



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-10936
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel  
For Applicant: *Pro Se*

September 21, 2009

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on March 31, 2008, as part of his employment with a defense contractor. On May 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F, and for personal conduct under Guideline E. 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 June 13, 2009.

Applicant answered the SOR in writing in an undated response that was received by DOHA on June 29, 2009. The explanation he provided that accompanied his response was dated June 25, 2009. He admitted 24 and denied 5 allegations under Guideline F. He denied the security concern for financial considerations. He admitted

three and denied one of the four sub-allegations under Guideline E pertaining to his failure to list arrests on his security clearance application. He denied the allegations under Guideline E pertaining to not listing debts more than 180 days past due in the last seven years and currently more than 90 days past due. He denied the security concern for Guideline E. He provided an explanation for his financial issues and his personal conduct. He did not request a hearing before an administrative judge. Department Counsel did request a hearing and was ready to proceed on July 10, 2009. The case was assigned to me on July 20, 2009. DOHA issued a Notice of Hearing on July 30, 2009, for a hearing on August 20, 2009. Applicant signed for the Notice of Hearing on August 8, 2009. I convened the hearing as scheduled. The government offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 through 5, which were received without objection. Applicant testified on his behalf and offered nine exhibits, marked Applicant Exhibits (App. Ex.) A - I which were received without objection. The record was left open for Applicant to submit additional documents. Applicant timely submitted one document marked App. Ex. J. Department Counsel did not object to the admission of the document (Gov. Ex. 6, Memorandum, dated September 16, 2009). DOHA received the transcript of the hearing (Tr.) on August 25, 2009. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issues**

Applicant signed for the Notice of Hearing on August 8, 2009. Applicant is entitled to 15 days notice of hearing (Directive E3.1.8). Applicant discussed with Department Counsel the hearing date of August 20, 2009, prior to the mailing of a Notice of Hearing. Accordingly, actual notice was given more than 15 days prior to the hearing. However, Applicant signed for the Notice of Hearing only 12 days prior to the hearing. He waived the 15 days notice requirement (Tr. 6).

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 38 years old and has been a security guard and emergency medical technician for a defense contractor for over two years. He also is a full-time college student and anticipates receiving his degree in two more semesters App. Ex. G, Transcript, dated August 18, 2009). He does not believe he ever requested or was granted a security clearance even though he worked construction at a military installation. He had periods of unemployment over the last ten years when he was a construction worker. The last time he remembers being unemployed was about seven years ago. (Tr. 21-24). Applicant is a certified Emergency Medical Technician (EMT), certified ambulance driver, and certified in basic life support programs (App. Ex. A, Certificate; App. Ex. B, Certificate, dated February 6, 2009; App. Ex. C, Certificate, dated February 24, 2009). He has been recognized by his company for outstanding service (App. Ex. D, Certificate, dated July 28, 2009). His present monthly net salary is

\$3,840, with monthly expenses of approximately \$2,100, leaving approximately \$1,800 in monthly discretionary funds (Tr. 32-33).

Credit reports list the following financial issues for Appellant: medical debts in collection for \$1,465 (SOR 1.a), \$938 (SOR 1.b), \$253 (SOR 1.c), \$391 (SOR 1.d), \$324 (SOR 1.e), \$377 (SOR 1.f), \$253 (SOR 1.g), \$209 (SOR 1.h), \$435 (SOR 1.i), \$363 (SOR 1.j), \$469 (SOR 1.k), \$3,876 (SOR 1.l), \$664 (SOR 1.m), \$234 (SOR 1.n), \$1,122 (SOR 1.o), \$348 (SOR 1.t), \$216 (216 (SOR 1.u), \$68 (SOR 1.v), \$454 (SOR 1.w), \$3,338 (SOR 1.x), \$343 (SOR 1.y), \$298 (SOR 1.z), \$281 (SOR 1.aa), and \$11,785 (SOR 1.bb); a credit card debt in collection for \$771 (SOR 1.p); an account in collection with a jeweler for \$3,728 (SOR 1.q); a telephone account in collection for \$109 (SOR 1.r); an account in collection for \$123 (SOR 1.s); and another telephone account in collection for \$111 (SOR 1.cc; Gov. Ex. 3, Credit report, dated April 22, 2008). He also has student loans of approximately \$10,000 in deferment (Tr. 33). Applicant admitted the medical debts but denied the debts at SOR 1.p, 1.q, 1.r, and 1.s. Most of these debts arose from 2006 to 2007 (Tr. 24-25).

Applicant recently sold his house and made a profit of approximately \$60,000. The majority of the proceeds from the house sale were deposited in Applicant's bank account on August 14, 2009 (App. Ex. H, Account Information, dated August 14, 2009 (prior to the deposit), App. Ex. I, Account information, dated August 14, 2009 (after the deposit)). The account has a balance of over \$60,000 (Tr. 33-34).

Applicant believes most of the medical bills are from his visits to hospital emergency rooms for a bulging disc, and a cut on his hand from barbed wire. He also had a hospital stay for an appendix removal. Since he worked construction during most of this time, he did not have health insurance. He only recently obtained health insurance (Tr. 10-11, 25-26, 28-29).

Applicant settled his debt with the collection agency for the jeweler for \$2,343.35 (App. Ex. E, Letter, dated June 29, 2009). This debt was paid in the settlement for the sale of his house (Tr. 26-27; App. Ex. F, Settlement document, dated July 16, 2009).

Applicant denied the credit card debt at 1.p. The card was a membership credit card which was opened with a credit balance from him of \$150. He used it only once and the company charged him membership fees. He denied owing the creditor the amount of the debt. SOR allegation 1.q was the jeweler debt that was settled and paid. Applicant believes he paid the creditor at SOR 1.r. He did not present any information to establish payment of the debt. He has no information on the debt at SOR 1.s, so he has not paid the debt (Tr. 30-31).

Applicant also paid a debt not listed on the SOR. He paid a utility debt of \$421. This was not his debt but one from his brother who used his name to obtain the service. Nonetheless, he paid the debt (Tr. 27-28; Gov. Ex. 4, Answer to Interrogatories, dated March 2, 2009, at 4). His student loans are in deferment since he is still in school (Tr. 28-29).

Applicant has not paid his other delinquent debts because he only had limited funds and not enough time to pursue past debts and creditors. He is working and attending school full-time. He also stated that he really did not have an excuse for not paying the other debts. Applicant has not yet taken any action on his debts because he has "had so much going on, between working and going to school full-time and moving and doing all this stuff. I just really don't have an excuse, I don't guess." (Tr. 25-26, 28-29, 34-35). He stated he intends to employ a debt consolidation specialist to assist him in paying his debts and reestablishing his credit. After the hearing, Applicant employed an attorney who notes he is assisting Applicant in satisfying his debts and meeting his financial obligations (App. EX. J, Letter, dated September 4, 2009).

Applicant did not list all offenses in response to question 23(d) on the e-QIP asking if he had ever been charged or convicted of any offense(s) related to alcohol or drugs. Applicant listed a disorderly conduct offense in 1996. A Federal Bureau of Investigation (FBI) criminal justice report shows Applicant was charged with illegal possession of prohibited liquor on May 9, 1992, with public intoxication on March 1, 1997, with possession of marijuana on July 17, 1998, and with public intoxication on September 21, 2004 (Gov. Ex. 2, Criminal Justice Information report, dated April 22, 2008). Applicant also answered NO to question 28 concerning any delinquent debts in the last seven years more than 180 days past due, and any debts currently more than 90 days past due. As noted above, he has delinquent debts since 2006.

Applicant testified that in completing his security clearance application, human resource personnel for his employer had him provide them a written answer to the questions, and they entered his answers on the computer driven document. He knew he had delinquent debts for medical expenses but did not know the number or the amounts of the debts. He had received inquiries about his medical debts but not recently. He is "not real sure" why he did not provide any information concerning his delinquent debts. In response to the question concerning being arrested or charged with an offense involving alcohol or drugs, he stated he read the question and does not understand why he did not answer it correctly. He stated that he now remembers the offense. He further stated "But I don't know if I was in a rush or - I didn't intentionally mean to lie. I mean it makes me sound really bad. But I just - - the only defense I have is that I forgot" (Tr. 35-41).

## **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 overarching

adjudicative goal is a fair, impartial, and commonsense 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 Considerations:**

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 delinquent debts as listed on credit reports and admitted by Applicant are a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations).

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony. FC MC AG ¶ 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 current reliability, trustworthiness, or good judgment), and FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) do not apply. Applicant incurred delinquent medical debt when he did not have health insurance and had to visit emergency rooms for treatment and was hospitalized. He has not inquired about or paid any of the debt. He has other debts that he has not paid. The debts are numerous and still current. Applicant presented no circumstance beyond his control that caused him to incur debt or prevented him from paying the debts. He has not paid the debts even though he has the resources to pay them. He has not established that he acted responsibly towards his financial obligations.

FC MC AG ¶ 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) does not apply. Applicant presented documentation to establish he consulted an attorney after the hearing to assist him in satisfying his debts and meeting his financial obligations. However, he has not presented any information to show he developed a plan or made any attempts to pay his financial obligations. There is no clear indication, therefore, that the financial problems are being resolved or are under control.

I considered FC MC ¶ 20(d) "the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts". For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed. Good-faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Most of the debts arose in the 2006 and 2007 time frame. Applicant presented no information to show he is paying his delinquent debts. He may in the past have resolved two debts, but he has numerous debts for which he admits he has not contacted the creditors or made any attempt to pay. He has not established a meaningful, reasonable, honest, or prudent plan to pay his debts. He has the resources to pay his debts, but presented no plan to do so. Applicant did not present sufficient information to establish a good-faith effort to pay creditors or resolve debts.

His finances are not under control and he has not acted responsibly. Accordingly, he did not mitigate security concerns for financial considerations.

## **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 charges or arrests relating to alcohol or drugs, 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."

The government produced substantial evidence to establish the disqualifying condition in AG ¶ 16(a). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the concerns raised under personal conduct (Directive ¶ E3.1.15). An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden of disproving it never shifts to the government (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005)).

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 denied intentionally providing false or misleading information, but he could not explain why he did not provide accurate information in response to the questions. The questions to which Applicant provided false information are straightforward and uncomplicated. Applicant is within two semesters of graduating from college so he should be able to understand the intent of the questions. Applicant's testimony on this issue is basically that he did not know why he did not provide accurate information. He knew that he had delinquent debts, and he knew he had committed criminal acts that related to alcohol and drug use. He admitted to most of the allegations when they were included in the SOR. Applicant was either very careless or deliberately provided false information in completing the e-QIP. Since Applicant could not provide any reason for his failure to provide accurate information, I conclude he has failed to

mitigate the security concern for personal conduct. The government established that Applicant acted deliberately with the intent to deceive when answering questions on the e-QIP. I find none of the Personal Conduct Mitigating conditions at AG ¶ 17 apply. 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 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. I considered Applicant's good reputation at work, his continued efforts to complete his college education, and his certification and service as an emergency medical technician.

Applicant must establish a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. He is not required, as a matter of law, to establish that he paid off each and every debt listed in the SOR. All that is required is that he has a plan to resolve his financial problems and takes significant action to implement that plan. The entirety of his financial situation and his actions can reasonably be considered in evaluating the extent to which his plan to reduce his outstanding indebtedness is credible and realistic. Available, reliable information about the person's behavior, past and present, favorable and unfavorable, should be considered in reaching a determination. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

Applicant has not established a meaningful track record of debt payment because he has not paid most of his debts. He has sufficient monthly income as well as savings from the sale of his house to meet his financial obligations. Applicant had the opportunity to develop and demonstrate a plan to pay his delinquent debts. He did not



establish a plan but just showed that he had contacted an attorney to assist him in resolving and paying his debts. He did not demonstrate a credible and realistic plan to pay his delinquent debts. He has not demonstrated that he is managing his finances responsibly under the circumstances. The lack of responsible action to manage past obligations indicates Applicant may not be concerned and responsible, but careless, in regard to classified information. Overall, the record evidence leaves me with questions or doubts as to Applicant's judgment, reliability, and trustworthiness. I conclude Appellant has not mitigated the security concerns arising from his financial situation and personal conduct, and he is not suitable for 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraphs 1.r to 1.cc:	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraphs 2.a to 2.b:	Against Applicant

### **Conclusions**

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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THOMAS M. CREAN  
Administrative Judge