



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 09-05497 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Nicole Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 12, 2010

**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) as part of his employment with a defense contractor on September 23, 2008. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated October 15, 2009, to Applicant detailing security concerns for financial considerations under Guideline F, and 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 adjudicative guidelines (AG) effective in the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on October 20, 2009.

Applicant provided answers to the SOR on both November 2 and November 6, 2009. He admitted eight of the allegations under Guideline F and denied one. He denied all allegations under Guideline E. He provided an explanation for his denials, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 9, 2009, and the case was assigned to me on February 22, 2010. DOHA issued a Notice of Hearing on March 10, 2010, scheduling a hearing for

April 7, 2010. I convened the hearing as scheduled. The government offered five exhibits, marked Government Exhibits (Gov. Ex.) 1 through 5 which were admitted without objection. Applicant and one witness testified on his behalf. Applicant offered 13 exhibits marked Applicant Exhibits (App. Ex.) A through M, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 15, 2010. I kept the record open for Applicant to submit additional documents. Applicant timely filed three additional documents, marked App. Ex. N through P, which were received without objection. (See, Gov. Ex. 6, Memorandum, dated April 20, 2010). Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant admitted eight of the nine factual allegations in the SOR under Guideline F with explanation. He also denied the four factual allegations under Guidelines E. I included Applicant's admissions and explanation in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 62 years old, and has worked as a senior analyst, military strategist, and history teacher at a military war college and policy office for over two years. Applicant served five years on active duty in the Navy as a corpsman, during which he served two tours in Vietnam, and was awarded a Bronze Star, Meritorious Service Medal, and a Purple Heart. After his Navy tour of active duty, he entered college receiving a Bachelor's degree in history in 1978. He also received a Master's degree in history in 1995. He has since authored and published five books on military history. After receiving his degree, he served on active duty in the Marine Corps for 19 years retiring in October 1962 as a Major. He held a security clearance while on active duty. Applicant then served with the Marines as a civilian on the west coast until 1997. His position was reorganized, and Applicant and his family moved to the east coast and he became a teacher and tactical officer at a state-run military college. After eight years, Applicant thought he could easily change positions and find employment, so he left the college. He was unemployed for over eight months. He took a position with a defense contractor working as a military doctrine writer at a military organization, and became a geographical bachelor in 2006. He left that position after about a year because his administrative paperwork, including a security clearance, was not completed. He worked in the private sector for approximately another year until that company went out of business. In September 2008, he was rehired by the same defense contractor he previously worked for as a military doctrine writer. (Tr. 17-21; Gov. Ex. 1, E-QIP, dated September 17, 2008; App. Ex. A, DD 214, dated October 30, 1992; App. Ex. B, Bronze Star Citation with Combat Distinguishing Device, dated April 1970; App. Ex. C, Commander's letter for award of Bronze Star, dated April 29, 1997; App. Ex. D, Purple Heart Citation, dated September 2, 1970; App. Ex. E, Meritorious Service Medal Citation, dated October 1992; App. Ex. F, App. Ex. G, App. Ex. H, Retirement Citations, dated October 1992)

Applicant has been married for over 16 years and has two children, ages 14 and 16. His present monthly salary and retired pay is \$5,600, and his wife also has a monthly salary of about \$800 for a combined monthly income of \$6,400. Applicant and his wife have monthly expenses of \$5,490 leaving about \$900 in monthly disposable or discretionary funds. (Tr. 26-28; Gov. Ex. 5, Personal Financial Statement, dated April 7, 2010).

When Applicant retired from the Marine Corps in 1992, he and his wife were both employed and their yearly income was between \$160,000 and \$170,000, including Applicant's retirement pay. Their standard of living was based on this level of yearly income. In 1996/1997, Applicant's wife's job was eliminated through re-organization. Shortly thereafter, Applicant's job was eliminated in a re-organization, and Applicant and his wife were no longer employed. They started to incur financial problems and delinquent debt in 1997 when they were unemployed. Applicant was hired as a teacher and tactical officer at an east coast state-run military college for substantially less salary. After moving across country, which cost Applicant over \$35,000 of his own funds, he worked for eight years at the college. His salary level, including his military retirement pay, was approximately \$60,000. They changed their lifestyle and adjusted to the lower income and have not incurred any additional delinquent debts. The drain on their finances from the move, from periods of subsequent unemployment, and from lower salary, added to their financial problems. Since Applicant has taken the position with the defense contractor as a senior military analyst and teacher, their finances have improved, and they continue to live within their income and means. Appellant's wife manages all of the family finances, including payment of bills. (Tr. 29-32; 61-65)

Applicant received the offer for a military analyst position with the defense contractor in 2006. He accepted the offer and was asked to complete a Security Clearance Application (SCA) as part of his employment. When completing that form, Applicant answered "no" to the financial questions. At the time, he knew that he and his wife had some financial problems but he thought they were under control. Since his wife handled the finances, he was not completely familiar with the circumstances of their finances. He did not know what bills were outstanding, for how long, and in what amount. He knew they had tried to pay bills on time and never missed a mortgage payment. They never refinanced and had not taken out any loans recently. They did not have a tax lien since he knew the tax lien was filed in error by the state. His request for a security clearance was not granted for financial considerations. He appealed and the appeal was still pending after more than a year. Applicant decided to accept another job and the security clearance process was terminated. (Tr. 30-39; Gov. Ex. 2, e-QIP, dated June 21, 2006)

When Applicant accepted his new position in 2008 with the same defense contractor, he was required to submit another security clearance application. He was provided the security clearance application he filed in 2006, and asked to update it. Applicant was in one location and his family was in another location. He made some changes concerning his employment status and jobs. He again answered "no" to financial questions. He noted in the section concerning previous investigations for

security clearance that his security clearance application in 2006 had been questioned concerning financial matters but the application was withdrawn before the process was completed. On the day he completed the application, he became sick and spent the next two weeks recovering from acute pancreatitis. He did not have any financial information with him when he completed the application. He did not believe he was in serious financial trouble even though he knew he had some delinquent debts. He had not missed any mortgage or car payments. He had debts but not more than 90 or 180 days past due. He did not know of any judgments or liens against him. He believed he was current on his taxes. He and his wife had an agreement with the state to pay state taxes and they were being paid. Since his wife managed the finances, he was not fully aware of the details of their finances and debt payments. He responded to the financial questions as best he could. (Tr. 39-59)

Credit reports ( Gov. Ex. 3, Credit report, dated September 21, 2009; and Gov. Ex. 4, Credit report, dated August 9, 2006) show the following delinquent debts for Applicant: a judgment in favor of a merchant for \$1,303 (SOR 1.a); a state tax lien for \$3,104 (SOR 1.b); a state tax lien for a different state for \$1,449 (SOR 1.c); a medical debt for \$350 (SOR 1.d); a charged off bank credit card for \$6,937 (SOR 1.e); a gasoline company credit card charged off for \$94 (SOR 1.f); a department store credit card in collection for \$14,475 (SOR 1.g); a credit card charged off for \$12,020 (SOR 1.h); another credit card charged off for \$20,252 (SOR 1.i); and a credit union account in collection for \$1,996 (SOR 1.j). The balance owed on these accounts is approximately \$62,000. The majority of the unpaid debt, about \$53,700, is from four credit accounts incurred on the west coast prior to 1997. (Tr. 63-64)

The delinquent debt at SOR 1.a is a judgment from a company which performed cleaning service at Appellant's home after a water problem. Appellant's wife thought the bill had been paid by their insurance company. The first she knew of the debt and judgment was when the judgment notice was placed on their front door. Appellant's wife paid the judgment the next day. She does not believe she even informed Appellant of the judgment. (Tr. 65, Response to SOR, Enclosure 1, Satisfaction, dated May 4, 2006)

The delinquent debt at SOR 1.b is for a property tax lien placed against Applicant by his former state of residence. Applicant and his family had moved from the property subject to the tax lien prior to incurring the tax. The state released the lien since it was recorded in error. (Tr. 66, Response to SOR, Enclosure 3, Release of Lien, dated July 17, 2007)

The delinquent debt at SOR 1.c is for an income tax lien from Applicant's state of residence. The lien has been paid and released. (Tr. 66-67; Response to SOR, Enclosures 2, Release, dated June 5, 2008)

The delinquent debt at SOR 1.d is for a medical debt. The bill has been paid in full. (Tr. 68; Response to SOR, Enclosure 4, Letter, dated October 6, 2007).

The delinquent debt at SOR 1.f is for a gas credit card. The debt is paid in full. (Tr. 74-76; App. Ex. M, Letter, dated January 29, 2009)

The delinquent debt at SOR 1.j is for a credit union loan. The debt has been paid in full. (Tr. 76-78; Response to SOR, Enclosure 5, Letter, dated October 28, 2009)

The delinquent debts at SOR 1.e, 1.g, 1.h, and 1.i, are for credit cards and loans Applicant and his wife used when they were first unemployed in 1997, and had to move to the east coast for employment. The amount of the debt listed in the SOR is not the amount Applicant and his wife used. The SOR amounts include extensive penalties and interest accruals. The debts have not been paid. However, Applicant and his wife contacted all of the creditors and have received settlement offers from them. (App. Ex. I, Letter, dated January 26, 2009; App. Ex. J, Letter, dated January 23, 2009; App. Ex. K, Letter, dated January 27, 2009; App. Ex. L, Letter, dated January 30, 2009; App. Ex. P, letter, dated April 9, 2010) Applicant and his wife tried a few years ago to refinance their home and take the equity from the house to pay the settlement offers. However, the arrangements were not completed before the housing downturn and the tightening of credit stopped the transaction. Applicant and his wife recently were contacted by their mortgage company and they have again made arrangements to receive equity from their home to pay these four debts. (App. Ex. N, Letter, dated April 114, 2010; App. Ex. O, Truth in Lending Statement, dated April 12, 2010) Upon completion of the arrangements and payment of the equity in the house, Applicant and his wife will pay the settlement offers. (Tr. 68-71)

## **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 must be considered 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 to obtain 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 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:**

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 are a security concern raising Financial Consideration 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). Applicant incurred delinquent debts when he and his wife lost their lucrative employment, had to use credit to pay their debts, and incurred additional moving expenses when they moved across country for new jobs.

I considered Financial Considerations Mitigating Conditions (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 AG ¶ 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). The mitigating conditions apply. Applicant and his wife had good jobs receiving excellent pay. When the companies reorganized, both lost their employment and used credit cards and loans to assist in paying their debts. They had to move across country to find new work incurring unreimbursed moving expenses. Applicant's salary at this new position was only about 40% of what he had been receiving. They changed their life style and have not incurred additional debt. The loss of a job and income is unlikely to recur since Applicant has been successfully employed by a defense contractor. The debt occurred through circumstances beyond Applicant's control since it resulted from the job reorganization. Applicant acted responsibly under the circumstances. He has been continuously employed since moving. He paid or is paying almost all of his debts, and is not incurring additional delinquent debt. One debt was a state property tax lien that Applicant contested, and it was released as filed in error. He paid five of the debts and has a plan to pay the remaining four debts. He acted responsibly under the circumstances by paying most of his past due debts and staying current with his present financial obligations. Since his debts have been or are being paid, his finances do not cast doubt on his current reliability, trustworthiness, or good judgment.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 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. Applicant has sufficient discretionary funds to pay his delinquent debts. He presented sufficient information to show that five of the ten delinquent debts have been paid in full. One debt was released since it was filed in error. He has a plan to pay the remaining four debts and is executing that plan. Applicant's action in contacting his creditors and arranging to make payments on the debts demonstrates a good-faith effort to repay his creditors.

## **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 incorrect answers to questions on his security clearance application concerning his finances 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).

Applicant denied intentional falsification. 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 with intent to deceive. When Applicant completed his security clearance applications in 2006 and 2008, he did not know the full extent of his financial issues. His wife managed the family finances and at the time they were located in two different areas. Applicant knew of some financial problems but did not believe the problems were serious or to the extent to be included on the security clearance application. He did not know of a judgment because his wife did not tell him about it and she paid it immediately. He knew that a tax lien had been entered erroneously and another had been paid. He never had repossessions or filed bankruptcy. He was current with his taxes. He knew that he and his wife had some past due debts but they were either paid or being paid, or they had a plan to pay any remaining debts. Appellant honestly and reasonably believed his finances were under control and being paid. He also noted that his suitability for access to classified information had been questioned for financial reasons after he submitted his 2006 application. This put the government on notice that there may be some financial issues concerning Applicant that needed to be investigated. His answers to the questions were not deliberately false because of his honest and reasonable belief concerning his finances, coupled with his lack of knowledge and information concerning the family's finances and debts. Accordingly, his wrong answers were not a deliberate intent to deceive. I find for 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 that Applicant served over 24 years on active duty in the Marines and Navy, and retired with an honorable discharge. He received an award for valor while serving on active duty. He also served as a civilian for many years and taught at a state-run military college. He is highly regarded by his employers.

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 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 actions to reduce his outstanding indebtedness are credible and realistic. 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 established a "meaningful track record" of debt payment, including evidence of actual debt reduction through payment of debts. Applicant's debts were created by circumstances beyond his control. He presented sufficient information to show he is taking reasonable and responsible action to resolve his financial issues. He paid five of the ten delinquent debts. He established another debt was an error. He has a plan to pay the remaining four debts. He has negotiated settlements with these creditors and is in the process of refinancing his house to withdraw the equity to pay the settlement offers. Applicant's management of his finances and payment of past obligations indicates he will be concerned, responsible, and careful regarding classified information. Applicant mitigated security concerns based on his finances. Applicant did not provide false information concerning his finances with intent to deceive on his security clearance application. His explanation for his responses to financial questions on his security clearance application mitigates security concerns under personal conduct. Overall, on balance the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations and 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: FOR APPLICANT

Subparagraphs 1.a - 1.j: For Applicant

Paragraph 2, Guideline E; FOR APPLICANT

Subparagraphs 2.a - 2.d: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge