



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



In the matter of: )  
)  
) ISCR Case No. 08-06798  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

May 6, 2010

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant lacks a track record of financial responsibility. Moreover, he deliberately falsified his security clearance application. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 30, 2008, Applicant submitted a security clearance application. On May 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent

with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant's first response to the SOR allegations was incomplete and undated. His second response is dated July 17, 2009. He elected to have his case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated August 13, 2009, was provided to him by letter dated August 21, 2009. Applicant signed the receipt for the DOHA transmittal letter on September 1, 2009. He was given 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The case was assigned to me on November 3, 2009.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.s, 1.u, 1.v, 2.a(2), and 2.a(3). He denied the allegations in SOR ¶¶ 1.t, 1.w through 1.y, 2.a(1), and 2.b. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's answers to the SOR, I make the following additional findings of fact.

Applicant is a 62-year-old security officer employed by a defense contractor. He served in the U.S. Army from February 1967 until December 1969, achieved the pay grade of E-4, and was honorably discharged (FORM Item 5). He attended college in 1978-1979, for approximately one year. He worked as a state police officer from 1970 until 1990, and receives a retiree pension from that job. He married his wife in May 1970, and they have been separated since 1998. He has four grown children, ages 37, 34, 32, and 20. He pays his spouse's rent because his youngest son lives with her.

Applicant and his wife filed for chapter 13 bankruptcy protection in 1987. They were having marital problems and separated. He could not afford to support the two separate households, his debts became delinquent, and they filed for bankruptcy protection to prevent foreclosure on their home.

After his retirement from the state police, Applicant was unemployed for five months. In May 1990, he was hired by a protective agency as a security officer. In June 1992 and June 1997, he was interviewed by Defense Investigative Service special agents, concerning a security clearance application related to his employment. In his June 1992 statement (Item 8), Applicant explained his then financial problems as follows: his retired pay was being garnished by the Internal Revenue Service (IRS) to pay for back taxes he owed; he was making payments on a delinquent credit union loan, he explained the reasons behind an unpaid dental bill, and provided information about an alleged pending settlement for an unpaid loan with another credit union.

In his June 1997 statement (Item 7), Applicant explained his then financial problems which included: \$44,800 in child support arrearages that were being paid

through a \$500 garnishment of his retired pay, a delinquent car loan with a credit union, and four tax liens for unpaid federal and state taxes from 1989 to 1994. He stated he acquired the tax debt when he was unemployed between jobs. He claimed that he and his wife were making partial lump sum payments on their tax debts and that her pay checks, and later her unemployment checks, were garnished to make partial payment on their delinquent tax debts. Applicant stated: "I'm financially stable and I have learned the hard way how important a stable financial situation is . . ." (Item 7). In June 1998, Applicant was hired by his current employer, a defense contractor, who is sponsoring his security clearance.

Applicant was late filing his federal income tax returns for 1992, 1993, 1994, 1995, 1998, 2000, 2001, and 2002. The IRS filed tax liens against him for every year except 1998. He eventually paid each of the liens. He has made one \$300 payment for 1998, and still owes over \$32,000. He is delinquent on his state taxes for years 1998, 1999, and 2000. A state tax lien for \$16,593, was filed against him in April 2008, and remains unpaid (SOR ¶ 1.s).

As of October 2009, Applicant had not filed his 1996, 1997, 1999, 2003, 2004, 2005, 2006, and 2007 federal income tax returns. Federal law required him to file his federal income tax returns by April 15<sup>th</sup> following the conclusion of each tax year, unless an extension was requested. Applicant was aware of his legal obligation to file his tax returns on time and to pay his assessed income taxes. Notwithstanding, he chose not to obey the law. He knew he was going to owe taxes every year, so he did not bother to timely file his tax returns or to pay his taxes. He waited for the IRS to file liens against him and to garnish his wages to pay his past tax debts (Item 6, Aug. 28, 2008, response to the DOHA Interrogatories). As of August 2008, Applicant had a net income of \$4,700; monthly expenses of \$3,359; and monthly debt payments of \$630, for a net remainder of \$710 (Item 6).

Applicant denied he owed \$31,600 for child support arrearages (SOR ¶ 1.t.). His February and September 2008, and March 2009 credit reports list a child support account (#1087) with a past due balance of \$31,600. Records from a state Child Support System, dated February 3, 2009, show that Applicant owed child support arrearages in the approximate amount of \$31,600. He averred that this child support arrearage has been satisfied. However, his documents reference a different state child support collection account number. Applicant's evidence failed to establish that these two debts are the same child support obligation being collected by two different states.

Applicant is indebted for a 2005 apartment fee in the approximate amount of \$132 (SOR ¶ 1.u.), and to a telephone provider in the approximate amount of \$360 for a debt that was charged off (SOR ¶ 1.v.). He denied the allegation in SOR ¶ 1.w, for \$174, claiming he paid it. In his response to the SOR, he included a statement from a collector concerning a post-dated check he issued to cover the debt. He denied the allegation in SOR ¶ 1.x, for \$543, claiming he paid it; however, he provided no documentation to establish his claim. He resolved the debt alleged in SOR ¶ 1.y, for \$641, in December 2007.

In his January 2008, clearance application, Applicant answered “No” to financial questions asking whether in the last seven years - his wages had been garnished, he had liens filed against him for failing to pay taxes or other debts, he had unpaid judgments, he had been 180 days delinquent on any debt, or if he was currently 90 days delinquent on any debt (Item 4 Sections 27 and 28).

During his March 2008 follow-up interview with a government investigator concerning his financial status, Applicant admitted that he was aware of the following financial problems: he had tax liens filed against him for unpaid taxes in November 1991, October 1992, June 1995, April 1998, and September 2004; he had three delinquent credit cards; owed unspecified taxes for 2007; and he acknowledge not being current on other debts as well.

In his answer to the SOR, Applicant admitted he falsified his clearance application, but claimed his falsification was not deliberate. Considering the evidence as a whole, Applicant deliberately falsified his January 2008 security clearance application as alleged in the SOR.

In his 1992 and 1997 statements, Applicant indicated he sought financial counseling to resolve his then financial problems. He presented no evidence of any financial counseling thereafter. Applicant has performed well for government contractors and is a good employee. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant expressed no remorse for his financial problems. He does not understand the importance of having and maintaining financial responsibility. Moreover, his behavior shows lack of candor and reliability, and an unwillingness to comply with legal requirements to pay debts.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. They provide explanations for each guideline and list potentially disqualifying conditions and mitigating conditions, which must be considered 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 goal is to achieve a fair, impartial, and commonsense decision. 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. AG ¶ 2(c).

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 the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence.”<sup>1</sup> Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government.<sup>2</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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 Executive Order 12968 (Aug. 2, 1995), Section 3.

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that 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.

Applicant has a history of financial problems dating back to 1987, when he filed for bankruptcy protection. Since 1991, he has been repeatedly delinquent in filing his

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<sup>1</sup> See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>2</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

federal and state income tax returns and in paying his tax obligations. He owes a significant federal and state tax debt which is being involuntarily collected via garnishments of pay. He failed to present documentary evidence to establish he is not delinquent in his child support obligations. Additionally, he failed to pay three relatively small charged off debts, which have been delinquent for many years.

Applicant presented little documentary evidence of good-faith efforts to pay, settle, or resolve his delinquent debts. AG ¶ 19(a): “inability or unwillingness to satisfy debts;” AG ¶ 19(c): “a history of not meeting financial obligations;” and AG ¶ 19(g): “failure to file annual Federal, state, or local income tax returns as required or fraudulent filing of the same,” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant established some circumstances beyond his control, which contributed to his inability to pay his debts, i.e., his and his wife’s periods of unemployment prior to 1998, and his long-time separation from his wife. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant’s evidence is not sufficient to show he acted responsibly under the circumstances. The evidence clearly shows Applicant has been consistently employed since 1998. In light of his approximately \$700 net remainder after paying his day-to-day living expenses and garnishments, he failed to explain why he has not addressed his delinquent debts. He also failed to satisfactorily

explain his recalcitrant failure to file his tax returns and to timely pay his taxes. None of the mitigating circumstances apply.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Applicant deliberately falsified material facts on his January 2008 security clearance application when he failed to disclose that since 1991, he had numerous federal and state tax liens filed against him for his failure to file tax returns and to pay sufficient taxes. He also failed to disclose his tax debts to the IRS and a state, four other delinquent debts, and that his wages had been garnished for years by the IRS. Considering the record evidence as a whole—including his education, military and police experience, his years working for government contractors, and maturity—his statement that his falsification was not deliberate is not credible.

His behavior triggers the applicability of disqualifying conditions AG ¶ 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 of status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;” and AG ¶ 16(e) “personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.”

AG ¶ 17 lists seven conditions that could mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

After considering the above mitigating conditions, I find none apply. Applicant falsified his security clearance application. His falsification is a serious offense (felony-level),<sup>3</sup> is relatively recent, and casts doubt on his reliability, trustworthiness, and judgment. There is insufficient evidence of rehabilitation, counseling, or of steps taken to reduce his vulnerability to exploitation or duress.

### **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 relevant 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.

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<sup>3</sup> 18 USC 1001.



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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served two and a half years in the Army, retired from a state police force after 20 years of service, and worked for government contractors since around 1990. He is a mature man and a good worker. There is no evidence he has ever compromised or caused others to compromise classified information. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond his control, which contributed to his inability to pay his debts.

Notwithstanding, Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He has deliberately violated federal law with his recalcitrant failure to timely file income tax returns and to pay his taxes when they became due. He also failed to resolve many other relatively small delinquent obligations. He presented little documentary evidence of debt payments, contacts with creditors, or negotiations of debts. On the contrary, he waited for creditors to bring legal action against him and to garnish his wages to secure payment for Applicant's debts. His favorable information fails to show financial responsibility and good judgment. Applicant expressed no remorse for his financial problems. He does not understand the importance of having and maintaining financial responsibility. Moreover, Applicant deliberately falsified his security clearance application when he failed to disclose his financial problems. His overall behavior shows lack of judgment, candor, and reliability, and an unwillingness to comply with the law.

### **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
Subparagraphs 1.a-1.v, and 1.x:	Against Applicant
Subparagraphs 1.w and 1.y:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

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JUAN J. RIVERA  
Administrative Judge