



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



In the matter of:	)	
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SSN: -----	)	ISCR No. 08-06623
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 29, 2009

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 29, 2008, and requested a hearing. The case was assigned to me on February 18, 2009, and was scheduled for hearing on March 23, 2009. The case was convened hearing on the scheduled date as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, or deny, Applicant's application for a security clearance. At hearing, the Government's case consisted of five exhibits; Applicant

relied on one witness (himself). The transcript (R.T.) was received April 3, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Rulings and Evidentiary Issues**

Prior to the presentation of the evidence, Applicant requested leave to amend her answer to deny any intentional falsification of his security clearance application (e-QIP). There being no objection from Department counsel, and for good cause demonstrated, from Applicant, Applicant's request was granted. Applicant's answer, in turn, was amended by inter-lineation to reflect Applicant's denial of any deliberate intent to falsify his e-QIP.

Before the close of the hearing, Applicant requested leave to supplement the record with payment documentation and any legal deficiency protections available to him under State law . For good cause shown, Applicant was granted seven days (to March 30, 2009) to supplement the record with documented payments and legal protections available to him on a foreclosed second mortgage covered in the SOR. The Government was afforded three days to respond. Within the time permitted, Applicant provided copies of e-mails, correspondence pertaining to his debts with creditors 1.b and 1.c and cancelled checks covering creditor 1.c., but nothing pertaining to the listed second mortgage deficiency. Department counsel did not object to the admission of the submissions. The submissions were admitted as exhibits A through C.

### **Summary of Pleadings**

Under Guideline F, Applicant is alleged to have accumulated (a) a charged off \$123,419.26 second mortgage in June 2006 (foreclosed in April 2008) and (b) four other delinquent debts exceeding \$13,000.00.

Under Guideline E, Applicant is alleged to have falsified his e-QIP of January 2008 by omitting his mortgage delinquencies over 180 and 90 days delinquent, respectively.

For his answer to the SOR, Applicant admitted each of the allegations. He provided no explanations.

### **Findings of Fact**

Applicant is a 34-year-old systems engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein and adopted as relevant and material findings. Additional findings follow.

Applicant married his current spouse (W2) in April 2007 (see exs. 1 and 3) and has two minor children from his marriage to W1 (see exs. 1 and 3). He earned a bachelors degree in information technology November 2004 (ex. 1).

In October 2004, Applicant and his significant other at the time (S) purchased a home together for the price of around of \$285,000.000 (see ex. 3; R.T., at 66). Applicant and S initially took out two loans with a lender (L1): a first deed to cover 80 per cent of the purchase price (approximately \$225,000.00), and 20 per cent to cover the remaining 20 percent of the loan (approximately \$57,000.00) (R.T., at 60-61, 65-69). Because Applicant did not document his home purchase, the details of his loans cannot be validated. Generally, Applicant and S agreed to split the monthly mortgage payments on a 50-50 basis (see ex. 3).

Shortly after Applicant and S purchased their home, L1 sold its first mortgage interest in Applicant's property to L2 (see exs. 4 and 5). L1 continued to hold its second mortgage on Applicant's property. Under the terms of the adjustable interest rate in their first mortgage, the rate was scheduled to accelerate in two years from an initial 5 3/4 per cent rate to an 8 per cent rate (R.T., at 73-74).

In June 2005, Applicant refinanced his second mortgage with L3, and replaced his \$57,000.00 mortgage with a \$123,000.00 second mortgage (see exs. 3, 4 and 5; R.T., at 61-65, 69-70). They used the extra money to repay other credit cards and purchase a vehicle (R.T., at 71-72).

Applicant and S split up in September 2006 (see ex. 3; R.T., at 42-46). Applicant vacated the home, and S continued to live in the home for a number of months (R.T., at 40). However, Applicant and S continued to make their monthly payments on both mortgages through April 2007 (see exs. 3, 4 and 5). After April 2007, Applicant and S quit making payments on their second mortgage (R.T., at 75-79), and ceased making payments on their first mortgage after July 2007 (see exs. 4 and 5; R.T., at 58-59, 77-79).

Applicant was notified after July 2007 by his first mortgage holder L1 that foreclosure procedures would be initiated in late 2007 (see ex. 3; R.T., at 89-90). Records indicate that L1 assigned its first mortgage to L4 in February 2008 (see ex. 2). L4, in turn, initiated foreclosure procedures in March 2008, and foreclosed on Applicant's first the following month (see ex. 3; R.T., at 48-51). At the scheduled foreclosure sale, L4 reportedly purchased Applicant's property for an undisclosed amount (see ex. 3; R.T., at 90-91).

Applicant was advised by letter of the impending foreclosure sale by L4 in 2008, but has received no sale information or payment demands from the foreclosing creditor since the earlier 2008 foreclosure (R.T., at 91-92). At this time he can provide no assurances of any safe standing from potential deficiency claims by this foreclosing first mortgage holder. He really does not know whether he is obligated for any deficiency on his first mortgage.

Records indicate that L3's second mortgage was legally foreclosed as a result of the first mortgage holder's foreclosure of Applicant's home in April 2008 (see exs. 3, 4 and 5; R.T., at 78-79). Applicant has not heard anything from L3 since the foreclosure, and does not know whether L3 still owns the second mortgage or whether he owes any deficiency on this foreclosed second mortgage (see ex. 3; R.T., at 92-93, 116-120).

Besides his mortgage debts, Applicant accumulated four other delinquent debts in 2007 (see exs. 2, 4 and 5). The four listed delinquent debts in the SOR (creditors 1.b through 1.e exceed \$13,000.00. These debts became delinquent in 2007, during a period when Applicant's finances were stretched by increased child support payments to W1 (R.T., at 51-54).

Applicant's debts were charged off in 2008 (exs. 2, 4 and 5). Applicant documents payment of his creditor 1.b debt and partial payments of his creditor 1.c debt (see exs. B and C; R.T., at 94-100), but has not addressed his remaining two debts to date (*i.e.*, creditors 1.d and 1.e). He provides no plan for how he intends to resolve these latter debts (R.T., at 100-101).

Applicant currently earns nets about \$5,200.00 a month. After paying his monthly expenses (which includes \$1,300.00 a month in child support to W1), he has a net monthly remainder of at least a \$1,000.00 a month after payments to identified creditors (R.T., at 103-109). Applicant could not account for why he is not doing more to resolve his remaining non-mortgage debts with his remaining funds (R.T., at 109-111).

Asked to complete an e-QIP in January 2008, Applicant answered "no" to question 28, which inquired whether he had incurred any debts over 180 and 90 days delinquent, respectively, during the previous seven years. He attributed his omissions to his uncertainties over whether S ever made any payments on the foreclosed home (R.T., at 77-81,113-115). S had previously told him when she abandoned the home that she could no longer make any payments on the property (R.T., at 79-80). So, when he completed his e-QIP in January 2008, he had no plausible reason to believe she had made any payments on the mortgage. Applicant provided no reasons

Applicant completed his e-QIP in haste and made no attempt to contact S about the status of his home loans, or check on his other delinquent debts (R.T., at 82). Nor did he inquire of S whether she had made any further payments on the home (R.T., at 81). He did indicate he was not thinking about delinquent home loans when he completed the e-QIP (R.T., at 82-85), but could provide no plausible reasons why he believed S might have made any further payments on their mortgages, or why he failed to list his delinquent mortgage debts and other debts on his e-QIP.

In April 2008, Applicant was interviewed by an agent from the Office of Personnel management (OPM). Applicant recollects his having a credit report with him and asking him questions about his debts (R.T., at 149-150). He could not recall whether the agent

actually showed him a credit report or otherwise confronted him about his delinquent debts before he disclosed them to the agent (R.T., at 150-153).

Applicant provided no endorsements or evidence of his work and status in his community. His testimony did not cover his work or time expended outside of his work place.

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Financial Considerations**

*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. Adjudication Guidelines (AG), ¶ 18.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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. AG ¶ 15.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted facts alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant accumulated a number of delinquent debts (some mortgage-related and others consumer-related) during periods of financial stress associated with his parting ways with his girlfriend at the time, and his incurring increased child support obligations. While he is able to document payment of two of his smaller creditors, he has not been able to make any visible headway with most of his major creditors. Applicant failed to disclose his delinquent debts in the e-QIP he completed in January 2008.

### **Financial issues**

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual applicant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of

delinquent debts and his past inability to pay these debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c)) "a history of not meeting financial obligations."

Applicant's debts are attributable in part to financial stress associated with his parting ways with S with whom he had purchased a home financed with first and second mortgages, and in part to increased child support obligations with W1. Faced with mortgage demands and increased child support obligations, Applicant let the mortgages on his home become delinquent. And he failed to address his other listed creditors. His progress to date in regaining control of his finances remains a considerable work in progress. He still has not addressed his major debts and provides no risk-free estimates of his ability to resolve a potential deficiency claim by the second mortgagee on his foreclosed home or pay off his remaining major creditors.

Based on his evidentiary showing, Applicant's proofs are sufficient to establish some extenuating circumstances associated with his debt accumulations. As a result, MC ¶ 20(b) of the financial considerations guideline, "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," has some application to Applicant's circumstances.

Full mitigation credit is not available to Applicant based on the facts of this case. Neither Applicant's oral or written evidence reflect any initiated voluntary repayment efforts in his behalf on his major debts. His documented payments with two of his smaller creditors, while encouraging, is not enough at this time to warrant full application of any of the mitigating conditions covered in the financial guideline.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in financial cases (as here).

Whole person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debt. He is not able to demonstrate enough tangible effort in addressing his covered debts to mitigate a potential deficiency on his home mortgage, or establish control over his other listed debts. Without more evidence of his overall contributions in his work and community, and his progress in stabilizing his finances, it is still too soon to credit him with restoring his finances to levels compatible with minimum levels of judgment and trustworthiness. In balance, whole person assessment does not enable Applicant to establish judgment and trust levels sufficient to enable him to overcome appraised security concerns arising out his accumulation of delinquent debts.

Taking into account all of the extenuating facts and circumstances surrounding Applicant's debt accumulations, the limited resources he has had to address them with, and the limited steps he has mounted to address his old debts, it is still too soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with his holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a, 1.d and 1.e. Favorable conclusions warrant with respect to subparagraphs 1.b and 1.c.

### **Applicant's e-QIP omission**

Posing potential security concerns, too, are Applicant's documented omitted tax lien in the e-QIP he completed in January 2008. He denied any intent to falsify his e-QIP in his amended answer and affirmatively admitted his having debts over 180 days delinquent when responding to question 28(a) and 28(b) of his e-QIP. His explanations are insufficient to avert inferences of knowing and wilful attempts to hide his financial problems.

Mitigation is difficult to credit Applicant with, since he failed to promptly correct his initial e-QIP omissions in the followup-up interview with the OPM agent who interviewed him without the aid prompting. In the past, the Appeal Board has denied applicants availability of the predecessor mitigating condition of MC ¶ 27(a), " the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts, " where the applicant has waited many months to timely correct a known omission, and did so only with prompting. *Compare* ISCR Case No. 97-0289 (Appeal Bd. January 1998) with DISCR Case No. 93-1390 (Appeal Bd. January 1995).

By willfully and knowingly failing to disclose his delinquent debts in his e-QIP application, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. His attributed reasons for his omitting his arrest/charges (assumptions of S's making the mortgage payments and mental lapse) are not sustainable grounds for averting inferences of falsification. Weighing all of the circumstances surrounding his e-QIP debt omissions and lack of any prompt, good faith corrections, Applicant's claims lack the necessary probative showing to avert drawn conclusions that he knowingly and deliberately withheld material background information about his debts.

Evaluation of Applicant on a whole person basis is difficult to do without more information about his work performance and community endeavors and contributions. While he appears to be an essentially honest person, he does not provide enough information to enable him to surmount trust doubts associated with his determined deliberate omissions of his major debts in his e-QIP.



Based on Applicant's omissions of his major delinquent debts, Applicant is unable to successfully refute or mitigate the allegations of deliberate falsification in the SOR. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a and 2.b of Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2(a) factors enumerated in the Adjudicative Guidelines of the Directive.

**Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS):	AGAINST APPLICANT
Sub-paras. 1.a, 1.d and 1.e:	Against Applicant
Sub-paras. 1.b and 1.c:	For Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Sub-para. 2.a:	Against Applicant
Sub-para. 2.b:	Against Applicant

**Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

