



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-05051
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 6, 2008

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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the security concerns arising from his financial considerations and personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) (GE 1) on June 27, 2005. On September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the Government's security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).<sup>1</sup>

<sup>1</sup> 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.

Applicant answered the SOR on October 24, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on December 6, 2007. DOHA issued a notice of hearing on December 14, 2007. I convened the hearing as scheduled on January 7, 2008. The government offered exhibits (GE) 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted exhibit (AE) 1 post-hearing, which was received without objection. I granted Applicant's request to keep the record open until January 25, 2008, to submit additional matters. DOHA received the transcript of the hearing (Tr.) on January 10, 2008. The record closed on January 25, 2008.

### **Findings of Fact**

In his Answer to the SOR, dated October 24, 2007, Applicant denied all SOR allegations. After a thorough review of all evidence of record, including his demeanor and testimony, I make the following findings of fact.

Applicant is a 58-year-old network engineer. In September 1968, he enlisted in the U.S. Coast Guard where he served as a Communication Specialist for 29 years. He retired from the Coast Guard in June 1997 at the rank of Chief Warrant Officer 3 (Tr. 5-7). His service in the Coast Guard was characterized as honorable. He married his wife in September 1973, and they have two adult children, ages 29 and 26 (GE 1).

Thirty days after his retirement, Applicant began working for his current employer, a defense contractor, and has been working for the same employer ever since (Tr. 8). Applicant was granted access to classified information at the secret level around 1969 after completion of Radioman school. His access to classified information, at times at the top secret level, continued throughout his 29 years of service in the Coast Guard. After he retired, his access to classified information at the secret level was continued to the present time as a result of his employment by a defense contractor (Tr. 5). Applicant explained he does not handle classified information. He manages contractor personnel providing information technology (IT) support to government agencies and needs access to classified areas to provide IT support. There is no evidence that Applicant has ever compromised classified information or that he has failed to comply with rules and regulations concerning the protection of classified information.

In his June 2005 e-QIP (GE 1), Applicant answered "No" to question 28(a) (asking whether in the last seven years he had been over 180 days delinquent on any debts), and to question 28(b) (asking whether he was currently 90 days delinquent on any debts). However, he failed to disclose the debts alleged in SOR ¶¶ 1.a and 1.b.

Applicant's background investigation addressed his financial situation and included his interview by a government agent in March 2006, his August 2007 response to DOHA interrogatories (GE 2), and the review of credit bureau reports (CBRs) from July 2005 (GE 4), May 2007 (GE 5), and September 2007 (GE 3). At his hearing,

consistent with his answers to the DOHA interrogatories, Applicant claimed he did not disclose the alleged debts because he believed both debts were either paid or settled.

The delinquent \$6,264 debt alleged in SOR ¶ 1a concerns a time share Applicant and his wife purchased in April 1999. After approximately one year making payments, Applicant realized he could not afford the payments and returned the property to the seller. He claimed he was assessed no penalties or charges after breaking his contract and returning the property. He believed the debt was settled in full. Applicant claimed he first realized the time share debt was delinquent when he was confronted with it by a government background investigator during his March 2006 interview. He averred that since returning the property in 1999, he had no contact with the creditor and received no collection notices regarding the time share debt. He further claimed that if he had known the time share debt was outstanding, he would have paid it during one of the three times he refinanced his home (Tr. 22-24).

Applicant stated that after he was confronted with the delinquent debt in March 2006, his wife attempted to contact the creditor several times to resolve the debt. He averred the creditor never returned her calls or correspondence (Tr. 31-35). Other than his testimony, and a letter he mailed to the creditor on January 2008 (AE 1) (asking for information on the account), Applicant presented no evidence to support his claims that he was allowed to return the time share without financial penalties, that the account was settled in full upon his return of the time share, and that he made attempts to settle or resolve this debt between March 2006 and his hearing date.

The delinquent \$10,440 debt alleged in SOR ¶ 1b concern student loans made by Applicant to pay for his daughter's college education. Applicant's daughter attended college from October 1996 to December 1997. At his hearing, Applicant admitted he obtained four student loans to pay for his daughter's education (Tr. 36-44). Based on the July 2005 CBR (GE 4), he took out the first loan in November 1996 for \$14,852. Between approximately August 2000 and August 2002, when the loan was paid off, it was over 120 days delinquent for five consecutive months (GE 4 at p. 9). The second loan was obtained in July 1997 for \$8,918. The loan has been delinquent and in collection since around January 2000. The third loan was obtained in January 2000 for \$10,440. The loan has been in collection since around May 2005. The fourth loan was obtained in August 2003, for \$23,270. The loan was in collection when it was paid off in February 2004.

Applicant claimed he paid all four of his daughter's student loans during one of the three times he refinanced his home. He further claimed that when he submitted his June 2005 security clearance application, he believed some of the loans were outstanding, but not delinquent because they were in forbearance. At his hearing, Applicant presented no documentary evidence to corroborate his claim that all four loans were paid. He explained that since the student loans were no longer reflected in his last two 2007 CBRs (GE 4 and 5), he believed the CBR were sufficient to established he paid the student loans. After the hearing, I granted Applicant additional time to submit documents to corroborate his claims that he settled the time share debt

in 1999, that he attempted to contact the creditor of the time share loan to resolve the debt, and that he paid the two remaining student loans. Applicant failed to present any documentary evidence to corroborate his claims.

Applicant testified his financial problems were caused by his wife not being able to work due to an accident (Tr. 83). She broke her shoulder in 2003 and underwent extensive medical treatment and rehabilitation. She started to work again in the spring of 2007. When she was working, she made approximately \$35,000 a year, which she contributed to the household finances. Applicant believes that since his wife is working again he will be able to resolve any possible financial problems.

Applicant bought his home in 1996 for approximately \$190,000. His mortgage payment was around \$1,700. He has refinanced his home three times, the last two times were in February 2004 and May 2005. He refinanced twice to pay loans, credit cards, and other debts. The last time he took some equity out, and paid some debts (Tr. 69-74). Applicant's most recent CBR, from September 2007, shows 33 accounts, four of which were in collection or charged off. He paid two of the debts after they were charged off (one of the student loans). Two debts remain which are identified as charged off in the CBR, a Military Star credit card debt owing \$1,016, and the debt to Plantation Resort, owing \$6,264 (GE 3).

Applicant is a valuable employee with a good record working for a defense contractor providing support to numerous federal agencies. There is no evidence to show he has ever failed to comply with the rules and regulations required to handle classified information.

### **Policies**

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>2</sup>

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 controlling 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,

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<sup>2</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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.”<sup>3</sup> 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**

Under Guideline F, the security concern is that an Applicant’s 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. AG ¶ 18.

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<sup>3</sup> *Egan, supra*, at 528, 531.

Applicant has three delinquent debts that have been charged off or in collection since 1997, 1999, and 2000, totaling approximately \$25,600. AG ¶ 19(a): inability or unwillingness to satisfy debts; and, AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns. After considering all the mitigating conditions (MC), I find that only AG ¶ 20(g) partially applies – Applicant paid two student loans and other debts after they were in collection or charged off. Concerning the other mitigating conditions, none apply. More specifically, AG ¶ 20(a) does not apply, because Applicant's behavior is recent as his debts are still outstanding.

Applicant presented some evidence attempting to establish a circumstance beyond his control contributing to his inability to pay his debts, i.e., his wife's 2003 injury, her inability to work, and the resulting deficiency to the household income. However, all three debts were already delinquent prior to his wife's injury. There is no record evidence to suggest Applicant had any other circumstances beyond his control that contributed to his financial problems (AG ¶ 20(b)). The record evidence is not sufficient to fully establish that circumstances beyond his control contributed to his inability to pay his debts, that he received financial counseling and/or that the problem is being resolved or is under control (AG ¶ 20(c)), or that he properly disputed the legitimacy of any of the debts (AG ¶ 20(e)).

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

Under Guideline E, the security concern is that 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. AG ¶ 15.

Applicant failed to disclose relevant information in his answers to questions 28(a), and 28(b) of his security clearance application. Considering the record as a whole, I am convinced Applicant deliberately failed to disclose the information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's maturity, his employment history, his demeanor and testimony, the number and value of the debts, his long term disregard of the debts, and the lack of credibility of his explanations.

Moreover, Applicant was provided ample opportunity to corroborate all his claims and explanations, and he failed to do so. Because of his extensive experience in the Coast Guard and applying for and holding a security clearance, Applicant knew the importance of accurately completing his security clearance application, and nevertheless failed to provide information that was material to making an informed security decision. AG ¶ 16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire," applies.

AG ¶ 17 lists seven conditions that could mitigate the personal conduct security concerns. After considering all the mitigating conditions, I find none of the mitigating conditions apply to this case. I specifically considered AG ¶ 17(c), and find it does not apply since his behavior is recent and shows Applicant's lack of reliability, trustworthiness, and judgment.

### **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. Applicant is a mature, well trained man. He honorably served 29 years in the Coast Guard, and has been successful working for a defense contractor for around nine years. He has held access to classified information at the secret level for approximately 38 years. There is no evidence to show Applicant has ever compromised or caused others to compromise classified information. Because of his rank and years of service in the Coast Guard, and his many years holding access to classified information, Applicant knew or should have known the importance of the trust placed on him by the government. He failed to be candid and honest, in his security clearance application, and broke the trust placed on him. His behavior shows he lacks judgment.

Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations and personal conduct security concerns.

### **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 & 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 continue Applicant's security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge