



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



In the matter of: )  
)  
) ISCR Case No. 08-08451  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Emilio Jaksetic, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 22, 2009

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated security concerns under the Guideline E, Personal Conduct, but failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on April 21, 2008. On October 21, 2008, he responded to written questions from the Defense Office of Hearings and Appeals (DOHA) about his financial situation. On December 18, 2008, DOHA issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline 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.

On January 30, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on February 26, 2009. I convened a hearing on March 25, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Exs. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced four exhibits, which were marked as Exs. A through D and admitted to the record without objection.

DOHA received the transcript (Tr.) of the hearing on April 1, 2009.

### **Findings of Fact**

The SOR contains 12 allegations of disqualifying conduct under AG F, Financial Considerations, (SOR ¶¶ 1.a. through 1.l.), and one allegation of disqualifying conduct under AG E, Personal Conduct (SOR ¶ 2.a.). In his Answer to the SOR, Applicant admitted all 12 AG F allegations and denied the one AG E allegation. Applicant's admissions are included herein as findings of fact.

Applicant is 46 years old, never married, and employed as a network specialist by a government contractor. He has a high school diploma and has taken some college courses. He seeks a security clearance. (Ex. 1; Tr. 29, 32-33, 83.)

Applicant began working for his present employer in March 2008. His annual salary is \$78,000. Before taking his job with his present employer, he worked full-time for one year for another employer. From May 2006 until February 2007, he was unemployed. He collected unemployment benefits for six of the nine months that he was unemployed. He stated that his financial problems began after he was laid off in May 2006 (Tr. 27-28, 34-38.)

After completing his e-QIP in April 2008, Applicant was interviewed by an authorized investigator in June 2008. The investigator discussed Applicant's financial delinquencies with him. Applicant was aware of the delinquencies alleged at SOR ¶¶ 1.a., 1.c., and 1.d. However, he was surprised to learn that a review of his credit revealed so many delinquencies. (Tr. 39-45.)

On October 15, 2008, Applicant entered an agreement with an on-line consumer credit counseling service to make monthly payments on the debts identified in the SOR at ¶¶ 1.a., 1.b., 1.d., 1.e., 1.f., 1.h., 1.j., 1.k., and 1.l. He provided documentation to corroborate payments on the debts by the credit counseling service in December 2008, and January, February, and March 2009. His payment plan anticipates payment of all debts in full in four years. (Ex. 2; Ex. A; Ex. B; Ex. C; Tr. 83.)

The \$19,110 debt identified at SOR ¶ 1.c represents a loan for the purchase of Applicant's automobile. This loan was charged off and had not been paid as of December 3, 2008. Applicant currently makes payments on that debt directly from his bi-weekly paychecks. He provided documentation to corroborate payments of \$325 twice a month in November and December 2008 and January, February, and March 2009. (Ex. D; Tr. 66-67.)

Applicant intends to work out a plan with the creditor to pay in the future the debts identified at SOR ¶¶ 1.g. and 1.i. He has spoken with the creditor, and he has made a verbal agreement to send \$50 to \$250 whenever he can to satisfy the two debts. He has no documentation to corroborate his agreement with the creditor. (Tr. 69-70.)

In January 2009, Applicant and his housemate fell behind in their rent. Their landlord sued them for unlawful detainer. The court found for the landlord, and Applicant and his housemate were required to pay a judgment of \$667.93, court costs of \$51, and attorney fees of \$150. (Ex. 3; Tr. 73.)

In response to DOHA interrogatories, Applicant provided a monthly budget. He listed a net monthly income of \$3,800. He listed the following monthly expenses: rent: \$900; groceries: \$300; clothing: \$25; utilities: \$205<sup>1</sup>; car expense: \$400; medical expenses: \$300.<sup>2</sup> These expenses did not include his \$600 monthly automobile payment or his \$551 monthly payment to the consumer credit counseling service for the payment of his delinquent debts. These figures suggest that Applicant has an approximate net monthly remainder of \$500 to \$600. (Ex. 2; Tr. 61-65.)

Applicant completed his e-QIP on April 21, 2008. Section 28 on the e-QIP requests information on an applicant's financial delinquencies. Section 28 poses two questions: "(a) In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and "(b) Are you currently over 90 days delinquent on any debt(s)?" Applicant answered "no" to both questions. (Ex. 1.)

SOR ¶ 2.a. alleged that Applicant falsified material facts about his debts by denying that he was currently over 90 days delinquent on any debts and by denying that he had any debts that were over 180 days delinquent in the last seven years. Applicant denied the allegation of falsification. In his answer to the SOR, he stated:

I deny that it was my intention to falsify material facts on the Questionnaire. I seriously believed that none of my accounts was ever more than 180 days delinquent or that I was currently more than 90 days delinquent on any debt. For this I apologize and can only state that I have

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<sup>1</sup> At his hearing, Applicant stated that his utility expenses had been reduced to \$125 a month. (Tr. 62.)

<sup>2</sup> Applicant suffers from a terminal illness which requires medication and medical attention. (Tr. 63.)

recognized my error and made a commitment to set the matter straight with my creditors.

(Answer to SOR at 2.)

At his hearing, Applicant acknowledged that his answers to the questions posed by Section 28 (a) and 28 (b) were not correct. He stated that when he answered the questions he was not aware of the extent of his financial delinquencies. He denied that when he answered the questions he was trying to hide the fact that he had certain debts that he knew to be delinquent. I observed Applicant's demeanor as he made these statements. I conclude that his testimony was credible.

### **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, the administrative judge applies these guidelines 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.

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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt and was unable to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c) or “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)).

Applicant’s financial delinquencies arose in about May 2006, when he was laid off and unemployed for nine months. Beginning in February 2007, however, he had reliable full-time employment, but he took no action to resolve his debts until October 2008, after his financial delinquencies were brought to his attention in June 2008 in an interview with an authorized investigator. His unresolved debts raise security concerns which continue to the present day, a situation which raises concerns about Applicant’s good judgment.

To his credit, Applicant has committed to a four-year payment plan for nine of the twelve debts alleged on the SOR, and he has made at least four monthly payments consistent with his payment plan. However, he has not yet made a commitment to begin regular and consistent payment of two additional debts alleged on the SOR. Despite good faith efforts to begin to pay some of his debts, Applicant has not demonstrated a record of consistent payments made over a period of time. It is not clear at this time that he will be able to manage his finances and avoid financial delinquency in the future. I conclude that AG ¶¶ 20(b), 20(c), and 20(d) apply in part in mitigation, but that AG ¶ 20(a) does not apply in mitigation to the facts of Applicant’s case.

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

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

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.

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

(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.

For this guideline to apply, Applicant’s omission must be deliberate. The government established that Applicant omitted material facts from his e-QIP when he answered “no” to parts a and b of Section 28, which asked if he had been over 180 days delinquent on any debt in the last seven years and if he was currently over 90 days

delinquent on any debt. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. He denies, however, that he deliberately falsified his answers. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.<sup>1</sup> For DC ¶ 16 (a) to apply, the government must establish that Applicant's omission, concealment or falsification in his answers was deliberate and intentional.<sup>2</sup>

When Applicant completed and signed his e-QIP in April 2008, he responded "no" to parts a and b of Section 28. In a later interview that Applicant had with an authorized investigator, it became clear that he had many old and delinquent debts. Applicant denied knowledge of these debts. In his answer to the SOR and at his hearing, he explained his thought processes when he was answering Section 28, and he denied that his failure to disclose his financial delinquencies information was deliberate falsification of material facts.

I observed Applicant carefully and listened closely to his explanation for his failure to disclose his financial delinquencies in his answers to Section 28 on his e-QIP. I conclude that his omissions were not deliberate and that he has rebutted Guideline E security concerns.

### **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 surrounding that conduct. 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>1</sup>See ISCR Case No. 03-09483 at 4 (App. Bd. Nov.17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

<sup>2</sup>Intention is defined as "a determination to act in a certain way" and intentional is defined as "done by intention or design." Merriam-Webster's Collegiate Dictionary (11<sup>th</sup> ed. 2003).

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began several years ago when he was a mature adult. Even though some of his debts arose during a period of unemployment, he did not address those debts once he was steadily employed. His failure to address these substantial delinquencies over a significant period of time raises concerns about his judgment and reliability.

To his credit, Applicant has taken recent action to address a majority of his delinquencies. However, these actions are recent and do not demonstrate a track record of satisfaction of debt consistently over time. In addition, he has not developed a payment plan for two debts listed in the SOR.

Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

### **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. through 1.l.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant



## **Conclusion**

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

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Joan Caton Anthony  
Administrative Judge