



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-02496
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

May 20, 2010

**Decision**

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HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I deny Applicant’s eligibility for access to classified information.

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on November 5, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct) on November 30, 2009. 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 adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on December 14, 2009. He submitted a notarized, written response to the SOR allegations on January 12, 2010, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on March 1, 2010. Applicant received the FORM on March 9, 2010. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response and additional evidence on March 29, 2010. DOHA assigned this case to me on April 23, 2010. The Government submitted ten exhibits, which have been marked as Items 1-10 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1. His response to the FORM and attachments are admitted into the record as Applicant exhibits, AE A through H.<sup>1</sup>

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b-1.dd, 2.a, 2.b, and 3.a of the SOR, with explanations. His admissions are incorporated herein as findings of fact. He denied the factual and security concern allegations in ¶¶ 1, 1.a, 2, and 3 of the SOR.<sup>2</sup> He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 36 years old, works as an instrumentation mechanic for a Department of Defense contractor. He began this position in August 2008. Applicant served on active duty in the United States Marine Corps from 1997 until 2002 and in the Marine Corps reserves from 2002 until 2005, when he was honorably discharged. While in the Marine Corps, he held a secret clearance without incident. Applicant married in 2000. He has three children, ages 12, 11, and 8.<sup>3</sup>

Applicant's August 2009 personal financial statement reflects that he earns \$3,865 a month in gross income, and he receives \$123 a month in veteran's disability

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<sup>1</sup>AE H is the first 12 pages of a 25 page credit report dated March 29, 2010. The relevant information from this credit report has been submitted.

<sup>2</sup>When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

<sup>3</sup>Item 5; Response to FORM.

benefits, for a total gross monthly income of \$3,988. His net monthly income totals \$3,733. His monthly expenses \$2,434, leaving a net remainder of \$1,299.<sup>4</sup>

The credit reports dated December 30, 2008, April 1, 2009, August 28, 2009, March 29, 2010, and the SOR indicate that Applicant has \$40,339 in unpaid debts owed to 28 creditors. The record reflects that Applicant paid some debts and disputed other debts. He also continues to owe money on several debts. After a careful review of all the evidence of record, I make the following findings regarding the status of Applicant's debts listed in the SOR.<sup>5</sup>

Applicant paid and verified payment of these two SOR debts: 1.a (credit card debt of \$210; AE A, AE B) and 1.q (cable \$315, AE F). In his personal interview and response to the FORM (AE G), Applicant stated that he paid the debts in SOR allegations 1.d (medical \$60); 1.e (medical \$91); 1.i (check \$77); 1.j (credit account \$250); 1.n (credit union \$69); 1.o (bank account \$2,234); 1.p (medical \$63); 1.r (bank credit card \$572); 1.t (medical \$55); and 1.bb (bank account \$232). He did not provide documentation which verified his statements that he paid these debts.<sup>6</sup>

The August 28, 2009, April 1, 2009, and March 29, 2010 credit reports indicate that Applicant disputed the following SOR debts: 1.g (telephone bill \$1,605); 1.h (bank debt \$497, paid \$50); 1.j (credit account \$250); 1.k (utility account \$225); 1.l and 1.u (same account, all-terrain vehicle \$5,012 and \$5,082); 1.y (education loan \$3,260); and 1.y (telephone bill \$446). The credit reporting company removed the accounts in SOR allegations 1.k (\$225), 1.l and 1.u (\$5,015 and \$5,082), 1.r (\$572), and 1.y (\$446), following Applicant's dispute. The reason for the removal of these debts is unknown. In his interview, Applicant stated that he paid the debt listed in SOR allegation 1.z (\$7,872), and this debt has been removed from Applicant's credit reports for unknown reasons. The debt listed in SOR allegations 1.v (automobile loan \$2,433) and 1.aa (credit account \$5,910) are not listed on any credit report, leaving Applicant without the ability to contact a creditor to verify the debt or pay it. Applicant admitted owing these debts in his response to the SOR; however, in his response to the FORM materials, he indicated that these debts had been removed from his credit report. He did not state that he paid the debts nor did he verify that the debts have been removed because he disputed the legitimacy of the debt.<sup>7</sup>

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<sup>4</sup>Item 6.

<sup>5</sup>Item 8 (Credit report, dated August 28, 2009); Item 9 (Credit report, dated April 1, 2009); Item 10 (Credit report, dated December 30, 2008); AE H (Credit report, dated March 29, 2010).

<sup>6</sup>*Id.*; AE A; AE B; AE F.

<sup>7</sup>Items 8-10; AE G; AE H.

Applicant provided evidence showing that he paid several bank account debts. He did not show how these payments related to debts listed in the SOR. The account numbers do not match the account information on the credit reports for these creditors.<sup>8</sup>

Applicant indicated that he retained the services of a debt counseling company. He did not provide a copy of the contract, a list of the debts managed by this company, and verification of his payments to the company or verification of debts paid by the company.<sup>9</sup>

Applicant advised the security investigator that his financial problems began after his discharge from the Marine Corps. He did not obtain employment immediately, and when he did find employment, his salary was insufficient to pay his regular monthly expenses. His current position provides a better income.<sup>10</sup>

When he completed his e-QIP, Applicant answered “no” to the following questions:

#### Section 28: Your Financial Delinquencies

a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?

b. Are you currently over 90 days delinquent on any debt(s)?

In his response to the SOR, Applicant admits that he falsified his answers to these questions. However, in his response to interrogatories he denies intentionally falsifying his answers to these questions, stating that he did not list his debts because the debts had been charged off. He did not consider accounts “charged off” to equate to debts over 180 days delinquent. His regular monthly bills were current. Because he previously held a security clearance, Applicant had completed at least one security clearance application in the past.<sup>11</sup>

SOR allegations 1.cc and 1.dd under the financial considerations guideline relate to two criminal allegations against Applicant for theft by check for less than \$500. Applicant reimbursed the individuals for the amount of the check. As a result, criminal charges were not filed.<sup>12</sup>

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<sup>8</sup>Items 8-10; AE C-AE E.

<sup>9</sup>Item 6.

<sup>10</sup>Item 7; Response to FORM.

<sup>11</sup>Response to FORM; Response to SOR; Item 7.

<sup>12</sup>Item 6.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 relevant, 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 applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 an 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."

## 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 delinquent debts, which he was unable to pay for a period of time. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when "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." Applicant's financial problems arose in 2005 and have continued. This mitigating condition does not apply.

AG ¶ 20(b) mitigation applies where "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." Applicant's financial problems arose after his discharge from the Marine Corps in 2005. It took him three months to find employment. When he did, his salary was less than he earned in the military and provided sufficient funds each month to pay basic living expenses, but not his overdue debts. This mitigating condition is partially applicable in this case.

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" is potentially mitigating under AG ¶ 20(c). Applicant indicated that he retained the services of a debt counseling company, but did not provide any information about this company or the services it provided to him. Applicant admitted the debts in SOR allegations 1.aa and 1.bb. However, allegation 1.aa is not listed in any of the four credit reports of record, leaving Applicant without any means to pay this debt. The information Applicant provided showing payments on bank account debts may relate to the debt in allegation 1.bb, but the evidence is not clear that it does. Applicant resolved some of his overdue debt; nonetheless, many debts remain unresolved. The record is insufficient to

show that Applicant's finances are under control. This mitigating condition has some applicability.

Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant provided proof that he paid two bills listed in the SOR. He believes several other bills are paid, but the record lacks evidence which shows that he paid these bills. This mitigating condition applies to SOR allegations 1.a and 1.q.

Finally, under AG ¶ 20(e), security concerns may be mitigated if "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." The credit reports of record indicate that Applicant disputed eight debts listed in the SOR because the debts were not his or he had paid the debt. As a result of his dispute, the debts in SOR allegations 1.k, 1.l, 1.u, and 1.y have been removed from his credit report. Applicant indicated that he disputed the debt in SOR allegations 1.j and 1.r. because he had paid the debts. Allegation 1.r is no longer on his credit reports, but allegation 1.j is listed on his most recent credit report as verified. This mitigating condition applies to the SOR debts in allegations 1.k, 1.l, 1.r, 1.u, and 1.y.

#### **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(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; and (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for

exploitation or pressure by the foreign security or intelligence service or other group;

For AG ¶ 16(a) to apply, Applicant's omission, concealment or falsification in her answer must be deliberate. The Government established that Applicant omitted a material fact from his e-QIP when he answered "no" to Questions 28a, about debts over 180 days delinquent, and 28b, about debts currently 90 days overdue. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. Although he admitted the allegations, he now denies that he had an intent to hide this information from the Government, arguing that he did not believe his charged-off debts would be considered as 180 days delinquent or more. 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>13</sup>

When he completed his e-QIP in November 2008 and answered question 28a, Applicant knew he had unpaid debts from the past. He paid his current bills, thus, he did not have any current bills more than 90 days overdue. His failure to answer "yes" question 28a when he knew about his old debts shows an intent to hide information from the Government. However, since he paid his monthly expenses and bills, he did not intentionally falsify his answer to question 28b. This question seeks information about debts which are more than 90 days old, but less than 180 days old. The debts in this case are more than 180 days old. The Government established intentional falsification under allegation 2.a, but did not establish intentional falsification of allegation 2.b, which is found in Applicant's favor.

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying:

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

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<sup>13</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)).



The Government alleges that Applicant violated federal law when he falsified his answers to Section 28 of the e-QIP. Since I found that Applicant intentionally falsified his answer to question 28a, the Government has established its case under AG ¶ 31(c).

AG ¶ 32 provides conditions that could mitigate security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense;

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement; and,

(e) potentially disqualifying conditions (b) and (f) above, may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee, has granted a waiver.

I have reviewed the mitigating conditions with the facts of this case and find that none of them apply. Applicant has not mitigated the Government's security concerns under Guideline J.

### **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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems first began after his discharge from the Marine Corps. He encountered difficulty obtaining immediate employment, making it difficult to pay all his monthly expenses. When he finally obtain employment, he earned less than his military income, which did not allow him to catch up on his overdue bills. Since he began his current job, Applicant has resolved some of his overdue debts either by payment or challenging the validity of the debts.

Applicant failed to provide documentation to show he has resolved all debts he said were resolved. He failed to provide sufficient evidence to establish that his finances are under control. Most importantly, because he asked for a decision on the record and not a hearing, his credibility cannot be evaluated. Thus, the validity of his reason for answering "no" to question 28a could not be assessed. Because he had previously completed security clearance applications, he understood the need to be truthful in his answers. His explanation for his "no" answer is not rational or reasonable, as not all his debts had been charged off.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances, personal conduct and criminal conduct.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b-1.j:	Against Applicant

Subparagraph 1.k: For Applicant  
Subparagraph 1.l: For Applicant  
Subparagraph 1.m-1.p: Against Applicant  
Subparagraph 1.q: For Applicant  
Subparagraph 1.r: For Applicant  
Subparagraph 1.s-1.t: Against Applicant  
Subparagraph 1.u: For Applicant  
Subparagraph 1.v-1.x: Against Applicant  
Subparagraph 1.y: For Applicant  
Subparagraph 1.z: For Applicant  
Subparagraph 1.aa: Against Applicant  
Subparagraph 1.bb: Against Applicant  
Subparagraph 1.cc: For Applicant  
Subparagraph 1.dd: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant  
Subparagraph 2.b: Against Applicant

Paragraph 3, Guideline J: AGAINST APPLICANT

Subparagraph 3.a: 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.

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MARY E. HENRY  
Administrative Judge