



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



In the matter of: )  
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 [Redacted] ) ISCR Case No. 10-04218  
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 Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

August 31, 2011

**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on January 27, 2010. On April 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his application, citing security concerns under Guidelines F and E. 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on April 27, 2011; answered it on May 26, 2011; and requested a determination on the record without a hearing. Department Counsel

submitted the government's written case on June 20, 2011. On June 21, 2011, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. He received the FORM on July 6, 2011, and responded on July 27, 2011. Department Counsel had no objection to the materials submitted in his response. The case was assigned to me on August 16, 2011.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶ 1.a and denied SOR ¶¶ 1.b, 1.c, and 1.d. He admitted omitting a delinquent debt from his SCA as alleged in SOR ¶ 2.a, but he denied intentional falsification. His admissions are incorporated in my findings of fact.

Applicant is a 44-year-old project manager for a federal contractor. He has worked for his current employer since August 2008. He served in the U.S. Army from August 1988 to August 2008, retiring as a master sergeant (pay grade E-8). His military service included a one-year tour of duty in Iraq. (DD Form 214, included in Item 6 at 213<sup>1</sup>) While on active duty, he earned a bachelor's degree in May 2007. He earned a master's degree in May 2009, after he retired from the Army. He has held a top secret clearance since August 2003.

Applicant married in July 1989. He and his wife have three children, ages 23, 19, and 16. He has a 14-year-old daughter by another woman with whom he had a "one-night stand." He was notified by state authorities around 2006 that a child support judgment had been entered against him, and that he owed an arrearage of \$27,500 for payments dating back to his out-of-wedlock daughter's birth in 1997.

When Applicant submitted his SCA, he answered "No" to question 26m, asking if he had ever been over 180 days delinquent on any debts, and question 26n, asking if he was currently over 90 days delinquent on any debts. He disclosed that his wages had been garnished for child support payments, and he stated that the account was current. (Item 5 at 47-48.) He did not disclose any other delinquent debts.

Applicant's credit bureau report (CBR) dated February 4, 2010, reflected that his home mortgage was current, but that he had been 60 days delinquent in the past. (Item 8 at 4.) It reflected that his charge account with a home improvement store was 90 days delinquent in the amount of \$305. (Item 8 at 8.) It reflected three military credit card accounts: one closed account with a zero balance that was 180 days delinquent; a second closed account with a zero balance that was 30 days past due; and a third open account with a balance of \$2,808 and no past-due balance. (Item 8 at 6-7.) He told a security investigator he did not disclose the home-improvement debt on his SCA due to

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<sup>1</sup> Item 6 is a bulky compilation of interrogatories and attachments, with the first page numbered 159 and the last page numbered 213. Because of the size of the exhibit, I have not renumbered the pages to begin with the numeral 1.

an oversight. (Item 6 at 160.) In his response to the SOR, he stated that he mistakenly omitted the home-improvement debt.

Applicant's CBR dated November 18, 2010, reflected that his home mortgage was current; his charge account with the home improvement store was closed by the creditor but had a balance of \$1,511; one military credit card account was sold or transferred and another was closed by Applicant, both with a zero balance; and an open account with the military exchange service with a balance of \$2,158. It also reflected a child support collection account with a balance of \$26,960. (Item 7 at 1-3.) This credit report reflected past delinquencies but did not reflect that any of the above accounts were currently delinquent.

In his response to the SOR, Applicant outlined a number of unexpected expenses that caused him and his spouse to fall behind on their debt payments after his retirement from the Army. These included educational expenses for their children, unexpected car repairs, uninsured vandalism of their home, a car accident with a deer, and an unexpected and uninsured root canal and crown for a fractured molar. (Item 4 at 16.)

The evidence concerning the delinquent debts alleged in the SOR is summarized below.

**SOR ¶ 1.a (mortgage past due for \$3,631).** In his response to DOHA interrogatories dated January 18, 2011, Applicant submitted a credit report reflecting that his home mortgage was past due in the amount of \$3,631, and he stated that he had made payment arrangements to resolve it. (Item 6 at 171, 173, 204.) His response to the FORM includes an account statement showing that payments are current.

**SOR ¶ 1.b (child support collection account for \$26,910).** Applicant's CBR dated November 18, 2010, reflected a child support collection account with a balance of \$26,960. (Item 7 at 1-3.) His military retired pay is being garnished at the rate of \$500 per month, and his federal tax returns are being seized to pay the debt. (Item 4 at 9-11; Item 6 at 196.)

**SOR ¶ 1.c (home-improvement store debt 90 days past due for \$1,667).** Applicant's CBR dated February 4, 2010, reflected that his charge account with a home-improvement store was 90 days delinquent in the amount of \$305. (Item 8 at 8.) His CBR dated November 18, 2010, reflected that his charge account with the home-improvement store was closed by the creditor but had a balance of \$1,511. (Item 7 at 1.) In January 2011, Applicant enrolled in a consumer credit counseling program (CCCP) that included nine debts, including the home-improvement debt. (Item 6 at 192-95.) In response to DOHA interrogatories, Applicant submitted a CBR dated January 7, 2011, showing that he was "paying as agreed" on this debt, with no payments past due. (Item 6 at 205.) His response to the FORM includes an updated accounting statement from the CCCP reflecting payments on all included debts through July 2011.

**SOR ¶ 1.d (charged off account with military exchange for \$9,051).** Applicant's CBR dated February 4, 2010, reflected three military credit card accounts: one closed account with a zero balance that was 180 days delinquent; a second closed account with a zero balance that was 30 days past due; and a third open account with a balance of \$2,808 and no past-due balance. (Item 8 at 6-7.) His CBR dated November 18, 2010, reflected one military credit card account that was sold or transferred, another that was closed by Applicant, both with a zero balance; and an open account with the military exchange service with a balance of \$2,158. (Item 7 at 1-2.) The debt to the military exchange service is included in his CCCP program. (Item 6 at 193.) His CBR dated January 7, 2011, reflects that he was "paying as agreed" on this debt, with a balance of \$2,093. (Item 6 at 203-05.) In his response to the SOR, Applicant submitted a detailed account summary from the military exchange service, reflecting his monthly \$250 payments from June 2009 through April 2011. His response to the FORM includes documentation that payments on this debt through the CCCP continued through July 2011. (CHECK)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the

applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Guideline F, Financial Considerations

The SOR alleges four delinquent debts: a mortgage account past due for about \$3,631 (¶ 1.a); unpaid child support payments totaling about \$26,910 (¶ 1.b); an account with a home-improvement store past due for about \$1,667 (¶ 1.c), and a charged-off debt to a military exchange store for about \$9,051 (¶ 1.d.). The concern under this guideline 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 relevant disqualifying conditions under this guideline are AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

In his answer to the SOR, Applicant admitted that the mortgage account alleged in SOR ¶ 1.a was delinquent, even though the two CBRs in the FORM reflected that it was current. However, his CBR also indicated that he had been delinquent in the past. He denied the allegations in SOR ¶¶ 1.b-1.d, but his CBRs reflect that the child support arrearage in SOR ¶ 1.b was referred for collection, the home-improvement debt was 90 days delinquent in the amount of \$305, and a delinquent military credit card account had been charged off. The evidence is sufficient to raise AG ¶¶ 19(a) and (b).

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). This mitigating condition is not established because Applicant’s debts are ongoing, recent, and did not occur under circumstances making them unlikely to recur.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, *i.e.*, conditions beyond the person’s control and responsible conduct, must be established. In his answer to the SOR, Applicant related several circumstances beyond his control: unexpected medical expenses, unexpected car repairs, and uninsured vandalism of their home. Applicant’s answer is uncorroborated, but it is also undisputed by Department Counsel. Applicant has acted responsibly by negotiating payment agreements, renegotiating his home mortgage, and enrolling in a consumer credit counseling program. I conclude that this mitigating condition is established.

Security concerns under this guideline also can be mitigated by showing 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.” AG ¶ 20(c). This mitigating condition is established for debts to the military exchange service and the home-improvement store that are being paid through the consumer credit counseling program.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999).

“A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, a security clearance adjudication is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness in order to make a decision about an applicant’s security eligibility.” ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.)

An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I conclude that AG ¶ 20(d) is established. Through a combination of responsible measures, he has brought his mortgage account up to date and established payment plans for the other debts alleged in the SOR. His consumer credit counseling program goes beyond the debts alleged in the SOR and is designed to restore his financial responsibility.

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

The SOR alleges that Applicant falsified his SCA by answering “No” to the two questions related to delinquent debts and deliberately failing “to disclose the accounts set for in *subparagraph 1.c through 1.c, above*. (Emphasis added.)

The concern under this guideline is set out in AG ¶ 15 as follows:

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.

The relevant disqualifying condition in this case is “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.” AG ¶ 16(a).

The drafting error in SOR ¶ 2.a, referring to plural “accounts” but listing “subparagraph 1.c through 1.c,” renders the SOR ambiguous. The reference to the plural “accounts” suggests the drafter’s intent to allege that Applicant failed to disclose more than one delinquent account. However, Applicant construed it as alleging a failure to disclose only the home-improvement debt in SOR ¶ 1.c. I conclude that Applicant did not have fair notice of the specific reasons for the proposed action required by Directive ¶¶ 4.3.1 and E.3.1.3.

Applicant admitted failing to disclose the debt alleged in SOR ¶ 1.c, but he did not admit intentional falsification. When a falsification allegation is controverted, as in

this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Apart from the fair-notice issue, I have noted that when Applicant submitted his SCA his CBR reflected that his mortgage was current, it did not reflect the child support arrearage, and it reflected two military credit card accounts with zero balances and a third account with no past-due balance. The only debt arguably encompassed by the SCA questions was the home-improvement debt, which the credit report listed as 90 days past due for \$308. The CBR does not establish that the debt was required to be disclosed, because it reflected that it was 90 days past due, not "over 90 days delinquent." Furthermore, given the small amount involved in relation to the other financial issues that Applicant was facing, his explanation that he overlooked the debt is plausible and credible. Thus, I conclude that AG ¶ 16(a) is not established.

### **Whole-Person Concept**

Under the whole-person concept, an 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. 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served honorably in the U.S. Army for twenty years, retiring as a senior noncommissioned officer. His service included duty in a combat zone. He has held a security clearance for many years, apparently without incident. His most onerous financial obligation is the result of a foolish "one-night stand" many years ago, and he did not learn that he had fathered a child until nine years later. He is addressing that obligation honorably to the best of his ability. As he was making the transition from



military service to civilian employment, he encountered multiple financial obstacles, which he is now overcoming.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, I conclude Applicant has refuted the allegation that he falsified his SCA, and he has mitigated the security concerns based on financial considerations. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline E (Personal Conduct)	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman  
Administrative Judge