



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-05043
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco J. Mendez, Jr., Esq., Department Counsel  
For Applicant: *Pro Se*

May 8, 2008

**Decision**

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TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns regarding Guidelines F (Financial Considerations) and E (Personal Conduct). Clearance is granted.

**Statement of the Case**

On January 18, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) also known as Security Clearance Application (SF 86).<sup>1</sup> On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him,<sup>2</sup> pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense*

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<sup>1</sup>Item 4. There is an allegation of falsification of the 2006 SF 86.

<sup>2</sup>Item 1 (Statement of Reasons (SOR), dated Oct. 28, 2007). Item 1 is the source for the facts in the remainder of this paragraph unless stated otherwise.

*Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised.<sup>3</sup> The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 10, 2007, Applicant responded to the SOR allegations (Answer), and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated February 6, 2008, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation.<sup>4</sup> On March 10, 2007, Applicant provided a letter with five enclosures (Response to FORM). Applicant's submission was received at DOHA on March 17, 2008. The case was assigned to me on April 2, 2008.

### **Findings of Fact**

As to the SOR's factual allegations, Applicant admitted the allegations in SOR ¶¶ 1.a. - 1.f., and 1.h. - 1.j. He denied the allegations in SOR ¶¶ 1.g., 2.a., and 2.b. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 45-year-old senior information technology analyst, who has been working for his defense contractor employer since January 2006. He served in the U.S. Air Force inactive reserves as an enlisted member from September 1982 to July 1984, and was awarded a General Discharge under Honorable Conditions. He attended a university for a brief period from June 2000 to July 2000. He was married to his wife in June 2000, separated from her in June 2003, and was granted a judgment of absolute divorce in January 2007. Applicant has two adult sons, ages 23 and 19, from a previous relationship.

Applicant's background investigation addressed his financial situation and included a review of his March 2006, May 2007, and October 2007 credit bureau reports.<sup>5</sup> During an interview on December 12, 2006, a government background

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<sup>3</sup>On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

<sup>4</sup>Defense Office of Hearings and Appeals (DOHA) transmittal letter, is dated February 6, 2008, which he received on February 13, 2008. The DOHA transmittal letter informed Applicant that he had 30 days after Applicant's receipt to submit information.

<sup>5</sup> Items 5 through 7.

investigator confronted Applicant about his delinquencies. Consistent with his 2006 statement, Applicant stated in his Response to FORM that his financial problems started around 2005 when he tore his Achilles tendon at a family reunion playing basketball. Following this injury, Applicant underwent surgery and a period of convalescence lasting approximately six weeks. While he was convalescing, his company downsized and outsourced his job overseas, which led to a period of unemployment lasting several months.<sup>6</sup> Not generating any income and without funds, Applicant fell behind on his monthly bills until he was able to find work in January 2006.

The SOR alleges 10 delinquent/charged off accounts totaling approximately \$41,300. The alleged debts are supported by the government's evidence, which were confirmed by Applicant in his Answer and Response to FORM. Debts alleged in SOR ¶¶ 1.a. through 1.d. are collection accounts for uncovered medical bills. Applicant submitted documentation that he made payment arrangements for these debts and is current on his payments.<sup>7</sup> SOR ¶ 1.e. is a collection account for back child/family support for \$20,825. Applicant submitted documentation that he has contacted the cognizant agency and is making payments of \$50 per month. Applicant further explained that he had full custody of his two sons and was providing them with 100% of their support from 2000 to 2006. After Applicant assumed physical custody of the boys in 2000, the boys' mother did not pursue child support. Neither she nor Applicant notified the authorities of this change in custody/support, which allowed the child support arrearage to accrue. In the interim, Applicant continues to pay \$50 per month to the agency until he pays off his arrearages or otherwise resolves this debt.

SOR ¶¶ 1.f. and 1.g. are charged off accounts. Applicant has contacted the creditor in ¶ 1.f. and made payment arrangements and is current on his payments. He has paid off the debt alleged in ¶ 1.g. SOR ¶¶ 1.h. 1.i., and 1.j. are state/county tax liens totaling approximately \$11,170. Applicant contacted the cognizant authorities and made payment arrangements and is current on his payments. These three tax liens have been consolidated.

The SOR alleged Applicant falsified his January 2006 security clearance application. In response to question 27 asking whether a lien had ever been placed against his property in the last seven years for failing to pay taxes or other debts, the SOR alleged Applicant failed to list his tax liens identified in SOR ¶¶ 1.i. and 1.j. Applicant responded in his Answer that he did not intentionally omit listing these tax liens because he did not know the tax liens existed and added that he did not own any property. Department Counsel countered in the FORM that Applicant claims to be both unaware of his lien(s), and even if aware of the lien(s), he was not required to disclose

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<sup>6</sup>Item 11, Response to FORM.

<sup>7</sup>In Applicant's Answer, he did not provide documentation of payment arrangement(s)/proof of payment(s) to debts alleged in SOR ¶¶ 1.a., 1.b., 1.c., 1.d., and 1.f. As to those debts, Applicant provided creditor phone numbers and points of contact. Department Counsel noted Applicant's lack of documentation. Applicant provided the missing documentation reflecting he has paid or is making payments on all debts alleged in his Response to FORM.

them because he owns no property. Department Counsel further argues that Applicant failed to disclose his child support arrearage on his security clearance application and provided a contradictory explanation regarding one of the debts alleged in the SOR. Department Counsel argues these omissions establish circumstantial evidence pointing to Applicant's lack of credibility. Applicant emphatically reiterated his denial that he deliberately falsified his security clearance application in his Response to FORM. There is no record evidence that Applicant received notification of any tax lien(s).

Applicant provided four work-related references from management and one personal reference. His work-related references describe Applicant as a stellar performer, loyal, trusted, and a valuable employee, whom they view as a valuable asset to their team. All references recommend Applicant for a clearance. His personal reference is a long-time personal friend of 21 years, who describes Applicant as reliable, dependable, and family oriented. His personal reference holds a security clearance and recommends Applicant for a clearance.

### **Policies**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,<sup>8</sup> and the whole person concept.<sup>9</sup> Having considered the record evidence as a whole, I conclude Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) are the applicable relevant adjudicative guidelines.

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<sup>8</sup>Directive, Section 6.3. "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2 . . ."

<sup>9</sup>Directive ¶ 2(a). ". . . The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . ."

## Burden of Proof

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>10</sup> The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.<sup>11</sup> The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.<sup>12</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.<sup>13</sup>

## Conclusions

Under Guideline F (Financial Considerations),<sup>14</sup> the government's concern is that an Applicant's "[f]ailure 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 failing to meet his financial obligations dating back to 2005. At the time the SOR was issued, he had accumulated ten debts totaling approximately \$41,300. Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a): *inability or unwillingness to satisfy debts*; FC DC ¶ 19(c): *a history of not meeting*

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<sup>10</sup>See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>11</sup>ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive ¶ E3.1.32.1.

<sup>12</sup>*Egan*, *supra* n.6, at 528, 531.

<sup>13</sup>See *Id.*; Directive Enclosure 2, ¶ 2(b).

<sup>14</sup>Guidelines ¶ 18.

*financial obligations; and FC DC ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same; apply in this case.*

In 2005, Applicant was injured and required surgery followed by a period of convalescence. While convalescing, his job was outsourced and he found himself unemployed. With no income, he was unable to pay his bills. The financial toll of this sudden and lengthy income loss placed Applicant in a precarious financial situation from which he is still recovering. These facts demonstrate circumstances beyond his control.

Applicant provided documentation demonstrating that he paid one of his debts in full, and contacted his remaining creditors establishing realistic payment plans. His evidence further reflects he has remained current on his payment plans. His evidence reflects he has the resolve and wherewithal to pay down his remaining debts. Applicant's monthly budget reflects a net remainder of \$675.<sup>15</sup>

Considering the record evidence as a whole,<sup>16</sup> I conclude that two of the mitigating conditions apply. Financial Considerations Mitigating Condition (FC MC) Guidelines ¶ 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; and FC MC ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; apply in this case.*

Applicant presented evidence showing he dealt responsibly with his financial obligations. He contacted all of his creditors and either paid off his debt(s) or established a payment plan for his remaining debt(s). His demonstrated efforts point to his commitment to resolve this matter. Applicant is financially responsible and has taken control of his financial situation. Based on the available evidence, his financial problems are not likely to be a concern in the future.

Under Guideline E (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. Guidelines ¶ 15.

The government's evidence established that he failed to disclose relevant information in his answers to question 27 on his security clearance application. Considering the record as a whole, I am convinced Applicant did not intentionally

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<sup>15</sup>Item 11.

<sup>16</sup>See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

withhold this information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, his level of education, his employment history, his explanation, the number and value of the debts, his life circumstances at the time, his personal and work-related references, and the plausibility of his explanation. While he should have exercised greater diligence and care in completing his security clearance application, I do not find his failure to disclose his liens deliberate. Accordingly, no disqualifying conditions are applicable foregoing the necessity of discussing mitigating conditions.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant's age, education, his military service, his family history, his valued service as a defense contractor employee, his demonstrated resolve to pay down his debts, his maturity, work performance recommendations, and commitment to his family. Considering the totality of Applicant's circumstances, he demonstrated sufficient judgment and trustworthiness in the handling of his financial affairs. Furthermore, his alleged falsifications were not deliberate. In short, he has mitigated the security concerns raised.

### **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: Subparagraphs 1.a – 1.j.:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a. – 2.b.:	FOR APPLICANT For Applicant

### **Decision**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge