



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



In the matter of:

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) ISCR Case No. 10-00119  
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Applicant for Security Clearance

**Appearances**

For Government: Paul M. DeLaney, Esq., Department Counsel

For Applicant: *Pro se*

June 30, 2011

**Decision**

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WHITE, David M., Administrative Judge:

Applicant accrued more than \$17,000 in delinquent debts over the past decade, with no progress toward resolution of any of them during the two years he has been employed in his current job. He made no showing of unusual circumstances giving rise to these debts, or of behavioral changes to prevent continued financial irresponsibility. He falsified his security clearance application by denying the existence of his financial problems. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on August 31, 2009.<sup>1</sup> On March 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines

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<sup>1</sup>Item 6.

F (Financial Considerations) and E (Personal Conduct).<sup>2</sup> 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on April 5, 2010, and requested a hearing.<sup>3</sup> On June 12, 2010, Applicant communicated to Department Counsel that he wanted to change his election, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>4</sup> Department Counsel submitted the Government's written case on July 1, 2010. A complete copy of the File of Relevant Material (FORM)<sup>5</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on December 20, 2010, and returned it to DOHA. He responded to the FORM in a one-page written statement dated January 7, 2011, and expressed no objection to my consideration of the evidence submitted by Department Counsel. The last sentence of his response stated, "I have attached copies of transactions on the dates that I paid from my accounts." No documents were attached to, or included with, the response when it arrived at DOHA. Applicant's Facility Security Coordinator was informed that no attachments were included with his response to the FORM, and in turn informed him of that situation by email on January 25, 2011.

On January 27, 2011, Applicant requested an extension of time to submit additional matters concerning his efforts to resolve his debts. Included with that request was a copy of some email communications on January 26 and 27, 2011, between Applicant and a non-profit consumer financial education and credit counseling organization. Department Counsel granted Applicant's request for additional time until February 15, 2011. On February 8, 2011, Applicant wrote to Department Counsel that he was unable to obtain any further evidence to submit, and explained the status of his efforts to that point. After clarification, Applicant indicated that he did not intend to submit anything further, and did not want any more delay in order to do so. On February 22, 2011, Department Counsel reviewed Applicant's various responses to the FORM and indicated that he had no objection to the admissibility into evidence of the materials submitted. I received the case assignment on February 24, 2011.

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<sup>2</sup>Item 1.

<sup>3</sup>Item 4.

<sup>4</sup>Item 5.

<sup>5</sup>The Government submitted ten Items in support of the SOR allegations.

## Findings of Fact

Applicant is a 34-year-old employee of a defense contractor, where he was hired to perform overseas security support services in July 2009. He has never married, but lives with the mother of his three children who are 9, 5, and 3 years old. In 1998, he was honorably discharged from the Marine Corps Active Reserve after a four-year enlistment. He is a high school graduate and attended one year of college while in the Reserves. This is his first application for a security clearance. From September 2001 to May 2009, he worked part-time as a security/entertainment coordinator for a saloon. Without further explanation, he reported that he was unemployed from August 2008 to June 2009 on his SF 86.<sup>6</sup>

In his response to the SOR, Applicant admitted the truth of each allegation in the SOR. After review of the credit reports submitted with the FORM, I conclude that the two allegations, in SOR ¶¶ 1.h and 1.t, are listings by different collection agencies, at different times, with different credit bureaus, of the same delinquent \$236 cell phone bill. That debt rose to \$279 by the time the second collection agent reported it in 2009. After eliminating that duplication, the total due on Applicant's 23 SOR-listed delinquent debts is \$17,195.<sup>7</sup>

Applicant told the investigator from the Office of Personnel Management (OPM) during an interview on November 19, 2009, that his many delinquent debts arose from a number of credit cards and consumer loans, and from numerous court and traffic fines. He said his financial issues started when he was young and in college, and he has never had good credit records. He said that he had been unemployed and underemployed over time, had never really gotten even, and continued to get behind on some debts and fines. He wanted to make it a priority to pay his court and traffic fines so he could get his driver's license back. He further said that with his new contractor position paying him a substantial salary, he would pay the overdue balances in two months. In his February 2010 verification of the interview contents, he stated, "At this time I am currently on contract in [overseas country]. My pay is 65K per year. I will start making payments on these accounts in April 2010."<sup>8</sup>

In his February 2010 response to DOHA interrogatories, Applicant attached a personal financial statement reporting his monthly net income of \$3,736, monthly living expenses of \$2,280, no debt payments, and a monthly remainder of \$1,486. He remarked on that document, "After catching up on Bill [sic] the NET REMAINDER should be what will be put towards my debt. I plan on having my debt take [sic] care of by Jan 2011 and payment plan by April 2010."<sup>9</sup>

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<sup>6</sup>Item 6.

<sup>7</sup>Item 1; Item 4; Item 9; Item 10.

<sup>8</sup>Item 8.

<sup>9</sup>Item 7.

In his response to the SOR, dated April 4, 2010, Applicant said:

I would like to add that during the interview for the background check I did admit to this statement and that I knew I was in debt. I was wrong in not answering the questions knowing that I am in debt. With this job I will be able to clean up my debt in a matter of a year while not acquiring any more debt. There is no reason or excuse as to why I answered on my [SF 86] the way I did. All I know is I am in [country] working and saving money to pay off my debt as the funds are available. I will leave in June of 2010 and am looking forward to paying at least half of the Debt that I have off. At the same time I plan on making arrangements on the rest of my debt to have payment plans or full payment by early 2011. [He then discussed how he needed a clearance for his job, and needed his job to pay his debts.] . . . Given the time to save and pay my debt is all that I can do at this time. I am working on getting in contact with debt collection agencies at this time and looking to make some arrangements. Though nothing has been paid at this time I know that by July 6<sup>th</sup> 2010 I will have fewer debts on the record and that those that are no longer on record would have been satisfied in full.<sup>10</sup>

In his first response to the FORM, dated January 7, 2011, Applicant claimed that he “did not fill out the financial area [of his SF 86] completely and as accurately as possible because I believed portions of my debt were more than 7 years old. . . . None of the inaccuracies I reported were intentional or meant to be misleading.” As noted above, however, he previously admitted the truth of the allegations in SOR ¶ 2 concerning his deliberate failures to disclose any information concerning judgments against him and delinquent debts, by answering “No” in response to questions 26.e, 26.m, and 26.n on his SF 86 that inquired about their existence.<sup>11</sup>

Applicant further stated, in his response to the FORM, that:

I have, in the past year, not met my own expectations to pay my debt as scheduled as I was met with family related hardships. These hardships include my children being taken be [sic] the Department of Human service and child welfare. My significant other currently [sic] going through medical situations. However, when comparing the credit report pulled in September 2009 and today, there are a few things that I had paid off in May and June 2010. My repayment estimates were inaccurate and put me off schedule. I am now diligently working on a new plan to pay down my debt.<sup>12</sup>

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<sup>10</sup>Item 4.

<sup>11</sup>Item 1; Item 4; FORM Response.

<sup>12</sup>FORM Response.

He closed his response to the FORM by stating that he had “attached copies of transactions on the dates that I paid from my accounts.” The subsequent communications between Department Counsel and Applicant described above in the section titled “Statement of the Case” are incorporated herein as findings of fact.<sup>13</sup>

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

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<sup>13</sup>FORM Response and subsequent email correspondence filed in blue folder.

A person applying for access to classified information seeks to enter 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 permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's financial problems began more than a decade ago, and have not improved in the two years during which he has been employed in his current position. He owes more than \$17,000 toward 23 SOR-listed delinquent debts. He demonstrated no effective effort to resolve any of them, despite the apparent presence of a substantial monthly surplus ever since he applied for a security clearance, and repeated statements of his intent to address them. He offered no evidence from which to conclude that he is willing to satisfy these debts or avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;

(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's multiple delinquent debts arose over the past decade, and continue to date. They are both frequent and recent, and were not shown to have arisen under unusual circumstances. A substantial portion of the debt arose from court and traffic fines. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved, and failed to resolve any of these debts even after their security implications became apparent almost two years ago. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). None of the debts were shown to have arisen from conditions beyond his control. The debts all substantially predate his significant other's vaguely-described recent medical condition and the state's taking of his children into custody. He offered no evidence of financial counseling except for an email communication in late January 2011, and did not establish clear indications that the problem is being resolved or is under control. His stated intention to work with a debt management company in the future is insufficient to establish a good-faith effort to repay his many overdue creditors or otherwise resolve his debts, particularly in the absence of evidence of any concrete steps to do so. MC 20(c) and 20(d) are therefore inapplicable.

The record evidence shows that the debt alleged in SOR ¶ 1.h is a duplicate listing of the debt alleged in SOR ¶ 1.t. This mitigates security concerns with respect to the former debt under MC 20(e), even though Applicant did not recognize or raise this issue. He admitted the legitimacy of the remaining debts alleged in SOR, for which the record credit reports also provide substantial evidence. Accordingly, he failed to mitigate those remaining allegations under MC 20(e).

## **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. The potentially disqualifying condition alleged in this case is:

(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 falsely answered “No” to three questions concerning the existence of judgments against him and his delinquent debts on his security clearance application. He admitted that he knowingly answered those questions falsely, and was wrong in doing so. He admitted knowledge of and responsibility for the debts shortly after certifying the truth of his false answers denying their existence. Appellant is educated, and his late claim to have misunderstood the questions, in his FORM response was unconvincing. His possible, and plausible, ignorance of the existence or particulars of a few of his smaller delinquencies does not justify his affirmative denial of any delinquent debt. He knew that he had a judgment against him, and a large number and amount of significantly delinquent debts, yet denied those facts three times on his SF 86. Serious security concerns under AG ¶ 16(a) were raised by these facts.

Other than a self-serving statement in his FORM response that his falsifications were not intentional or meant to be misleading, Applicant offered no evidence that would tend to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them 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 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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans the past decade, and continues at present. It involves substantial delinquent debts totaling more than \$17,000, toward which he had made no documented payments at the close of the record. He has yet to sufficiently demonstrate a willingness to fulfill his legal obligations to his creditors, despite the apparent ability to do so during two years of employment in his current position. He did not demonstrate that these debts arose under unusual circumstances, or that he initiated any changes to prevent additional financial difficulties. He offered no evidence of effective financial counseling, rehabilitation, or responsible conduct in other areas of his life. Moreover, he deliberately falsified his SF 86 by denying the existence of these debts, demonstrating a lack of integrity or respect for compliance with security procedures. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.s:	Against Applicant
Subparagraph 1.t:	For Applicant
Subparagraph 1.u through 1.x	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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.

DAVID M. WHITE  
Administrative Judge