



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-07904
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

November 30, 2009

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s delinquent debt and his omission of relevant information from a 2006 security clearance application generate security concerns under Guidelines F, Financial Considerations, and E, Personal Conduct. Although Applicant has recently begun satisfying some of his debts, the majority remains outstanding. Also, Applicant’s explanation for his omissions from the security clearance application was not credible. Clearance is denied.

**Statement of the Case**

On April 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations, and 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on June 5, 2009, admitting all of the allegations except SOR ¶¶ 1.d, 2.a, and 2.b, and requesting a decision without a hearing. The case was assigned to me on August 28, 2009, after Department Counsel requested a hearing. On September 4, 2009, a notice of hearing was issued scheduling the case for September 24, 2009. On September 23, 2009, the case was transferred to another judge. On the date of the hearing, Applicant moved for a continuance. The motion was granted, and the case was returned to me, whereupon a notice of hearing was issued on October 1, 2009, rescheduling it for October 21, 2009. The hearing was conducted as scheduled. I received seven government exhibits, nine Applicant exhibits, and Applicant's testimony. The transcript was received on October 29, 2009.

### **Findings of Fact**

Applicant is a 52-year-old married man. An earlier marriage ended in divorce. He has three children from his current wife, ages 19, 14, and 9, and two children, ages 18 and 23, from his ex-wife. He has a bachelor of science degree in information technology management, earned in 2007 (Exhibit 3 at 7). Currently, he is working toward an MBA in the same field.

Applicant served in the U.S. Marine Corps from 1979 through his retirement in 2006 (Exhibit 1 at 6). He served the first four years as a reservist. He was a master sergeant (E-8) when he retired (Tr. 20). Currently, Applicant works for a defense contractor as a deputy project manager specializing in public key inscription (Tr. 21; Exhibit I). Specifically, he writes "policies for operational, technical, and management for the security of a network" (Tr. 21).

Applicant's employer is pleased with his work performance. Applicant "has lead [sic] his team to many project milestone successes and has worked tirelessly under extreme pressure and deadlines without complaint (Exhibit I).

Between 2004 and 2008, Applicant accrued \$33,000 of delinquent debt. Approximately \$29,000 of these delinquencies constitute the deficiencies from two automobiles that were voluntarily repossessed (SOR ¶¶ 1.a, 1.b). The remainder include a delinquent tuition payment (SOR ¶ 1.c), two phone bills (SOR ¶¶ 1.d, 1.f), and a debt owed to a bank (SOR ¶ 1.e).

Applicant purchased the automobile, referenced in SOR ¶ 1.a, in 2000 (Exhibit 5 at 2). He returned it in 2003 because he could neither stay current with the payments nor afford a settlement plan the dealer offered (Tr. 23). As of November 2008, the deficiency balance was approximately \$16,000 (Answer).

In mid-2009, Applicant contacted the dealer and negotiated a settlement arrangement. Under the plan, the total payoff was reduced by 70 percent, payable in

monthly \$316 increments (Exhibit A at 2). This plan was effective so long as Applicant completed payment by February 2010 (*Id.*). Otherwise, Applicant would owe the original delinquency amount.

Applicant began executing the agreement in July 2009 (*Id.*). He made an additional payment that month and the scheduled August payment (*Id.*). He missed the September payment because of unexpected household expenses (Tr. 63). He contacted the dealer who told him this would pose no problem so long as he paid the entire negotiated settlement by February 2010, as agreed (Tr. 63). Since then, Applicant paid the October payment as scheduled (Exhibit A at 2).

In March 2006, Applicant financed the purchase of a car with the loan referenced in SOR ¶ 1.b (Exhibit 5 at 1). By late 2008, he was unable to make the payments (Exhibit 6 at 2). In 2009, the car was voluntarily repossessed. Recently, the delinquency was transferred to a collection agency (Tr. 24). Applicant has not yet contacted the collection agent, but intends to develop a payment plan in the future (Tr. 24).

Applicant owes \$2,742 in delinquent tuition payments to the university where he is pursuing his MBA (Answer). Applicant had been receiving partial tuition reimbursement from the Marine Corps (Exhibit 3 at 4). He lost track of the tuition reimbursements, and mistakenly thought the Marine Corps's tuition reimbursement program would satisfy this debt (*Id.*; Tr. 28). The debt has been outstanding for two years (Tr. 26).

By May 2009, Applicant had begun satisfying the \$321 delinquent phone bill listed in SOR ¶ 1.d through incremental payments (Exhibit B). He satisfied it in full in October 2009 (Exhibit B at 2). I resolve SOR ¶ 1.d in Applicant's favor.

Applicant disputes the debt listed in SOR ¶ 1.e, in the amount of \$1,137. He provided no evidence supporting the basis of the dispute (Tr. 28). In response to government interrogatories in October 2008, Applicant stated that he was working on a payment option (Exhibit 4 at 3).

One of Applicant's children accrued the phone bill listed in SOR ¶ 1.f (Tr. 28). As of November 2008, the balance was \$816 (Answer). Applicant negotiated a settlement of this account for approximately \$555 (Tr. 29). Under the plan, Applicant was to have satisfied the debt by June 2009 (Answer). He made his first payment in September 2009, in the amount of \$200 (Exhibit 6). Approximately \$355 remains outstanding (Exhibit C).

Applicant attributes his financial problems to a series of family crises that occurred between 2004 and 2008. In 2004, his sister was diagnosed with cancer (Tr. 29). He then began assisting her with her bills. In the process, many of his bills "got deferred in order to alleviate some of her stress" (Tr. 29).

In 2007, Applicant's father suffered a disabling stroke (Tr. 30). Because his father was indigent, Applicant decided to forego his own financial obligations and take care of his father's financial obligations (Tr. 30). Later that year, Applicant's father died (Tr. 30). Applicant paid more than \$10,000 of funeral expenses and debt that his father had accrued (Tr. 80).

Later that year, Applicant's sister and his father's live-in girlfriend died (Tr. 30). He paid for their funerals, also (Tr. 31).

From November 2007 through December 2008, Applicant was separated from his wife (Tr. 79). His ability to satisfy his delinquencies was further impeded by the costs of maintaining the apartment where he moved when they separated (Tr. 31). They have since reconciled, and currently live together.

Applicant consulted a financial counselor in September 2009 (Exhibit D). With the help of the counselor, Applicant created a budget and a spending plan (*Id.*). Under the budget, Applicant has approximately \$1,000 of after-expense income<sup>1</sup> (Exhibit D at 5).

Applicant's access to classified material was temporarily suspended from April 9, 2004, through April 17, 2004, because of his unauthorized storage of classified material (Tr. 36; Exhibit 7 at 2). After the Naval Criminal Investigative Service (NCIS) conducted an investigation, "a favorable personnel security determination was made," and Applicant's clearance was reinstated (Exhibit 7 at 1).

In 1998, Applicant was arrested and charged with driving while under the influence of alcohol (Exhibit 3 at 6). This incident, along with a spousal battery charge, and three delinquent accounts prompted the Department of the Navy Central Adjudication Facility (DONCAF) to issue a Letter of Intent to Revoke Security Clearance and Deny Eligibility for Access to Sensitive Compartmented Information (LOI) in 2000 (Exhibit 7; Exhibit 4 at 17). While the LOI was pending, his security clearance was suspended (*Id.*). After considering Applicant's response, the DONCAF reinstated his clearance conditionally (Exhibit 7 at 2; Exhibit 3 at 7). The conditions for retaining the clearance are unknown from the record.

Applicant completed a security clearance application in 2006 (Exhibit 2). In response to Section 26b,<sup>2</sup> he did not list the suspension of his security clearance in 2004, nor the suspension of his security clearance in 2000. Applicant characterized these omissions as mistakes caused by his preoccupation with his family problems when he completed the application (Tr. 32). He realized his mistake shortly after

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<sup>1</sup>The financial counselor's plan actually lists after-expense income of \$1,301. It did not, however, include the \$316 per month Applicant is paying to satisfy the auto deficiency, as listed in SOR ¶ 1.a.

<sup>2</sup>**YOUR INVESTIGATIONS RECORD** b. To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? If "Yes", give date of action and agency. **Note:** An administrative downgrade or termination of a security clearance is not a revocation.

completing the security clearance application and intended to disclose the correct information upon meeting with an investigative agent (Tr. 32). Applicant met with an investigative agent, as anticipated, but did not disclose the information, because “his mind set was not very clear” at the time (Tr. 32).

## **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. 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.”

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

## **Analysis**

### **Financial Considerations**

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial delinquencies triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant accrued the majority of his delinquent debts at or about the same time his sister and father were stricken with disabling illnesses. His finances grew strained in the process of supporting them through their illnesses and subsequent deaths. His

finances were further exacerbated by a 13-month marital separation between November 2007 and December 2008.

In September 2009, Applicant met with a financial counselor and developed a budget. Since then, he has been paying the delinquencies listed in SOR ¶¶ 1.a and 1.f through payment plans, and has satisfied SOR ¶ 1.d in full. AG ¶ 20(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," and AG ¶ 20(c), "the person has received or is receiving counseling for the problem . . ." apply.

Applicant provided no evidence corroborating his dispute of the debt listed in SOR ¶ 1.e. AG ¶ 20(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," does not apply. Nevertheless, I conclude Applicant's efforts toward debt satisfaction are sufficient to trigger the application of AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors, or otherwise resolve debts."

I am not persuaded that Applicant's history of financial difficulties no longer poses a security concern. His most recent automobile repossession occurred less than 18 months ago (SOR ¶ 1.b). The resulting deficiency constitutes more than a third of his remaining outstanding delinquent debt, and Applicant has yet to make plans to begin satisfying it. Moreover, although Applicant's budget indicates that he should have substantial income to pay his debts, he missed a payment toward the satisfaction of the automobile deficiency, listed in SOR ¶ 1.a, in September 2009, claiming that other household expenses were out of control that month. Consequently, the amount of disposable income listed in his budget is not an accurate barometer of Applicant's financial well-being.

### **Guideline E, Personal Conduct**

Under this guideline, "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" (AG ¶ 15).

Applicant's failure to list the past suspensions of his security clearance from his 2006 security clearance application raises the issue of whether 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 or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," applies. Applicant's explanation was, in sum, that he mistakenly omitted the information from the security clearance application, realized his mistake and

intended to tell the investigator, then accidentally neglected to inform the investigator upon meeting him. I conclude Applicant's explanation was not credible. AG ¶ 16(a) applies without mitigation.

### **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.

Circumstances beyond Applicant's control contributed significantly to the accrual of his delinquencies. Although he has made some progress toward addressing his debts, he has yet to establish a demonstrated track record of financial reform sufficient to conclude that he has mitigated the financial considerations security concern. Moreover, his reassurances that his finances are under control were undermined by the lack of credibility displayed in falsifying his security clearance application. Upon evaluating this case in the context of the whole person concept, I conclude Applicant has not mitigated the financial considerations and personal conduct security concerns.

### **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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	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.

MARC E. CURRY  
Administrative Judge