



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



In the matter of: )  
)  
) ISCR Case No. 09-03503  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro Se*

March 19, 2010

**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

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

On August 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct, and Guideline F, Financial Considerations. 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 September 20, 2009. He failed to make an election on whether he wanted to have a hearing. DOHA advised him on September 28, 2009, that his answer could not be considered complete until he made an election. On October 4, 2009, Applicant provided a new answer and elected to have his case decided on the written record. Department Counsel submitted the government's File of Relevant Material (FORM) on November 30, 2009. The FORM was mailed to Applicant and it was received on December 15, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on February 17, 2010.

### **Findings of Fact**

In Applicant's August 28, 2009 answer to the SOR (Answer #1), he denied all of the allegations except ¶¶ 1.f, 2.a, 2.b, 2.c, and 2.d, which he admitted. In response to DOHA's request on September 28, 2009, that he must make an election as to whether he wanted a hearing, he provided a new answer to the SOR (Answer #2). In this answer, he denied all of the allegations in ¶ 1 of the SOR and admitted all of the allegations in ¶ 2 with explanations. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 36 years old and is employed by a defense contractor. He has been married since 1998. He does not list any former spouses on any security applications.<sup>1</sup> He served in the Army and was honorably discharged.<sup>2</sup>

In a statement made on September 23, 2008, to an Office of Personnel Management (OPM) investigator, Applicant said he did not recognize the debts listed in SOR ¶¶ 1.c, 1.d, 1.e, 1.f, and 1.g. He did recognize the debt in ¶ 1.b. He stated he ordered a trial membership with the creditor for game rentals. He stated he returned the game and thought the account was paid.<sup>3</sup> In Answer #1, Applicant denies the debt in SOR 1.b.<sup>4</sup> In Answer #2 he states "This is not my debt (possible identity theft issue)."<sup>5</sup> I find Applicant was untruthful in explaining this debt. The debt in SOR ¶1.b is not paid.

In Answer #1, Applicant admits the credit card debt in SOR ¶ 1.f (\$11,000). In Answer #2 Applicant denies this debt and states: "This is not my debt (possible identity theft issue)." In Answer #1, Applicant denies all of the remaining debts. In Answer #2,

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<sup>1</sup> This information is noted because Applicant refers to an ex-wife being responsible for opening an account that is listed as delinquent on the SOR.

<sup>2</sup> Applicant lists his service dates in Item 8 as May 2001 to July 2006, and his status as enlisted active. In Item 9, he lists his dates as July 2002 to July 2006, and his status as enlisted inactive reserve.

<sup>3</sup> Item 11.

<sup>4</sup> Item 4.

<sup>5</sup> Item 7.

he denies the debts in SOR ¶¶ 1.a through 1.g and states: “This is not my debt (possible identity theft.)”

Applicant acknowledged, in his statement to the OPM investigator, that he recognized the debt in SOR ¶ 1.h. The debt was to a library for an overdue book. He stated he returned the book and paid the fine in 2007. In Answer #1, he denies the debt. In Answer #2, he stated: “I was not aware of this debt, I was in Iraq at the time, I did not receive a bill; paid in full 2/17/2009 (see attached).” The attachment shows Applicant paid \$40 to the creditor on February 17, 2009. This contradicts both his statement made on September 23, 2008, that he paid the debt in 2007, and his denial of the debt in Answer #1. I find Applicant was untruthful in explaining this debt.

In Applicant’s statement to the OPM investigator, he said he became delinquent on his debts due to unemployment for a year in 2006 to 2007. He thought another factor could be that his identity was stolen in 2003 or 2004, while he was deployed to Iraq. He further stated he intended to contact the creditors on his credit report and the court where a judgment was entered against him to get information about the debt. It is listed in SOR ¶ 1.c.<sup>6</sup> Applicant did not provide any information or documents to show he has contacted any of the remaining creditors, or paid or resolved any of the delinquent debts.

In Answer #2 under Guideline E, Applicant states, “I DENY-I did not lie about any of the judgments or delinquent accounts because I did not know about these accounts and some of them are not mine.” In response to SOR ¶ 2.f he states:

I stated “NO” because I have never had a [telephone 1] account; I don’t know what [creditor 1, creditor 2, creditor 3, or creditor 4] are. My ex-wife signed up for the [creditor 5] account. I was unemployed at the time when the [telephone 2] account became delinquent. I was experiencing a financial hardship when the [creditor 6] account became delinquent; I’d forgotten about the [telephone 2] and [creditor 6] account. I have not received any correspondence regarding these 2 debts in years.<sup>7</sup>

In Answer #2, Applicant admits he stated “no” in responding to falsification allegations in SOR ¶¶ 2.a-2.f. His explanation for that answer is that he did not know he had judgments or delinquent debts. This statement contradicts the above statement he made in Answer #2. He also attributes a debt to his ex-wife. Applicant does not list on his security clearance application that he has an ex-wife.

Applicant states that all of his delinquent debts are “possibly” attributed to identity theft. He provided no support for this explanation. He did not provide any information as to what action he has taken to dispute the debts or if he reported them as identity theft.

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<sup>6</sup> Item 11.

<sup>7</sup> Item 7.

I find Applicant's statements are not credible. He provided inconsistent statements and explanations in his answers and interview. I find Applicant intentionally failed to provide truthful information on his August 23, 2008 Electronic Questionnaires for Investigations Processing, on the August 6, 2007 Questionnaire for Public Trust Positions, Standard Form 85P, and on the April 18, 2002 Security Clearance Application.

### **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 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 that 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.” 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 them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has more than \$13,000 in delinquent debt that remains unpaid or unresolved. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considering the following:

- (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; and

(e) 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.

Applicant provided evidence to show he resolved one debt for \$40. He has not provided any other evidence to show he contacted the creditors, paid or resolved the remaining debts, or disputed them. He has not provided any evidence to show he may be the victim of identity theft. I find mitigating condition (a) does not apply because Applicant's debts remain owed and unresolved. I find mitigating condition (b) does not apply because Applicant failed to adequately explain his unemployment or his statement about his ex-wife. He failed to explain the specifics of how he determined he is "possibly" a victim of identity theft and what he has done about it. There is no evidence Applicant received financial counseling, or made a good-faith effort to pay his creditors or resolve his debts. Therefore, mitigating condition (c) and (d) do not apply. He did not provide documentary proof that he has disputed any of the debts. He also contradicts himself regarding the validity of the debts, which will be addressed more thoroughly under Guideline E, Personal Conduct. I find mitigating condition (e) does not apply.

### **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:

(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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant intentionally and deliberately failed to divulge his delinquent debts. He provided false, inconsistent, and misleading statements during his OPM interview and in both of his answers to the SOR. I find both of the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 17 and conclude none apply, particularly in view of his inconsistent denials and conflicting answers.

### **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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant received an honorable discharge from the military and served in Iraq. He has numerous delinquent debts that he has not paid, resolved, or legitimately disputed. He made conflicting statements about the debts. He has taken no action to resolve them. His deliberate omissions and contradictions are a serious concern. He failed to provide sufficient evidence to mitigate those security concerns. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations, and Guideline E, Personal 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-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.f:	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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Carol G. Ricciardello  
Administrative Judge