



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



In the matter of: )  
)  
) ISCR Case No. 10-04380  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

September 23, 2011

**Decision**

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.

**Statement of the Case**

On March 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and 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 within the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 12, 2011, and requested a hearing before an administrative judge. The case was assigned to me on July 29, 2011. DOHA issued a Notice of Hearing on August 9, 2011, and the hearing was scheduled for August 30,

2011. On August 24, 2011, Applicant requested a continuance which was granted and the hearing was rescheduled for September 1, 2011.<sup>1</sup> The Government offered Exhibits (GE) 1 through 8. Applicant objected to GE 5 through 8. His objection was overruled and all of the exhibits were admitted into evidence. Applicant testified on his own behalf and offered Exhibits (AE) A through J, which were admitted into evidence without objections. The record was held open until September 9, 2011, to allow Applicant to submit additional documents, which he did and they were marked as AE K through P and admitted into evidence without objection.<sup>2</sup> DOHA received the hearing transcript (Tr.) on September 12, 2011.

### **Findings of Fact**

Applicant admitted all allegations in the SOR except ¶¶ 1.d and 1.n. His admissions are incorporated in the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. He has worked for a federal contractor since 2004. He was in the Marine Corps Reserve from 1981 to 1983 and was honorably discharged. He enlisted in the Air Force and served from 1983 to 2003 and retired in the rank of E-5. Applicant married in 1985 and has two sons who are 22 and 15 years old. Applicant attended college beginning in 1997. He earned his bachelor's degree in 2005. He is currently enrolled in a master's program that his employer is funding. In the past ten years he has had no periods of unemployment. Applicant's wife works as a dental assistant. Applicant has held a secret security clearance continuously since he was in the Air Force.<sup>3</sup>

Applicant lived in State A in 2003. In October 2003 he moved to State B until April 2004. His family remained in State A. He was then offered a transfer in August 2004 that was a good career opportunity in State C. He and his wife made a family decision and he moved to State C, and she remained in State A. He believed she would move to State C in the next three to six months. They owned a house in State A that he continued to make the mortgage payments. They continued to maintain two households which impacted Applicant's finances. In January 2006, Applicant purchased a house for \$255,000 in State C. His family did not move to State C until July 2007. During this time Applicant was responsible for paying the two mortgages on the houses. Sometime before his family moved to State C, they sold the house in State A. Applicant used credit cards and consumer loans to pay his bills during this time. He had difficulty paying the credit cards and consumer loans and many of them became delinquent.<sup>4</sup>

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<sup>1</sup> Applicant's Continuance Request was marked as Hearing Exhibit I.

<sup>2</sup> Hearing Exhibit II is Department Counsel's memorandum noting no objections to the submitted documents.

<sup>3</sup> Tr. 10, 126-128, 131-135, 146.

<sup>4</sup> Tr. 121, 147-151, 155.

On October 2, 2008, Applicant completed a security clearance application (SCA). In responding to Section 28, he indicated he had one debt for \$144 that was over 180 days delinquent. He answered “no” to the inquiry that asked if he had any debts that were over 90 days delinquent.<sup>5</sup> During his interview with an Office of Personnel Management (OPM) investigator on January 8, 2009, he was confronted with his delinquent debts. He indicated in his interview that he was not aware of exactly when some of the debts became delinquent, but he had been contacted by creditors about the debts. He indicated he was actively seeking credit counseling and was seeking professional advice. At his hearing, when asked why he failed to disclose all of his delinquent debts, he indicated he was not prepared at the time he submitted his SCA, and he was not certain how much delinquent debt he had. He stated he was not aware and stated he was not paying attention to “the bottom line.”<sup>6</sup> He did not know the specifics of his debts. He stated he had no intention of deceiving the government.<sup>7</sup>

Throughout the hearing, Applicant acknowledged he had numerous credit cards and consumer loans. He acknowledged that he had difficulty paying the debts and eventually stopped paying them. He received notices from creditors that he was delinquent. He was aware he stopped paying debts he owed. Some of the debts date back to 2004 through 2006, when they were charged off. Based on Applicant’s testimony throughout his hearing, it is inconceivable that he was unaware of the more than \$60,000 of delinquent debts he had, especially when he admitted he had difficulty maintaining two households and used credit cards to pay for some of his expenses. I did not find Applicant’s testimony credible and find he deliberately failed to disclose his delinquent debts.<sup>8</sup>

In December 2009 and January 2010, Applicant made small sporadic payments to three creditors. In March 2010, Applicant contracted with a debt consolidation company to help him resolve his delinquent debts. He made two payments of \$400 to the company and decided it was not reputable. He was able to get his payments refunded. In May 2010, he contracted with another debt consolidation company. He indicated he began making monthly payments of \$650 in May 2010. He provided proof that he made payments in October 2010 through March 2011, and May 2011 through Aug 2011. Nine creditors are included in the plan, but only two are being paid at this point. It appears that the plan pays off creditors as the funds become available based on settlement agreements. Not all of the creditors in the plan have agreed to settlements. In fact, two of the accounts listed are with the same creditor and they have indicated they will not deal with debt consolidation companies, but will only deal directly with the Applicant when settling the debts. The aggregate balance listed for the nine accounts is \$45,725. Applicant does not know the status of each individual debt.

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<sup>5</sup> GE 1.

<sup>6</sup> Tr. 105.

<sup>7</sup> Tr. 28, 101-105, 151-153.

<sup>8</sup> Tr. 34-37.

Applicant obtained a credit report in May 2011. When asked why he did not get a credit report before then, he stated he did not take the issue seriously after his interview with the OPM investigator.<sup>9</sup>

Applicant purchased a new vehicle in 2005 for \$28,000. He traded it in for a used vehicle in November 2010. His loan payment was reduced. He estimated that after he pays his expenses and the \$650 towards his debts, he has about \$200 remaining at the end of the month. He has about \$150 in savings and \$750 in checking. He has been contributing to a retirement account since October 2006 and estimated he has about \$10,000 saved. He receives approximately \$700 in retirement income from his military pension. He owes approximately \$12,000 in student loans. They were deferred for a period and then he was delinquent for four months. He now makes monthly payments of \$123.<sup>10</sup>

The following is the status of the debts alleged in the SOR.

The debt in SOR ¶ 1.a is a credit card debt (\$10,531). It became delinquent sometime in late 2006 or early 2007. He did not make a payment on the debt once it was in a delinquent status. He has no current settlement offer for the debt. It is not paid or resolved.<sup>11</sup>

The debt in SOR ¶ 1.b (\$113) is a collection account for phone service. Applicant contracted for the phone service for his son in 2005 or 2006. His son changed providers and did not tell Applicant. He learned of the delinquent account in May 2011 when he obtained his credit report. Applicant stated he paid the debt when he learned of it. He did not provide documented proof that he paid the debt.<sup>12</sup>

The debt in SOR ¶ 1.c (\$15,070) is a consumer loan Applicant obtained in August or September 2007. He used the money to pay other debts. The debt became delinquent in about September or October 2008. He is attempting to negotiate a settlement with the creditor. This debt is included in his credit consolidation plan but no payments have been made to resolve it.<sup>13</sup>

The debt in SOR ¶ 1.d (\$1,548) is for satellite television. Applicant disputes the debt stating he has never contracted with this carrier. He contacted the creditor and filed a fraudulent dispute claim. He provided a copy of the dispute letter.<sup>14</sup>

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<sup>9</sup> Tr. 29-32, 43-46, 112-120; GE 2, 3; AE G, H, O.

<sup>10</sup> Tr. 125-131, 135-145.

<sup>11</sup> Tr. 69-70.

<sup>12</sup> Tr. 38-46.

<sup>13</sup> Tr. 70-75; AE G.

<sup>14</sup> Tr. 28-29, 67-69; AE C.

The debt in SOR ¶ 1.e (\$1,036) is a credit card debt. Applicant stated he settled the debt for \$520 in April 2011. The debt was charged off in December 2004. He provided a copy of the letter noting he had provided a post-dated check to the creditor.<sup>15</sup>

The debts in SOR ¶ 1.f (\$2,959), ¶ 1.g (\$4,381), and ¶ 1.n (\$4,730) are credit card debts. This creditor does not want to negotiate with third party debt consolidators and will only address the debt with the consumer. The debts in SOR ¶ 1.f and ¶ 1.g are included in the consolidated payment plan. However; no settlement has been negotiated because of the creditor's policy. Applicant disputed the debt in SOR ¶ 1.n stating he paid it. Applicant's credit report shows a fourth account with this creditor was previously paid, but this one remains delinquent. Applicant provided a document dated May 13, 2011, that shows he was to make a scheduled payment of \$1,480 on the debt in SOR ¶ 1.f by May 27, 2011. He did not provide proof that he made the payment. The debts remain unresolved.<sup>16</sup>

The debt in SOR ¶ 1.h (\$777) is a credit card debt. In Applicant's statement to the OPM investigator he indicated he had contacted the creditor and would pay the debt by February 2009. He did not make the payment. This debt is included in his payment plan, but has not been paid. The debt is about four years old.<sup>17</sup>

The debt in SOR ¶ 1.i (\$5,839) is a credit card debt. It was charged off in 2006. Applicant indicated he received a settlement offer in February 2011 for \$2,630. He made seven payments of \$328 through his consolidated payment plan. He provided proof of the payments beginning in February 2011.<sup>18</sup>

The debt in SOR ¶ 1.j (\$837) is a store credit card. It is approximately seven years old. The consolidated credit company contacted the creditor but they did not offer a settlement agreement. Applicant indicated he will pay the debt when he receives a settlement offer.<sup>19</sup>

The debt in SOR ¶ 1.k (\$2,068) is a credit card debt. The current balance is \$3,568. Applicant indicated that his consolidated credit company negotiated a settlement in May 2010 for ten monthly payments of \$173. He did not provide documented proof of his payments or that the debt is resolved.<sup>20</sup>

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<sup>15</sup> Tr. 52-56; AE F, M.

<sup>16</sup> Tr. 32-38; 76-86, 107-112; AE G, N; GE 5 at pages 2-4. The credit report also shows a fifth account with this creditor that is delinquent but was not alleged in the SOR. I have not considered this account for disqualifying purposes, but will consider it when analyzing the whole person.

<sup>17</sup> Tr. 86-89.

<sup>18</sup> Tr. 57-66; AE D, G, P.

<sup>19</sup> Tr. 90-91.

<sup>20</sup> Tr. 91-97; AE G.

The debt in SOR ¶ 1.1 (\$4,202) is a credit card debt. It was forwarded to a collection account in November 2006. The creditor agreed to settle the debt for \$1,922. Applicant was to make an initial payment of \$400 and monthly payments of \$152. He provided documentation to show he made three payments in June, July, and August 2011.<sup>21</sup>

The debt in SOR ¶ 1.m (\$12,625) is a credit card debt. It has been delinquent since approximately 2006. Applicant stated he was notified in 2007 that he was behind in his payments. He stated the payment amounts increased at that time and he was unable to make them. He stated he has contacted the creditor about a year ago and is negotiating a settlement. This debt is not included in the consolidated payment plan.<sup>22</sup>

Applicant attended financial counseling through his credit union in 2009 and 2011. He regrets he did not plan his finances better, but stated he did the best he could. He was trying to do what was best for his family. He did not anticipate that it would take three and half years for his family to move and consolidate their households. He believes he is making progress on paying his delinquent debts.<sup>23</sup>

Applicant provided two character letters from a coworker and former coworker who have known him for four years and three years respectively. Applicant is described as a man with personal integrity, who is responsible and trustworthy. He is considered a leader and dependable team player who exercises good judgment.<sup>24</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.

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<sup>21</sup> Tr. 47-52, 56; AE E, G, L.

<sup>22</sup> Tr. 98-101.

<sup>23</sup> Tr. 153.

<sup>24</sup> AE A, B.

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 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 of 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 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 the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

(a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant accumulated numerous debts over several years that became delinquent and were unpaid. He used credit cards and a consumer loan to subsidize his spending. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following potential mitigating conditions under 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;

(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 has been steadily employed during the past ten years. He and his wife chose to maintain separate households during a period of transition. Applicant did not anticipate that his wife would not make the move for more than three and a half years. These decisions affected their finances, but were totally within their control. He chose to purchase a house during this period. He accumulated consumer and credit card debts beyond his ability to make the payments. Applicant has many delinquent debts that are many years old and are not resolved. He has shown a consistent track record since at least 2004 of being financially irresponsible. In the past he made promises to pay his



debts and did not follow through. Under the circumstances, I cannot find that his behavior is unlikely to recur. I find his actions casts doubt on his reliability, trustworthiness, and good judgment. I find that the conditions that resulted in Applicant's financial problems were within his control. Therefore, I find AG ¶¶ 20(a) 20(b) do not apply.

Applicant attended financial counseling twice. However, considering the amount of delinquent debt remaining to be resolved, Applicant's present financial status, and his past unreliability in paying his debts when he promised, I find AG ¶¶ 20(c) only partially applies. I am not convinced at this time that his financial problems are under control. Applicant has made some efforts to settle some of his debts, but many have not been resolved. I find AG ¶ 20(d) partially applies.

Applicant disputed some of the delinquent debts and provided one dispute letter for one of the debts, but did not provide any other documentation to substantiate the basis of his disputes nor did he provide evidence of action to show he is resolving the issue. I find AG ¶ 20(e) partially applies.

### **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. 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.

Applicant intentionally and deliberately failed to disclose all but one of his delinquent debts on his SCA. Applicant had numerous debts that had been delinquent for years that he was aware were unresolved. I find the above disqualifying condition applies to Applicant's personal conduct.

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

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I have considered all of the mitigating conditions and conclude none apply. Applicant was aware of his financial problems and intentionally failed to disclose them on his SCA. His omissions are serious and he did not make a good-faith effort to disclose his delinquent debts until he was confronted by an investigator. His deliberate omissions cast doubt on his reliability, trustworthiness, and good judgment. I find AG ¶¶ 17(a) and 17(c) do not apply. There is insufficient evidence to support the application of AG ¶¶ 17 (b), 17(d) or 17(e).

### **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 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 others warrant additional comment.

Applicant retired from the Air Force with an honorable discharge. He has been steadily employed for ten years. He and his wife made a decision to maintain two separate households during a period when Applicant accepted employment in a new location. This arrangement presented financial difficulties for him. He chose to use credit cards and a consumer loan to pay many of his expenses. Applicant accumulated significant consumer debt that he was aware he was not paying and it became delinquent. He was receiving notices from the creditors that his payments were delinquent. When he submitted his SCA he was aware he had many delinquent debts, but he only disclosed one small debt. His omissions were deliberate. Applicant has paid some of his delinquent debts, but many are unresolved. Applicant has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d-1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge