



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



In the matter of: )  
)  
) ISCR Case No. 08-07694  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

March 12, 2009

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on December 11, 2006 (Item 5). He previously submitted a Public Trust Position Application (SF 85P) on April 27, 2004 (Item 10). On October 6, 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 for personal conduct under Guideline E (Item 1). Two of the allegations under Guideline E concerned falsification of answers to financial questions on the Public Trust Position Application. 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 October 10, 2008 (Item 3).

Applicant answered the SOR in writing on October 27, 2008, admitting all of the allegations under both Guideline F and Guideline E. He elected to have the matter decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's written case on December 30, 2008. Applicant received a complete file of relevant material (FORM) on January 7, 2009, and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not respond to the FORM or provide additional material. The case was assigned to me on March 3, 2009. Based on a review of the case file and pleadings, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 49 years old and submitted his security clearance application as a pre-employment requirement for a position with a defense contractor. He served 20 years on active duty as an avionics mechanic with the Army and retired on July 31, 1999 (Case file, DD 214, date July 31, 1999). Since retiring from active duty, he has worked at various positions as a contract employee for defense contractors. He also was a full time student. He anticipates employment in the defense industry. He was married and divorced, and has one child from that marriage that he supports through payment to a state agency. He remarried and has two children from that marriage. The children live in Panama with their grandparents. Applicant and his wife are attempting to bring the children to the United States. Applicant provides support for the children in Panama (Item 5, e-QIP, and Item 6, Answer to Interrogatories, dated August 19, 2008; Case file, Personal Subject Interview, dated August 10, 2007).

Credit reports (Item 7, Credit report, dated July 2, 2007; Item 8, Credit report, dated January 3, 2007; and Item 9, Credit report, dated November 26, 2001) show 24 delinquent debts for Applicant to include the following: an account placed in collection in May 2005 for \$921 (SOR 1.a); two medical debts placed in collection in October 2005 for \$260 (SOR 1.b) and \$283 (SOR 1.c); a cable company debt placed in collection in April 2004 for \$341 (SOR 1.d); two debts placed in collection by the same creditor in October 2003 for \$30 (SOR 1.e), and in July 2003 for \$12 (SOR 1.f); a judgment in the amount of \$521 entered in December 2003 (SOR 1.g); a lien for \$623 placed in July 2007 (SOR 1.h); an account past due 120 days for over \$1,000 on a balance of \$3,714 in July 2008 (SOR 1.i); an account placed in collection for \$136 in June 2008 (SOR 1.j); a car repossession in June 2006 (SOR 1.k); an account past due over 180 days or more for \$1,000 on a balance of \$1,235 (SOR 1.l); an account charged off for \$815 in January 2005 (SOR 1.m); a utility account charged off in January 2005 for \$448 (SOR 1.n); an account for a car placed in collection for \$12,418 in June 2005 (SOR 1.o); an account placed in collection for \$1,948 in February 2004 (SOR 1.p); an account placed in collection for \$2,113 in June 2007 (SOR 1.q); an account placed in collection for \$268 in June 2007 (SOR 1.r); a cable account placed in collection for \$268 in July 2002 (SOR 1.s); a medical account for \$30 placed in collection in February 2002 (SOR 1.t); a credit card account past due over 120 days for \$295 on a balance of \$2,116 (SOR 1.u); an account placed in collection for \$695 in August 2001 (SOR 1.v); an account placed in collection for \$110 in January 2007 (SOR 1.w); and an account placed in collection for \$51 in July 2000 (SOR 1.x). Applicant admits all of these debts (Item 4, Response to SOR, dated October 27, 2008).

In response to interrogatories, Applicant stated that he has been a contract worker for defense contractors since retiring from the Army in July 1999. As a contract worker, he is required to move when jobs become available. He never became a permanent worker for the defense contractors. The frequent moves required him to leave his family behind and set up two households. He had other additional expenses from moving to new locations. He also notes the requirement to support his two children in Panama, and his daughter from his first marriage who is in college. In a personal financial statement attached to the Answer to Interrogatories, Applicant lists net monthly income of \$5,023, from a net salary of \$3,748, and retired military pay of \$1,275. He lists recurring monthly expenses of \$3,772, and debt payments of \$860.95. This leaves \$390.05 in net remainder for discretionary or disposable funds each month (Item 6, at 7-9).

Applicant was interviewed by a security investigator on August 9, 2007. He stated concerning the debt at SOR 1.u, that he paid on the account for a short time, but did not have the funds to continue paying after sometime in 2003. In March 2007, he started paying \$70 per month on the account. However, he presented no information to show the payments or any continuing payments. Applicant also stated he is aware of the debts listed on his credit report. However, he claims they are not his debts. After learning in early 2007 of the debts on the credit report, he began to dispute the debts. He can only dispute one a month and has to wait until he receives a response from the creditor. He believes his identity has been compromised and he anticipates hiring an attorney to assist him. Applicant also did not know the person who obtained the judgment against him listed in SOR 1.g. He presented no information on previous action taken on any of these debts (Case file, Interview, dated August 9, 2007, at 1). Applicant did not present any information on any anticipated action to be taken by him on any of these debts.

In response to financial questions on his e-QIP, Applicant responded "NO" to question 27b asking whether in the last seven years he had any property repossessed. Applicant admits the June 2006 car repossession at SOR 1.k. Applicant responded "NO" to question 27d asking if in the last seven years he had any judgments placed against him. He admits the judgment placed against him in December 2003 at SOR 1.g. Applicant responded "NO" to question 28a asking if in the last seven years he had any debt more than 180 days past due. At the time, he had at least 17 debts more than 180 days past due as noted in the SOR. He answered "YES" to question 28b asking if he presently had any debt more than 90 days past due. He listed only one of his debts that were currently more than 90 days past due (Item 5, e-QIP, dated December 11, 2006). Applicant admits he provided false information in response to these questions.

In response to financial questions on the SF 85P he submitted on April 27, 2004, Applicant answered "NO" to question 19 asking if in the last seven years there were any judgments against him. He did not list the judgment at SOR 1.g. Applicant answered "YES" to question 20 asking about delinquent debts more than 180 days past due, Applicant listed only one debt but had at least ten delinquent debts at the time more

than 180 days past due. Applicant admits he provided false information in response to these questions.

### **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. Applicant's 24 delinquent debts established by credit reports and Applicant's admissions 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 accumulated delinquent debts because he made little if any effort to pay his financial obligations. While Applicant noted that he had not been steadily employed by his employers since he retired from active military duty in 1999, and had to move frequently, he presented no information to establish how these circumstances hindered his ability to make some payments toward his delinquent debts. The delinquent debts appear to be from normal consumer spending rather than under unusual circumstances.

I considered all of the Financial Considerations Mitigating Conditions (FC MC) and none apply. The debts have not been paid and are still outstanding, making them current debts which cast doubt on Applicant's current reliability, trustworthiness, and good judgment (AG ¶ 20(a)). Applicant claims he was required to move frequently to maintain employment, had to maintain two households, and had to provide support for his children at another location. He presented no information on how or why these events impacted his ability to make some payments on his debts. In fact, Applicant seems to have been gainfully employed for significant periods, and he has a monthly positive cash flow indicating some ability to pay delinquent debts (AG ¶ 20(b)). He presented no information indicating he sought or received financial counseling to assist him in his delinquent debt management (AG ¶ 20(c)). He presented no information on any attempts to pay past due obligations which indicates he is not trying to resolve his indebtedness. He did not establish that he acted responsibly under the circumstances of his employment by at least attempting to pay some of his small debts. His actions not to pay debts were within his control. His actions in not paying delinquent debts

shows he has not acted responsibly in managing his finances (AG ¶ 20(d)). This shows he will not act responsibly when handling of classified information. The government established that Applicant's delinquent debts are a security concern. The Applicant has the burden to refute, extenuate, or mitigate the security concern. The information presented by Applicant is not sufficient to verify his claims and establish that he acted responsibly towards his debts. He has not 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 involving a judgment, a repossession, a lien, and debts past due more than 180 days or 90 days raise 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 admitted that he deliberately failed to answer financial questions correctly and accurately on his December 11, 2006 e-QIP security clearance application, and his April 27, 2004 Public Trust Position 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. Applicant admits he knowingly and willfully provide false financial information on his security clearance application and public trust position application. I find against Applicant 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) 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 a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant has not taken sufficient action to resolve his past due debts. His indifferent attitude and lack of action show he is not trustworthy, responsible, or exercises good judgment. Applicant has been irresponsible towards his delinquent debts and financial obligations. This is an indication that he might be irresponsible towards the protection and handling of classified information. He also deliberately provided incomplete and false information on security clearance applications. This course of conduct indicates he may not be truthful and careful in protecting classified information. Applicant has not mitigated the security concerns arising from his finances and personal conduct. Clearance is denied.

### **Formal Findings**

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.x:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.e:	Against Applicant

### **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge