoid his delinquent debts but used bankruptcy as a means of managing and paying his debts. Applicant acted responsibly towards his debts, and established his good-faith efforts to resolve his debts. He mitigated security concerns raised by his financial situation.

## **Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's incomplete answers on his security clearance application concerning financial issues of judgments and past due debts raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) "the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness".

Applicant denied intentional falsification. He initially completed a security clearance application that accurately responded to the financial questions. He left the company and the application was not processed. When he returned to the company, the application was updated by the security office as to employment and places he lived but not as to the financial questions. Applicant did not see the responses to the financial questions but only saw the signature pages when he signed them. Applicant credibly testified that when he first completed his security clearance application, he listed the debt that he knew was a security concern. His credit report for that time verifies his financial problem. He was not asked to update the financial information when the application was resubmitted. His supervisor acknowledges the erroneous process used by the company to complete and submit the new application. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Since Applicant listed the financial concerns as he knew them when first completing the application and did not see the resubmitted application, his failure to list the present delinquent debts was not knowing and willful. Applicant established he did not deliberately provide false information on the security clearance application with intent to deceive. I find for Appellant as to Personal Conduct.

## **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 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. I considered Applicant's nine years of active duty in the Army and his present service in the Air Force Reserves. I considered that he held a security clearance while on active duty. I considered the opinion of his supervisor that he is dedicated to his country and job. Applicant encountered financial problems when leaving active duty and entering the civilian workforce. He acknowledges his legal obligation to pay his outstanding debts. He has paid five of them, has a Chapter 13 bankruptcy to assist him in paying five more, and is current on his student loans. Applicant lives within his means and meets his personal financial obligations. His actions do not indicate poor self control, lack of judgment or unwillingness to abide by rules and regulations. He is not financially overextended, and his finances do not create a security concern. He did not provide incomplete information on his security clearance application with the intent to deceive. He provided the information accurately when first completing his application but the application was not correctly updated before being resubmitted by his company. Overall, on balance the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from financial considerations and personal conduct.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:



Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For 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 clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge