



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



In the matter of: )  
)  
) ISCR Case No. 08-11571  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro Se*

September 29, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline E, Personal Conduct, but failed to mitigate the security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On May 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and F. 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 in writing on June 18, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 22, 2009. DOHA issued a Notice of Hearing on July 31, 2009. I convened the hearing as

scheduled on September 2, 2009. The Government offered Exhibits (GE) 1 through 7. Applicant did not object and they were admitted. Applicant testified and did not offer any exhibits. DOHA received the transcript of the hearing (Tr.) on September 10, 2009.

### Findings of Fact

Applicant admitted all of the allegations in the SOR except ¶¶ 1.g, 1.h, 1.o, 2.a, and 2.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 30 years old and has worked as an Information Specialist with a federal contractor for a year and a half. He held a top secret clearance with access to sensitive compartmented information. He is not married and has a four-year-old child for whom he pays child support. He graduated from high school in 1998, and served in the Air Force from 1998 to 2002, when he was honorably discharged in the pay grade E-4.<sup>1</sup>

In 2001, Applicant was working two jobs and was earning approximately \$120,000 annually for a period of two years. He bought a house for \$110,000. He bought a luxury vehicle for \$42,000. The value of his house increased approximately \$50,000 to \$60,000, so he decided to buy another house. That house cost \$760,000. He took out a second mortgage on the first house to pay for the second house. He rented the first house. The monthly expenses on the second house were \$5,000 a month, which included the mortgage and utilities. His total payments for both houses per month were approximately \$7,000. He obtained a line of credit of \$10,000 on a credit card and another line from a credit union for approximately \$10,000 to \$15,000. He used both of these resources to maintain the payments on his houses. He was forced to sell the first house at the end of 2003 or beginning of 2004. He lost money because he had a second mortgage on the house. He also sold the second house and did not make a profit.<sup>2</sup>

Approximately eight months ago, he was in discussions with his credit union to begin a repayment plan on SOR ¶ 1.k, his vehicle debt, but he has not followed through. He stated the reason was because he and the mother of his child no longer live together and he now pays child support. He no longer works two jobs.<sup>3</sup>

Applicant has five judgments against him (SOR ¶¶ 1.a for \$400 was a civil dispute; 1.b for \$4,489, 1.c for \$10,201, 1.d for \$15,000, are all credit card debts; and 1.e for \$3,100 is a rental agreement dispute). He has not paid any of the judgments.<sup>4</sup>

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<sup>1</sup> Tr. 36-40.

<sup>2</sup> Tr. 19-28, 59-61.

<sup>3</sup> Tr. 27-28.

<sup>4</sup> Tr. 65-70, 77-79.

Applicant believes the debt in SOR ¶ 1.g (\$4,265) is the same debt as the judgment in SOR ¶ 1.e (\$3,100). He stated he vacated his apartment and did not provide the proper notice. He went to court and was ordered to pay \$3,100. He did not provide any documentation to substantiate his position. Neither debt nor judgment is paid.<sup>5</sup>

The debt in SOR ¶ 1.f (\$1,318) is a credit card debt on which Applicant defaulted in 2005. The debt is not paid.<sup>6</sup>

Applicant is unfamiliar with the debt in SOR ¶ 1.h. (\$2,303). He did not take any action to determine the identity of the creditor or dispute the debt. The debt is not paid.<sup>7</sup>

Applicant is unfamiliar with the debt in SOR ¶ 1.i (\$426) and did not research the identity of the creditor or dispute it. The debt is not paid.<sup>8</sup>

Applicant believes the debt in SOR ¶ 1.j (\$1,705) is likely a credit card debt. It is unpaid.<sup>9</sup>

The debt in SOR ¶ 1.k (\$17,000) is a car loan. Applicant purchased a new Hummer vehicle for \$42,000, in approximately 2002. His monthly payments with insurance were \$1,200. It was repossessed sometime in 2004 or 2005. The debt is not paid.<sup>10</sup>

The debt in SOR ¶ 1.l (\$1,887) is for purchases from an electronics store. Applicant does not recall what he purchased. He has not paid the debt.<sup>11</sup>

The debt in SOR ¶ 1.m is a tax lien (\$5,936) that was filed in August 2006. Applicant admitted he knew he was delinquent in paying his taxes, but did not know the exact amount. He admitted he did not file his federal income taxes on time for tax years 2004, 2005, 2006, or 2007. He stated he eventually filed three tax years at one time (he could not remember which years). Some of his taxes were filed a couple of years late, others just one year late. He has not yet filed his 2008 federal tax return. He stated he would claim between seven and nine exemptions because he needed the money. He said he intended to change the high number of exemptions later in the year, but never

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<sup>5</sup> Tr. 41-51; GE 5, 7.

<sup>6</sup> Tr. 70.

<sup>7</sup> Tr. 70; GE 3.

<sup>8</sup> Tr. 70-71.

<sup>9</sup> Tr. 71.

<sup>10</sup> Tr. 71-73.

<sup>11</sup> Tr. 73-74.

did because he continued to need the money. He never got around to filing or paying his taxes. He contacted the IRS, but could not afford to pay the amount of taxes they proposed in a repayment plan. He has not paid his back taxes.<sup>12</sup>

Applicant admitted that none of his state taxes were filed on time. He has not filed his 2008 state tax return. He did not file his state tax returns on time in 2004, 2005, 2006, or 2007. He believed he filed three or four years at the same time. He did not pay any state taxes from 2004 to 2008. It is unclear whether he owed state taxes, but he stated he put off paying his taxes and never did so because he was irresponsible.<sup>13</sup>

The debt in SOR ¶ 1.n (\$240) is an electric bill. It is not paid.<sup>14</sup>

Applicant denies the debt in SOR ¶ 1.o. (\$1,495). This debt is owed to a cell phone company. He believed his bill was incorrect and should have been under \$100. He contacted the company at the time he received the bill to dispute it over the phone. At first he was told it would be corrected and then he was told it was the correct amount and he needed to pay it. He continued to dispute it over the phone. He terminated his service and never resolved the disputed debt. He did not dispute it in writing or with the credit bureau.<sup>15</sup>

The debt in SOR ¶ 1.p (\$226) is owed to a car insurance company. Applicant failed to pay the last month of his insurance before his car was repossessed.<sup>16</sup>

Applicant completed his security clearance application (SCA) on April 21, 2008. He failed to list under Section 27.c that he had a tax lien filed against him in 2006. Applicant's explanation was that he knew he did not pay his taxes, but thought the question dealt with whether there was a lien against real property. Applicant also failed to list in Section 27.d that he had judgments against him. He stated at the time he completed his SCA, he was unaware that some of his debts had been reduced to judgments. Applicant listed that he had debts delinquent over 180 days and past due 90 days on his SCA, but did not list all of his debts. I find Applicant's testimony credible. I find there is not enough evidence to conclude Applicant deliberately and intentionally failed to disclose his tax lien and judgments.<sup>17</sup>

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<sup>12</sup> Tr. 29-35, 61-65. Applicant's failure to file his federal tax returns and state tax returns on time is not considered for disqualifying purposes, but will be considered when analyzing the "whole person."

<sup>13</sup> Tr. 108-114.

<sup>14</sup> Tr. 75.

<sup>15</sup> Tr. 52-58; GE 4, 5.

<sup>16</sup> Tr. 75-76.

<sup>17</sup> Tr. 84-102; GE 1

Applicant stated his father died in 2007, and he was helping his mother, which affected his finances. He had difficulty focusing on his job and left it by mutual agreement with his employer.<sup>18</sup> He also noted that when he began paying child support it impacted his finances.<sup>19</sup>

## 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

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<sup>18</sup> GE 1.

<sup>19</sup> Tr. 114-119; GE 2.

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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and
- (c) a history of not meeting financial obligations.

Since approximately 2001, Applicant has accumulated more than \$69,900 in delinquent debts that he has not taken any action to pay or resolve. He bought a luxury car while he was attempting to finance two houses. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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;

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant purchased a house when he was working two jobs and earning a high salary. He then bought another house and had to take out a second mortgage on the first house in order to make both payments. During this time he also bought a very expensive vehicle. He eventually sold the houses, but did not make a profit. He no longer was working two jobs and earning a high income. He used credit cards and lines of credit to pay some of his bills. He has not paid any of his delinquent debts. He does not have a payment plan to pay his debts. He has not received any financial counseling. He had judgments entered against him that remain unpaid. Although his father died in 2007, and he had child support to pay, those factors were not the cause of his financial problems. They may have put an extra burden on him, but he did not act responsibly under the circumstances. Therefore, mitigating condition (b) only marginally applies. I find none of the other above mitigating conditions applies.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(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.

Applicant failed to list on his SCA a lien placed against him for unpaid taxes. He credibly testified that he was confused and believed the question addressed whether there was a lien placed against real property. He did not believe he had a lien against any real property so he answered no. I find his explanation reasonable and that he did not intentionally or deliberately omit relevant facts from his SCA.

Applicant failed to list on his SCA judgments that had been filed against him. He listed he had debts over 180 days delinquent and 90 days past due. He explained he knew about the delinquent debts, but was unaware some were judgments. I find Applicant's explanation was credible and he did not intentionally or deliberately omit relevant facts from his SCA. Therefore, I find no disqualifying conditions apply.

### **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.

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 was working two jobs and earning a high income for approximately two years. He bought a house he could afford and its value increased. He bought a second house he could not afford. He took out a second mortgage on the first house and began using credit cards and lines of credit to pay his bills. He purchased a luxury vehicle that he could not afford. He accumulated more than \$69,900 in delinquent debt. Applicant already had grave financial problems when his father died in 2007. He left his job by mutual agreement because he had difficulty focusing on his work. He does not have a plan for managing the debt and it remains unpaid and unresolved. Applicant's conduct raises questions about his judgment and reliability. Applicant disclosed on his SCA that he had debts over 180



days delinquent and 90 days past due. He was confused by the wording of the SCA and did not list a lien. He credibly testified he was unaware of the judgments against him, so he did not list them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concern raised under Guideline E, Personal Conduct, but failed to mitigate the security concern under Guideline F, Financial Considerations.

### **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.p:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge