



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



In the matter of: )  
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 ) ISCR Case No. 09-07292  
 )  
 SSN: )  
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 Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro se*

October 27, 2010

**Decision**

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COACHER, Robert E., 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.

**Statement of the Case**

On May 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. DOHA acted 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on June 7, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on July 14, 2010. The FORM was mailed to Applicant and he received it on July 22, 2010. Applicant was given 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 September 21, 2010.

### Findings of Fact

In Applicant's answer to the SOR, he admitted ¶ 1.a, but denied ¶ 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He is married and has two adult children. He has worked for his current employer, a federal contractor, for 23 years. He is a customer service engineer. This is the first time he has sought a security clearance. He served in the Marine Corps for six years and was honorably discharged. Applicant received a discharge from his debts in 2003 after completing a Chapter 13 Bankruptcy repayment plan.<sup>1</sup>

The one debt listed in the SOR is supported by three credit reports dated April 28, 2009, April 8, 2010, and July 13, 2010. The debt alleged in the SOR is approximately \$58,826 and results from a charged-off home equity line-of-credit loan. The debt was reported 120-days late in November 2008 and charged off in December 2008. Applicant explained that his wife was laid off from her job in 2008 and consequently they were unable to meet their obligations, including the monthly payments on their home equity loan (SOR ¶ 1.a). Since then, Applicant's wife obtained a job and they applied for and received a loan modification on their home mortgage (not SOR ¶ 1.a).<sup>2</sup>

Applicant's current income and expense statement shows net monthly income of about \$8,100, net expenses of \$5,700, and a remainder of \$2,400. He also claims that in June 2010, he began \$300 monthly payments on the home equity debt; however, he did not provide supporting documentation of payments. There is no other evidence in the record showing a payment arrangement for that debt. There is also no evidence that Applicant received any financial counseling.<sup>3</sup>

The personal conduct concern arises because of answers Applicant provided to financial questions on his security clearance application. The allegation states that he falsified answers to his security clearance application (e-QIP) on April 23, 2009, by

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<sup>1</sup> Item 4, 6.

<sup>2</sup> Items 2, 7-9.

<sup>3</sup> Items 2, 5-6.

answering “no” to the questions concerning whether he had ever been 180 days delinquent on any debt and whether he was currently 90 days delinquent on any debt. Applicant gave conflicting reasons for his “no” answers. During his investigative interview, he stated he knew he was behind on the home equity loan but because his wife handles their finances, he did not think to list it on his application. In his answer to the SOR, however, he stated because the home equity debt was not current and had been charged off, he did not think he needed to list it on the application.<sup>4</sup>

## **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 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>4</sup> Items 2, 5.

extrapolation about 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**

AG ¶ 18 expresses the security concern for 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.

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 a \$58,826 delinquent debt that remains unpaid or unresolved. I find both disqualifying conditions have been raised.

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

Applicant did not provide evidence that he paid or resolved his delinquent debt. Therefore, his behavior is recent and the delinquent debt remains a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debt remains unresolved. Applicant provided some information that his wife experienced periods of unemployment. However, I am unable to determine that his financial problems were beyond his control, since there was no evidence offered to show responsible action under the circumstances. I find AG ¶ 20(b) does not apply. Applicant failed to present evidence of financial counseling and there is no clear evidence that Applicant's financial problems are being resolved or under control. There was no documented evidence that he has made a good-faith effort to pay his delinquent home equity loan or has attempted to resolve it. I find AG ¶¶ 20(c) and 20(d) do not apply.

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

AG ¶ 15 expresses the security concern for 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. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.

Applicant's rationale for not reporting the charged-off home equity loan is inconsistent and unpersuasive. He clearly was aware of the debt and the questions are unambiguous. I conclude from the evidence that Applicant deliberately provided false information concerning his home equity debt. AG ¶ 16(a) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and especially considered the following:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

The record is absent any evidence that Applicant made any efforts to correct his false answers prior to being interviewed by an investigator. AG ¶ 17(a) does not apply. Falsification of material information on a security clearance application calls into question Applicant's trustworthiness and good judgment. AG ¶ 17(c) does not 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. I considered that the Applicant's wife experienced periods of unemployment which led to the default on the home equity loan. I also considered Applicant's veteran status. However, Applicant did not supply documented proof of a payment arrangement for the home equity debt. He has not shown a track record of financial stability considering that he received a discharge in bankruptcy in 2003. Additionally, he also engaged in deliberate falsification on his security clearance questionnaire. Therefore, he failed to provide sufficient evidence to mitigate the security concerns.

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 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:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.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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Robert E. Coacher  
Administrative Judge