



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-01980  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 25, 2008

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 6, 2006. On September 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F and Guideline 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On October 19, 2007, Applicant filed his initial response to the SOR, but it was incomplete. Applicant submitted an answer dated November 15, 2007, in which he responded to all the SOR allegations, and he requested a hearing. The case was assigned to me on December 27, 2007. On February 21, 2008, I scheduled a hearing for March 25, 2008.

The parties appeared as scheduled. Five government exhibits (Ex. 1-5) were admitted without any objections, and Applicant testified, as reflected in a transcript (Tr.) received on April 4, 2008. Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

DOHA alleged under Guideline F (financial considerations) that Applicant owes delinquent debt of about \$12,145 (SOR ¶¶ 1.a-1.i), and that he was not paying on his debts as of a December 7, 2006, interview (SOR ¶ 1.k) and financial interrogatories (SOR ¶ 1.l). Under Guideline E, personal conduct, Applicant was alleged to have deliberately falsified his October 2006 e-QIP by denying he had been over 180 days delinquent on any debts in the last seven years, and that he was currently over 90 days delinquent on any debts (SOR ¶ 2.a).

Applicant denied he owed an alleged civil judgment of \$950 to a former landlord (SOR ¶ 1.a) but admitted the remaining allegations. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 34-year-old painter who has been employed by a defense contractor since September 2005 (Tr. 33-34). He seeks a security clearance for his duties (Ex. 1), never having held a clearance (Tr. 40).

After graduating from high school, Applicant went to work as a painter (Ex. 1). He and his brother rented a house from June 1998 to July 2000. When the property was sold, Applicant and his brother were given 30 days to vacate the premises. They moved out two weeks before the deadline and did not pay the rent for their last month. They also did not inform the landlord (a realty company) that they had vacated the premises (Tr. 41-45). In August 2000, the realty company obtained a judgment against Applicant and his brother in the amount of \$950 (SOR ¶ 1.a) (Ex. 5). Applicant was unaware of the judgment until he went to buy a home. He claims he and his brother settled with the landlord by each paying \$450, although he no longer has the check to prove it (Ex. 3, Tr. 42, 46).

In 2000, Applicant and his brother bought a home together for \$58,000. They put down \$13,000 with a mortgage for the rest. Applicant contributed \$3,500 toward the downpayment, \$2,500 of it inherited from his grandmother and \$1,000 borrowed from his girlfriend's father. Applicant was included on the deed and he split the \$500 plus monthly mortgage payments with his brother (Tr. 66-67).

Applicant was unemployed for three or four months in 2000 (Tr. 30-31, 47).<sup>1</sup> He collected about \$144 per week before taxes in unemployment compensation (Tr. 30-

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<sup>1</sup>Applicant indicated no gap in his painting jobs in 2000 when he completed his e-QIP (Ex. 1). When asked why he did not report his unemployment in 2000, Applicant responded, "I don't know, just so there wasn't any gaps, I'm not sure." (Tr. 48).

31). He then went to work as a painter in the auto body industry under his brother's supervision (Ex. 1). Due to poor financial management skills ("My finances, I'm pretty, I wouldn't say irresponsible with but I'm not, I'm not that good at taking care of them." Tr. 28), Applicant fell behind on several consumer credit accounts while he was gainfully employed. Following another period of unemployment from September 2003 to January 2004, Applicant worked for a year as a painter for an auto collision company. He was thereafter unemployed for nine months (Ex. 1), and his unemployment compensation was not sufficient to cover his monthly expenses and his consumer credit obligations (Tr. 27).

In March 2000, Applicant bought a television (Tr. 49). An unpaid credit balance of \$1,328 was charged off in August 2002 and placed for collection the following month (SOR ¶ 1.d) (Ex. 5). In about January 2001, Applicant cancelled his cellular phone contract early because he could no longer afford the cost (Tr. 49). He was assessed an early termination fee that he did not pay (Tr. 48). In February 2003, the creditor placed a \$234 delinquent balance for collection (SOR ¶ 1.c) (Ex. 5). A satellite television debt of \$188 (SOR ¶ 1.g), owed since January 2001, was eventually placed for collection in June 2005 (Ex. 5, Tr. 53). In August 2001, Applicant purchased a computer on credit (Tr. 46). In September 2002, a \$3,048 debt was placed for collection (SOR ¶ 1.b) (Ex. 5). A credit account opened in or before January 2002 was placed for collection in April 2003 with \$3,127 past due (SOR ¶ 1.e) (Ex. 5). In November 2002, a catalog merchandiser placed a \$185 past due balance for collection (SOR ¶ 1.h) (Ex. 5, Tr. 52, 54).<sup>2</sup> Medical debts of \$165 (SOR ¶ 1.f) incurred in November 2004 and \$620 (not alleged) in February 2005 were referred for collection and his old debts went unpaid (Ex. 5).

In September 2005, Applicant began working as a painter for his current employer. Since he had to get caught up on accounts that had fallen behind when he was unemployed, he did not pay on his old debts, including a VISA card account that had been delinquent since February 2002. In May 2006, the creditor referred a \$1,744 balance for collection (SOR ¶ 1.i) (Ex. 5). After his wireless telephone service contract ended in about December 2004, Applicant did not pay the remaining balance of \$155 and the creditor placed his account for collection in July 2006 (SOR ¶ 1.j) (Ex. 4, Tr. 57).

In July 2006, Applicant took in his mother to live with him after she injured herself and was out of work on disability. She stayed with Applicant until late September 2007 (Tr. 68). She did not contribute financially to the household with the exception of buying her own food once in awhile (Tr. 69).

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<sup>2</sup>Applicant testified he made four payments before they closed his account, "not because of nonpayment but something about just reserving the right to close any and all accounts." (Tr. 54). He acknowledged he still owed the debt (Tr. 55).

During the summer of 2006, Applicant was given an e-QIP by his employer and told to fill it out (Tr. 27). Aware he had delinquent debt but not sure to what extent, Applicant left the financial delinquency section blank. When he provided the form to his security office for electronic processing, he indicated verbally that he had debt but was hoping to pay it off through a refinancing of his mortgage (Tr. 26-27). He was told by a security office employee to answer “no” to the financial inquiries (Tr. 30). Knowing that he probably should have answered in the affirmative but sure that the government would obtain his credit information, he responded “No” to 28a (“In the last 7 years, have you been over 180 days delinquent on any debt(s)?”) and 28b (“Are you currently over 90 days delinquent on any debt(s)?”) (Ex. 1, Ex. 2, Tr. 26-27, 30). After they refinanced, Applicant spent about \$10,000 installing new windows, heating system, cabinets, and appliances (“My theory on that was if I made myself a very comfortable place to live, I wouldn’t have to spend any more money on anything else and I could pay my bills. . . .” Tr. 83). He now realizes that he should have paid off his debt instead (Tr. 71-72, 83).

A check of Applicant’s credit in October 2006 revealed the judgment debt of \$950 (SOR ¶ 1.a) and nine debts in collection totaling \$11,815 (SOR ¶¶ 1.b-1.j plus \$620 for a medical debt not alleged) (Ex. 5). In December 2006, Applicant was interviewed by a government investigator about his financial indebtedness and his failure to list any delinquencies on his e-QIP. Concerning his income and expenses, Applicant estimated he had \$434 per month in discretionary funds after paying his mortgage and other recurring monthly expenses. He acknowledged he was not currently making payments on his delinquent debt, and was surprised to learn that it had accumulated to almost \$12,000. He attributed his financial problems to unemployment and surmised that some of the debt was incurred by a former girlfriend with whom he had lived for about six years. Applicant recalled that the debt in SOR ¶ 1.b was for a computer, and that he had recently paid the debt in SOR ¶ 1.h. Applicant also maintained he had settled the court judgment (SOR ¶ 1.a). He indicated he would either contact his other creditors himself or seek assistance from a credit counseling service. Applicant admitted that he should have disclosed his indebtedness on his e-QIP, but explained that he did not have a good feel for his overall financial posture. He denied any intent to conceal in that he knew he would eventually be called to explain (Ex. 3).

In February 2007, Applicant agreed to repay the debt in SOR ¶ 1.d (\$1,944.85 balance as reported by a new collection agency) at \$277.83 per month (Ex. 2, Tr. 50). Applicant made two payments totaling about \$300 on the debt by December 2007 (Tr. 50-51). In response to DOHA interrogatories requesting a financial update, Applicant estimated he had a monthly net remainder of \$313.69 after expenses and the television debt (SOR ¶ 1.d). He indicated that after the television debt, he would pay off the small debts and then take out a personal loan to pay off the rest. He explained that it was the best he could do for now as he was just getting back on his feet (Ex. 2).

In September 2007, Applicant told DOHA that he was planning on giving up his share of the house and moving into his father’s home so that he can pay his debt (Ex. 3). About a month later, he found his mother an apartment, removed himself from the

deed to the home, and moved into his father's basement. He has since been paying rent at \$100 per week (Tr. 69-70).

Applicant was out of work on temporary disability for about six weeks in September/October 2007. In December 2007, Applicant was again placed on temporary disability due to illness (Tr. 33). As of his hearing, he was still out of work and scheduled to undergo surgery within the next month (Tr. 89-90). His temporary disability pay is \$432 per week, which is about \$200 less than had he been able to work (Tr. 36-37).

During the first quarter of 2008, two of Applicant's creditors (SOR ¶¶ 1.b and 1.i) obtained judgments against him (Tr. 27, 57-59). Applicant contacted the assignee owed the debt in SOR ¶ 1.b because the creditor had been awarded a judgment of about \$8,000 when the original debt was about \$3,000. Applicant has not yet arranged to settle the debt ("I haven't sent the letter yet though because I really don't know where I stand financially, at the moment." Tr.58). The other judgment is for about \$3,000 (SOR ¶ 1.i) (Tr. 59).

In December 2007 or January 2008, Applicant contacted a couple of lawyers about filing for bankruptcy, which he considers to be his only option ("the Chapter 13, to me, feels like it would be a reasonable thing for me to do, seeing as though I personally can't handle it."). (Tr. 28, 33, 85, 90). He has saved about \$800, which is enough to cover the filing based on a quote he received from one lawyer (Tr. 89), but he also incurred veterinary bills and car repair costs (70, 82) that delayed filing. He wants to get his medical situation resolved before he files for bankruptcy (Tr. 89).

Applicant's current hourly wage is \$16.73 plus \$1.40 shift differential following a raise in March 2008. Raises are automatic every six months until he reaches an hourly rate of \$21 (Tr. 31). Based on his income and estimated expenses, he had about \$800 in disposable income per month as of March 2008.

Applicant drives a 1992 model year vehicle he bought from his father for \$500. He put \$2,000 into the car (Tr. 70, 82). He owes \$236 for cable television and \$1,800 for electric service at his previous residence (Tr. 76-77). He has not made any payments on those debts, although he recently arranged to make \$100 monthly payments on the electric bill (Tr. 80-81). He is saving his money to cover costs associated with his upcoming surgery (Tr. 81). He is now trying to live frugally, aware that his spending on discretionary items such as electronic and kitchen gadgets had gotten "out of control" (Tr. 84-85). Applicant does not intend to purchase items in the future unless he can pay cash for them. He enjoys his job and does not want to jeopardize it by getting further into debt (Tr. 84-87). Applicant considers himself "terrible at the finances" and in need of further education concerning handling his money (Tr. 87).

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition

to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 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.

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 about 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.

Applicant has a history of financial problems since about 2000, when he and his brother moved out of a house without paying the last month's rent. The landlord obtained a financial judgment against him. While the judgment remains on his credit report, Applicant's claim of settlement is credible. His credit report corroborates his claim of satisfaction with respect to another debt (SOR ¶ 1.h). However, two creditors obtained judgments against him in 2008 in amounts significantly higher than their original balances, so Applicant now owes almost \$20,000 in delinquent debt. Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

The government argues for consideration also of AG ¶ 19(b) ("indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt"). There is evidence of irresponsible spending, apparently for electronic and kitchen gadgets. Around 2001/02, Applicant ran up consumer credit balances (SOR ¶¶ 1.b for the computer, 1.d for the television, 1.e and 1.i on credit card accounts) without regard to his ability to repay them. AG ¶ 19(b) does not apply given his plan to resolve his debts through a Chapter 13 bankruptcy. Applicant contacted a couple of lawyers and saved the money to file. His failure to follow through to date must be considered in evaluating whether he presents an unacceptable risk because of his handling of his finances, however.

Applicant's failure to pay on his debts from January 2005 to September 2005 is excused due to his unemployment. He collected \$144 weekly, which was not enough to cover his living expenses as well as the debts. However, AG ¶ 20(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") applies only in part. Affording him some time to get caught up after going to work for the defense contractor, he reported discretionary income of \$434 as of December 2006, and was doing little to address his old delinquencies. Apart from food costs, it is not clear that caring for his mother increased his financial burden, as he had to pay his share of the mortgage and utility costs regardless. Since his interview in December 2006, Applicant has known that the government is concerned about his finances. He has satisfied only the debt in SOR ¶ 1.h and paid only about \$300 total on the debt in SOR ¶ 1.d when he was supposed to pay \$277.83 per month starting in February 2007. He has not done enough to qualify for mitigation under AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts").

A Chapter 13 bankruptcy filing would go a long way toward mitigating the concerns raised by his significant debt burden but it would be premature to conclude that his financial problems are likely to be resolved in the near future. He has not yet formally retained legal counsel to file under Chapter 13. Nor has he obtained the financial counseling or education that would address the root cause of his financial difficulties. He lacks sufficient knowledge of his financial situation to deal with his debts on his own (“I really don’t know where I stand financially at the moment.” Tr. 58). Reducing his living expenses by renting a basement room from his father is a good first start, but Applicant’s financial problems are ongoing. When he moved out of his previous residence in late September 2007, he owed \$236 for cable television and \$1,800 for electric services. His failure to make any payments on his utility and cable television debts reflects current financial irresponsibility.

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

The security concern about personal conduct is set out in AG ¶ 15:

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 government alleged Applicant deliberately falsified his October 2006 e-QIP by failing to disclose thereon any delinquent debts. Knowing he had bad debts but lacking a good handle on their extent (I just didn’t know what was owed, how many days it was late. . . . Tr. 26), Applicant initially did not respond to question 28a (any debts over 180 days delinquent in the last 7 years) or question 28b (currently over 90 days delinquent on any debts). He testified further, with no rebuttal by the government and little inquiry on the issue, that he informed the security office employee to whom he handed the form for electronic processing, that he had debts but planned to pay them possibly by refinancing his mortgage. He was told by the security officer to answer “no” to the questions (Tr. 30). Despite his recognition that he should have answered the questions affirmatively (“And if I did answer them yes, which I probably knew I should have. . . .” Tr. 26), Applicant responded negatively to both questions. Under AG ¶ 16(a) personal conduct concerns are raised by the “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 knew he had delinquent debts, and ignorance of the specific information does not make his negative responses any less false.

Applicant has consistently denied any intent to conceal his financial problems, and submits that he knew the government would find out about them. He has an

obligation of candor that is not alleviated by a government inquiry. However, as conceded by the government (Tr. 98), the evidence supports application of AG ¶ 17(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”). When questioned by a government investigator in December 2006, Applicant apparently expressed surprise at the extent of his debt, which is telling of his poor understanding of his personal financial situation. The impact of the advice of the security office employee cannot be discounted under the circumstances.

I have considered the potentially disqualifying and mitigating conditions in light of the “whole person concept” required under ¶ 2(a) of the Directive. Given the extent of Applicant’s unresolved debt and his track record of questionable financial decisions, I am unable to conclude at this time that it is clearly consistent with the national interest to grant him access.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ELIZABETH M. MATCHINSKI  
Administrative Judge