



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 10-07504

**Appearances**

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

11/26/2012

**Decision**

WESLEY, Roger C., Administrative Judge:

Based on the record evidence presented, Applicant does not mitigate security concerns covered by the financial considerations and personal conduct guidelines. Eligibility for access to classified information is denied.

**History of the Case**

On April 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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), (Directive); and the Adjudicative Guidelines (AGs) implemented by the Department of Defense after September 1, 2006.

Applicant responded to the SOR on May 25, 2012, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant

Material (FORM) on August 21, 2012, and timely responded with supplemental information. He provided updated explanations of his credit management problems, accumulated debt delinquencies, and reasons for not wanting to reopen old accounts more than seven years delinquent. He attached summaries of employer withholdings of state tax levies and student loan debts as well as copies of his unsigned 2008, 2009, and 2010 federal tax returns and his 2010 state tax return. The case was assigned to me on September 18, 2012.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly: (a) incurred an adverse judgment against him in January 2004 in the amount of \$754; (b) accumulated nine delinquent consumer debts exceeding \$25,000; (b) experienced the repossession of his vehicle in April 2005; (c) was late with his mortgage payments and was subject to foreclosure proceedings in November 2004; (d) failed to file his federal tax returns for tax years 2008 through 2010; and (e) failed to file his 2010 state tax return.

Under Guideline E, Applicant allegedly (a) falsified the electronic questionnaire (e-QIP) he completed in March 2010, by omitting his resignation from his prior employer under unfavorable circumstances and (b) by understating his employee counseling sessions associated with his accessing employer web sites containing sexual content during working hours when completing DOHA interrogatories in January 2012.

In his response to the SOR, Applicant admitted most of the alleged debts and judgment. He denied the allegations in subparagraph 1.g (claiming he had paid the underlying car loan). He claimed he has since filed his delinquent federal and state returns and has since received a refund on his 2008 federal tax return. He claimed his failure to admit his resignation from his employer in 2003 under unfavorable circumstances was attributable to his embarrassment. Applicant admitted the allegations pertaining to his falsifying his e-QIP and DOHA interrogatories and attributed his omissions to embarrassment.

### **Findings of Fact**

Applicant is a 42-year-old assembly and test technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married his first spouse in October 1991 and has one adult child from this marriage. (Item 4) He divorced his first wife in July 1997. He married his second and current wife in July 2002 and has one adult stepchild from this marriage. (Item 4) Applicant enlisted in the U.S. Army in July 1990 and served six years of active duty. He received his honorable discharge in November 1996. (Item 4) He is currently enrolled in a local college. (Item 4)

## **Applicant's finances**

Applicant accumulated a number of consumer debts between 2000 and 2005 that have since become delinquent. His listed delinquencies are documented in both of his credit reports and exceed \$25,000 in aggregate indebtedness. (Items 8-10) One of these debts was reduced to a judgment against him in January 2004. This judgment remains outstanding.

In his interrogatory responses, Applicant attributed his debt delinquencies to his unsuccessful business efforts, his wife's losing her job, and his assumption of financial responsibility for his adopted family. (Items 5 and 6) With his limited income he could not pay his outstanding bills. To date, he has not provided any evidence of how his business losses and wife's unemployment hampered his ability to cover his debts. Nor he has he provided any documentation of payments or payment plans.

Applicant disputed several of his listed debts: creditors 1.a (\$463), 1.b (\$339), 1.c (\$1,125), 1.d (\$13,151), and 1.j (\$158). (Item 6) He acknowledged as valid debts those debts covered by creditors listed as creditor 1.e (\$754), creditor 1.f (\$3,952), and creditor 1.k (\$5,938) and expressed his intention to contact these creditors to resolve the listed debts. (Item 6) To date, he has not provided any documentation of dispute correspondence with the creditors he disputes or correspondence with the creditors whose debts he recognizes.

In Applicant's furnished 2012 personal-financial-statement, he reported net monthly income of \$5,800 and monthly expenses of \$3,200. (Item 6) This leaves him with a monthly net remainder of \$1,450. He provided no evidence, though, of how he used all or some of the remainder to address his listed debts.

Besides his incurring delinquent consumer debts, Applicant fell behind in his mortgage payments in 2004. Foreclosure proceedings were started against him in November 2004. (Items 5, 9, and 10) However, he was able to restore his mortgage to current status with the lender and avert foreclosure. (Item 8) In April 2005, Applicant's car was repossessed. Credit reports reveal that he redeemed the vehicle and re-established current payment arrangements with the lender. (Item 8)

Applicant failed to file timely federal tax returns for the tax years 2008-2010. (Items 5 and 6) He failed to file a timely state tax return for tax year 2010. He has since filed his federal tax returns for tax years 2008-2010, and documents net refund entitlements on his federal returns. He filed his state tax return for 2010 and currently pays \$644 a month in state wage garnishments for tax year 2008 and \$290 a month from his checking account for tax years 2009 and 2010. (Item 6 and post-FORM submissions)

## **Applicant's e-QIP and DOHA omissions**

In completing his March 2010 e-QIP, Applicant failed to acknowledge his employer resignation upon his being informed he could be discharged for violating company policies related to misuse of company information systems. (Items 3-5) In his

SOR response, he admitted the allegations. He attributed his omissions to embarrassment and pledged it will never happen again. When responding to the FORM, he qualified his SOR admission to incorporate his belief that his resignation was more than seven years old and did not need to be answered. (post-FORM submission) Applicant never withdrew his pleading admission, though, and without more persuasive explanations than embarrassment and misunderstanding of dates, he cannot avert inferences that his misstatements and omissions regarding his work history were both knowing and wilful.

When Applicant responded to DOHA interrogatories in January 2012, he understated the number of times he was counseled by his employer over his accessing websites containing sexual content during work hours. (Item 6) He made no attempt to correct the misstatement before responding to the SOR and admitted the misstatement in his SOR response without explanation or qualification.

Afforded a post-FORM opportunity to respond to the FORM, Applicant qualified his pleading admission to understating the number of counseling sessions with his employer over his accessing company websites to include sessions not covering specific website incidents. See Applicant's post-FORM response. His post-FORM qualifications are not sufficient to vacate or modify his pleading admissions, or to otherwise avert inferences that his misstatements and omissions regarding the extent of his counseling sessions over his website accessing violations were knowing and wilful.

### **Endorsements**

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions or awards and commendations during his military service.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent

guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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 ¶ 15.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and

materiality of that evidence. See *United States v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Applicant is an assembly and test technician of a defense contractor who (a) accumulated a number of delinquent debts (to include an adverse judgment) during periods of business losses and (b) failed to timely file federal and state tax returns for prior tax years. His accumulation of delinquent debts and his past failures to address most of these debts and timely file federal and state tax returns raise security concerns about his judgment, reliability, and trust.

Additional security concerns are raised by Applicant's misstatements and omissions of material information about his work history in his completed e-QIP and ensuing misstatements about the number of employer-related counseling sessions he submitted to over his accessing of work sites containing sexual content during working hour

### **Financial concerns**

Applicant's pleading admissions of the delinquent debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are fully documented in his credit reports and provide ample corroboration of his debts.

Applicant attributes his debt delinquencies in part to his income losses from his consulting company and his wife's loss of her job. His tax returns cover past years

that are not covered by any approved extensions. Afforded an opportunity to detail and explain his debt repayment and tax-filing efforts, he provided accepted copies of his filed federal and state tax returns. He did not provide any details, though, of how his business and spousal employment losses impacted his ability to repay his delinquent debts. While he was able to bring his auto and mortgage loans current, he has not to date addressed any of his other listed debts. These other debts remain unsatisfied and lacking in dispute documentation.

Applicant's delinquent debts and failure to file timely federal and state tax returns merit the application of several disqualifying conditions. Disqualifying conditions (DC) are applicable as follows: DC ¶ 20(a), "inability or unwillingness to satisfy debts;" DC ¶ 20(c), "a history of not meeting financial obligations;" and DC ¶ 20(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

Based on the record evidence in the FORM, some extenuating circumstances are associated with Applicant's inability to pay of or otherwise resolve his debts. Available to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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." Limited application of MC ¶ 20(b) is warranted based on his furnished explanations.

Judgment problems persist, too, over Applicant's unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts once the adverse financial conditions associated with his failing business had passed or eased and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he has failed to address them in any documented way.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

By consulting tax specialists and filing his federal and state returns for the tax years in issue (*i.e.*, 2008-2010 for the federal returns and 2010 for the state return), Applicant may take advantage of the mitigating benefits of MC ¶ 20(c), "the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." Applicant mitigates security concerns related to his failure to file timely federal and state returns. However, he fails to provide any documentation to warrant the application of any of the other mitigating conditions under the financial considerations guideline to his situation.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts. Since his discharge from the Army in 1996, he has shown limited interest in addressing his covered debts to mitigate his still delinquent accounts. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

While business losses and spousal unemployment might have played a considerable role in his accumulation of delinquent debts, he failed to provide any meaningful documentation material for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of his overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his lack of any exhibited explanations for his debt accruals, and his failure to provide any proof of corrective actions taken to address his old debts, it is still soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance.

Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.f, and 1.i through 1.k of Guideline F. Subparagraphs 1.g, 1.h , 1.l, and 1.m are mitigated.

### **Personal conduct concerns**

Security concerns over Applicant's judgment, reliability, and trustworthiness are raised under Guideline E as the result of his admitted (a) knowing and wilful omission of his resignation from his previous employer under unfavorable circumstances and (b) his understating of the counseling sessions he had with his former employer over his accessing of web sites containing sexual content during work hours in the responses he provided to furnished DOHA interrogatories.

By omitting the circumstances under which he resigned from his former employer and understating the counseling sessions he had with his former employer over accessing of websites containing sexual content during work hours, Applicant failed to provide materially important background information about his prior work history that was needed for the Government to properly process and evaluate his prior security clearance applications. He attributed his acknowledged misstatements and omissions to embarrassment, and subsequently to mistaken understanding. Separately and collectively, his misstatements and omissions reflect his conscious decisions to omit and mislead when answering questions concerning his prior work history.



Applicant's recurrent misstatements and omissions about his work history invite application of several disqualifying conditions under the personal conduct guideline: DC ¶ 16(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," DC ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other government representative," and DC ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, trustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: DC ¶ 16(d)(3), "a pattern of dishonesty or rule violations."

Applicant's admissions and post-FORM supplemental explanations were neither prompt nor voluntary, and preclude application of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Applicant's admissions and explanations were prompted by questions in DOHA's interrogatory and the pertinent allegations in the SOR and FORM comments and, as such, do not meet the MC 17(a) requirements of prompt, good-faith disclosures.

From a whole-person perspective, Applicant has established no independent probative evidence of his overall honesty with his supervisors, coworkers, and friends. Still of concern are Applicant's multiple misstatements and omissions about his prior work history and his accessing of company websites containing sexual content. Because motivation is never easy to objectively establish, the placement of reasonable time lines on clearance applicants to test and absolve themselves of recurrence risks makes safe and practical sense when balancing the interests of protecting national security with the interests of those who seek access to the Nation's secrets.

Considering the record as a whole, at this time there is too little seasoning of Applicant's mitigation efforts to avert foreseeable risks of making material misstatements and omissions on a security clearance application and other forms designed to facilitate Government background investigations. It is still too early to make safe predictions about his ability to restore his honesty and trustworthiness sufficient to justify his eligibility to hold a security clearance.

Taking into account all of the facts and circumstances surrounding Applicant's judgment and trust lapses, Applicant fails to mitigate security concerns related to his personal conduct issues. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 2.a through 2.c. of Guideline E.

## **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

### GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a through 1.f and 1.i through 1.k:	Against Applicant
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Subparas. 1.g, 1.h, 1.l, and 1.m:	For Applicant
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### GUIDELINE E: (PERSONAL CONDUCT): AGAINST APPLICANT

Subparas. 2.a through 2.c:	Against Applicant
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## **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

