



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



In the matter of: )  
 )  
 ) ISCR Case No. 08-10344  
 )  
 ) SSN: )  
 )  
 )  
 ) Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: *Pro se*

August 31, 2009

**Decision**

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his Security Clearance Application (SCA) on October 14, 2008. On May 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's undated answer to the SOR was received on May 9, 2009. DOHA issued a notice of hearing on July 8, 2009 for a hearing on July 27, 2009. The hearing was held as scheduled. At the hearing, four exhibits (GE 1 through 4) were admitted into evidence without objection to support the government's case. Applicant testified and submitted five exhibits (AE A-AE E). The five exhibits were received into evidence. The record remained open until August 7, 2009 to allow Applicant to submit additional evidence. No evidence was received. DOHA received the transcript on August 5, 2009. The record closed on August 7, 2009.

### **Findings of Fact**

Applicant is 37 years old. He married in 1998 and divorced in August 2001. He has two children from that marriage; their ages are 16 and 12. He has taken several technical courses in college or trade schools (Tr. 20). Applicant has been employed as an electrician for the past 20 years. He seeks a security clearance.

### **Financial Considerations**

Applicant admitted all 33 delinquent accounts appearing under paragraph 1 (financial considerations) of the SOR, but he does not recognize each account (Tr. 42). His explanation is that the security people told him to admit all the debts and then explain the debts later. (*Id.*). The total amount of debts as of the date of the SOR was approximately \$37,000, with medical debts (\$28,000) representing about 2/3 of the total amount. He admitted all allegations listed under paragraph 2 (personal conduct) of the SOR. However, Applicant claims he did not intentionally omit information from his SCA. The security department told him to admit everything (Tr. 71-74). His answers are incorporated into the following factual findings.

There appear to be two reasons for Applicant's financial problems. The first reason is the nature of his profession that is characterized by short employment contracts, layoffs and other types of gaps in employment (Tr. 35). These employment problems have been aggravated by medical problems in Applicant's case. His SCA shows he has worked for 16 employers since 2001. The short employment contracts have caused insurance problems. Occasionally, Applicant has not worked long enough to qualify for health insurance. An example of the lack of insurance coverage occurred in 2004 (Tr. 38) when he had no insurance to cover his appendectomy costing \$23,543 (subparagraph 1.i.). His surgery was complicated by an infection that required 10 extra days in the hospital, and three or four months of convalescence (Tr. 49-50). Applicant had no insurance in 2008 when his son received treatment for having a needle lodged in his foot (Tr. 61). Applicant is currently not working because of a back injury (Tr. 80-81).

The second reason has two parts. Applicant is trying to officially obtain full custody of his son so that he can end child support payments. Unofficially, Applicant has full custody of the child anyway (Tr. 24). In addition, he has always provided

financial help for his mother, sister, brother, and former wife whenever they needed it (Tr. 33).

The credit reports reflect that Applicant's financial accounts started falling delinquent between December 2001 (subparagraph 1.a.) and August 2008 (subparagraph 1.ee.). As noted in the Statement of the Case, Applicant was provided additional time to furnish documentation supporting his claim of having paid some of the medical services (Tr. 53) or any other debt (Tr. 85). No documentation was supplied.

In his interrogatory responses (GE 2) dated January 15, 2009, Applicant provided no individual responses to any of the delinquent accounts appearing in the first nine pages of the exhibit. On the last page, he stated he intended to pay his debts as his finances allowed. Then he stated, "I will continue to contact and make payment arrangements on my debts as finances allow me to do so." (*Id.*) At the hearing, Applicant testified he has taken no action on the debts because he is waiting on the security clearance decision (Tr. 80).

### **Personal Conduct**

The security investigation began on August 7, 2008, when Applicant certified and signed his SCA. Under section 27 (FINANCIAL RECORD), Applicant answered question 27B (wage garnishments/property repossessions?) "no," when he should have answered "yes" because of his vehicle repossession in 2003 (subparagraph 1.f.). In response to questions 28A (any debts over 180 days delinquent in the last 7 years), and 28B (over 90 days delinquent on any debts), Applicant answered "no," when he should have answered "yes" because of his admissions to the delinquent accounts listed in the SOR. In addition to his admissions to the vehicle repossession and other overdue accounts listed in the SOR, the delinquent debt information is substantiated in the two credit reports identified as GE 3 (August 15, 2008), and GE 4 (February 26, 2009).

Before treading into his explanations for the missing information, Applicant provided a general explanation that he was following the standard procedure of applying for a construction job where "you just put down basically no and then answer any questions later that come up." (Tr. 66). Applicant provided four explanations for the missing information; (1) they just handed him papers and told him to sign the application; (2) he did not understand the importance of the application; (3) he did not really believe that the debts needed to be reported; and, (4) I am not certain about his fourth explanation, but I believe he got confused by the questions and simply wanted to finish the application so he could turn it in (Tr. 68-73). I find Applicant intentionally omitted material information about his finances from his SCA in October 2008.

### **Character Evidence**

Applicant furnished four character statements from coworkers and his mother. Reference A believes Applicant takes pride in his work while dedicating quality time to his family. According to Reference A, Applicant paid his former wife's telephone bill so

that his children could talk to her. Reference B has found Applicant trustworthy, honest and a faithful employee. Reference C, a coworker, considers Applicant a leader and a team player. Reference D, a coworker and friend for 20 years, commended Applicant's trustworthiness.

Applicant's financial problems, according to his mother (Reference E), were caused by sporadic employment and inconsistent insurance coverage. His mother believes Applicant is a diligent worker who takes pride in his work.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept." Finally, 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. Reasonable 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 sensible, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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 the potential, rather than actual, risk of compromise of classified information.

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.

## **Analysis**

### **Financial Considerations (FC)**

¶ 18. 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."

Applicant's financial delinquencies began in December 2001. Over the next seven years, Applicant collected 33 debts totaling approximately \$37,000. Both FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*), and FC DC ¶ 19.c. (*a history not meeting financial obligations*) apply.

The first four mitigating conditions of the FC guideline are potentially applicable: FC mitigating condition (MC) ¶ 20.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 reliability, trustworthiness, and good judgment*); FC MC ¶ 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); FC MC ¶ 20.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*); and, FC MC ¶ 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). None of the mitigators are applicable.

FC MC ¶ 20.a. does not apply as there are 33 delinquent debts, with three becoming delinquent in August 2008. The fact that Applicant has provided no plan to address his current debts, other than repeatedly stating he plans to pay them, continues to raise doubts about his current reliability and judgment.

Applicant divorced his wife in 2001. He had sporadic employment since 2001. He and members of his family had some medical problems since 2001. The divorce, the irregular employment, and the isolated medical problems were events beyond his control. However, he has made no documented adjustments in his financial practices or lifestyle to confront the realities of his employment. In addition, he was hired at his present job in August 2008, and could have taken some small steps to show he truly wants to pay his creditors by paying off one or more of the eight creditors that hold overdue accounts of less than \$100.

There is no indication Applicant has ever had financial counseling. Because his 33 debts are still unresolved, FC MC ¶ 20.c. and FC MC ¶ 20.c. do not apply. Given his seven-year history of not meeting his financial obligations, Applicant has not mitigated the FC guideline.

### **Personal Conduct (PC)**

¶ 15. *The 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.”

PC DC ¶ 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness*) applies based on Applicant’s deliberate omission in his SCA of his repossessed car (question 27B) and 33 delinquent debts (questions 28A and 28B).

PC MC ¶ 17.a. (*the individual made prompt, good-faith efforts to correct the omission, concealment or falsification, before being confronted with the facts*) does not apply as Applicant continues to deny he intentionally falsified his SCA. PC MC ¶ 17.c. (*the offense was 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*) does not apply because Applicant’s refusal to acknowledge his intentional omission of material information raises current doubts about his judgment and reliability that are not sufficiently relieved by his favorable character evidence.

The application of PC MC ¶ 17.d. (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*) is predicated upon an understanding by the applicant that his omissions were intentional. Applicant, who is now 37 years old, has not reached that understanding, as evidenced by his other explanations for omitting information from his SCA. The PC guideline is resolved against Applicant.

### **Whole Person Concept (WPC)**

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the FC and PC guidelines. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual’s conduct, the administrative judge should consider the following factors:

¶ 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 the participation was 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.

The record reflects Applicant is employed in a profession with short employment contracts where time on the job is, more often than not, too short to qualify for insurance coverage. Applicant has worked in this profession for 20 years. Between 2001 and August 2008 (his first permanent employment), Applicant has been employed by 16 different contractors. He had his appendix removed in 2004 when he was uninsured. Applicant did not have insurance when his son had a needle removed from his foot. Applicant currently has a back injury that has kept him unemployed for an undetermined period. However, Applicant has done nothing to address his listed debts at any time covered by the SOR. There are eight debts under \$100 that he could have paid but he has not. In addition, Applicant deliberately omitted the debts from his SCA, attempting to give the impression he had no debts. Considering the entire record, including his favorable character evidence, it is not clearly consistent to grant Applicant a security clearance.

### **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 (Financial Considerations, Guideline F): **AGAINST APPLICANT**

Subparagraph 1.a. through 1.gg.	Against Applicant
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Paragraph 2 (Personal Conduct, Guideline E): **AGAINST APPLICANT**

Subparagraphs 2.a. through 2.c.	Against Applicant
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## **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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Paul J. Mason  
Administrative Judge