



## STATEMENT OF CASE

On March 16, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6, dated January 2, 1992, as revised by Adjudicative Guidelines (AG) made effective on September 1, 2006, issued a Statement of Reasons (SOR) to the Applicant. The SOR indicated that based on financial considerations (Guideline F) and personal conduct (Guideline E), 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 Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. On June 21, 2007, Applicant signed his response to the SOR. His answer was notarized on June 27, 2007. He requested a hearing before an Administrative Judge.

The case was assigned to me on August 3, 2007. This case, originally set for hearing at 12:00 p.m. on October 11, 2007, was postponed on that day because the case scheduled for the morning did not conclude until approximately 4:30 p.m. in the afternoon of October 11. On October 24, 2007, the case was rescheduled for November 14, 2007. The Government submitted nine exhibits. Applicant testified. He submitted one exhibit (AE A) containing documents verifying payment of some of the listed debts. The exhibit was marked AE A and admitted in evidence. Based on my belief that Applicant would be more successful in marshaling his documents to demonstrate which debts he acted on and which debts needed action, I returned the exhibit to him. The stipulated deadline to submit additional information was December 6, 2007. Applicant agreed to return the exhibit with a position statement providing additional responses to the personal conduct allegation (Tr. 87).

Applicant's exhibits have been remarked, beginning with a one-page e-mail (AE B) he submitted on December 11, 2007. He also returned a group of documents that have been divided into two groups, character statements and correspondence from some of the listed and unlisted creditors, and payment receipts. The character evidence is admitted as AE C, and the creditor documentation is admitted as AE D. Each specific page of AE D has been identified as AE D1 through AE D16 for reference purposes. AE A has been withdrawn as an exhibit because Applicant's documents have been reorganized in AE B through AE D16. The transcript (Tr.) was received on November 21, 2007.

## RULINGS ON PROCEDURE

On July 31, 2007, the government filed a Motion to Amend the SOR by adding an additional allegation to paragraph 3 of the SOR. At the hearing, Applicant denied the Motion because he claimed his address was different in the 2001 and 2002 time period. The allegation refers to Applicant's "NO" answer to question 29 of the January 4, 2006 security clearance application (SCA) requiring information whether he was a party to a public record civil court action not listed elsewhere in the SCA. His security clearance application (SCA) (GE 1) reflects he lived at the stated address (Tr. 8) for nine years, and specifically during 2001 and 2002 when he would have received the correspondence from the two creditors. One of those is identified in subparagraph 1.e. of the SOR. The motion is granted and subparagraph 2.c. is added to the other allegations under subparagraph 2 of the SOR.

## FINDINGS OF FACT

Applicant is 62 years old has been employed at the same work location since May 1997. Applicant was promoted from millright to foreman in 1999. He seeks a security clearance.

● 1.a. Applicant agreed that he petitioned for Chapter 7 bankruptcy in June 1990, although he suggested the petition may have been filed before the date identified in the SOR. Applicant opted for bankruptcy after he discovered he could not afford the mortgage. The only debts he recalled that were in the bankruptcy were the house and a car. He indicated an intention to contact the bankruptcy court to uncover more information about the bankruptcy, however, no information was provided.

The remaining allegations of paragraph 1 of the SOR are 16 debts totaling \$28,904.00. The Internal Revenue Service (IRS) lien (1.b.) was imposed in March 1992. The IRS filed a wage garnishment (1.q.) in October 2005 to satisfy this lien. Three of the other debts became delinquent in 2000. Some became delinquent in 2002, 2003, 2004, and 2005. Regarding where the money is coming from presently to pay the debts, Applicant's monthly pay is approximately \$3,000.00 with a monthly remainder of about \$150.00 a month. His wife who is retired and financially secure, is paying most of the remaining debts from her resources (Tr. 54). The creditors or collection agencies in subparagraphs 1.c., 1.k., 1.l., 1.p., 1.q., and 1.s. have been paid or removed as creditors. Applicant has also settled with the second and third creditors (not listed in the SOR) of GE 4 (credit bureau report dated February 17, 2006).<sup>1</sup>

● Applicant did not file federal forms for two years, one of the those year was 1992. An IRS tax lien (1.b.) of \$2,155.00 was levied against him in 1992 for failure to pay taxes. He worked out an agreement with the IRS that required him to pay \$100.00 a month until the lien was paid. (GE 7) When Applicant stopped the payments, the IRS garnished (1.q.) his wages in October 2005 for failure to pay off the 1992 lien.

● Applicant owes a department store on a delinquent credit card account amounting to \$476.00 (1.c.). This debt was reported delinquent in March 2000. Applicant blamed his former wife on for allowing this debt to fall into arrears. He settled the account for \$380.00 (D11, D12, D13).

● The original creditor placed this account for collection in approximately September 2000. The delinquent amount is \$1,511.00 (1.d.). Applicant testified he called this collection agency to settle the account (Tr. 32). D4 reflects an offer to settlement, but no evidence indicating the debt was paid.

● This account (\$15,606.00) (1.e.) was charged off in October 2000. Applicant wrecked this vehicle, and never received a letter from the bank that he owed a deficiency balance. He speculates his former wife may have never told him that he still owed money on the car. No additional information was provided.

● The two accounts in 1.f. and 1.g. (\$227.00) have been combined because they are held by the same collection service. Applicant does not know who the creditor is. (Tr. 33-34)

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<sup>1</sup> D3 is a check dated May 26, 2006, made out for \$423.15 to one of these unlisted creditors. The drawer of the check is not Applicant.

● Applicant testified he contacted the collection service for a settlement (1.h.) of the account \$1,106.00 (Tr. 34).

● Applicant does not know the identity of the original creditor of this account (1.i.) amounting to \$450.00. (*Id.*)

● Applicant called the collection service for a settlement figure (1.j.) to close the account (Tr. 35).

● The accounts in 1.k. and 1.l. have been combined since both are held by the same collection agency. The total past due amount is \$262.00. The documentation (D14) verifies Applicant paid both accounts.

● The delinquent debt of \$1,132.00 (1.m) was transferred from the original creditor in November 2004. D8 discloses a letter from the collection agency offering to settle the account for \$462.93. There is an official check at the bottom of D8, however, the poor quality of the copy makes the check unreadable.

● A settlement figure of \$480.00 (1.n.) has been proposed to Applicant. He predicted payment of the settlement in the next two weeks (Tr. 35). No additional information was provided.

● The telephone account (\$243.00) has not been addressed (Tr. 36).

● The wage garnishment for child support (1.p.) was levied in error. Applicant provided documentation that all money was refunded (Tr. 37). Applicant was arrested for not paying child support in 1994. He eliminated the arrearage in April 1997 (GE 7), and provided documentation the garnishment order was in error (D10).

● The IRS garnished Applicant's wages (1.q.) in October 2005 to satisfy the lien that had been filed in 1992. He satisfied the garnishment.

● Applicant claims he paid the telephone account (Tr. 38) (1.r.). Applicant's documentation (D1) indicates an offer to settle at 60% for \$164.03 was made by the collection agency, but no documentation indicating the account was settled.

● Applicant is certain he paid this telephone account (1.s.) in June 2007 (Tr. 38). His testimony is supported by bank ledger indicating the debt was paid in June 2007 (D16).

GE 9 is a Final Judgment and Execution Withholding Order signed by a county judge on July 24, 2002. The order memorializes a payment arrangement between a credit card company (seconds page, GE 4) and Applicant that required Applicant to pay a judgment of \$1,005.61 in installments beginning with a payment of \$150.00 by July 15, 2002, followed by monthly payments of \$150.00 until the principal was paid.

Applicant's documentation (AE D) indicates he paid or settled with four of the 16 listed creditors . After subtracting the total repayment amounts to the erroneous child support, and the satisfied federal lien, Applicant still owes 12 creditors \$22, 398.00.

Applicant attributed the false answers to question 28 of his SCA (subparagraphs 2.a. and 2.b.) in January 2006 to a constantly changing work schedule, a short period of time to complete and return the SCA, and going through a rough divorce that was granted in August 2005 (Tr. 39). However, when he filled out his SCA (GE 1) in January 2006, he knew he had delinquent debts and that he had a car repossessed (Tr. 48-50). Applicant remembered he had a older version of the SCA (GE 2), so, he copied the information from the older version to GE 1 (Tr. 40). Yet, he could not explain why he did not transfer some of the information from the older form (GE 1) to the newer SCA (GE 1) (Tr. 44-48). Applicant does not believe he made the same number of mistakes in answering the questions of other sections of his SCA (GE 1) as he made in the financial section of the application (Tr. 51). Regarding subparagraph 2.c., he answered "NO" to question 29 of the same SCA because he contends he was unaware of any civil suits against him in the last seven years, and even though his correct address appears on the documents (Tr 51).

After he received the SOR (circa March 2007), Applicant returned to his security department and corrected the mistakes in GE 1 (Tr. 51-53).

In Applicant's one-page statement (AE B), he described his disconsolate feelings during the hearing on November 2007. His son-in-law had just died on October 27, 2007. His mother-in-law, who was sick, passed away three days after the hearing. Applicant reiterated that living with an alcoholic and experiencing a contentious divorce created medical problems which contributed to not providing correct answers on the SCA in January 2006. Having weighed Applicant's testimonial and recorded explanations regarding the omitted information, specifically his understanding of the importance of the SCA, I find Applicant deliberately omitted information from GE 1.

A supervisor and close friend of Applicant for nine years believes Applicant is a trustworthy individual. The supervisor recalled Applicant, in his job as supervisor of heavy equipment, was provided with confidential information about employees, budgetary matters and launch operations, and always conducted himself in a professional manner. The supervisor's family and Applicant's family are very friendly.

The facilities control director has known Applicant professionally since 1997. The director quickly learned that Applicant was concerned with safety issues in the facility, and sought advice from Applicant on how to make the facility a safer place. The director had to lay Applicant off because of economic issues, but brought him back and promoted him to manager in 1999, where he has remained. The director recalled that Applicant received a safety award in 2002 for making changes to promote safety in the shop locations assigned. The director is aware of no adverse information that would have a negative impact on Applicant's security clearance application.

A social friend of Applicant for eight years, who knew about his former wife's alcoholism, considers Applicant an honest and trustworthy person.

Applicant's performance evaluations for October 2001 to September 2007 have been outstanding.

## POLICIES

The AG contains disqualifying conditions (DC) and mitigating conditions (MC) that should be given binding consideration in making security clearance determinations. These conditions must be considered in every case along with the general factors of the whole person concept. However, the conditions are not automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense.

### **Burden of Proof**

Initially, the government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualifies, or may disqualify, the applicant from being eligible for access to classified information. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant’s security suitability.” ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *See Egan*, 481 U.S. at 531; *see* Directive E2.2.2.

### **Financial Considerations (FC)**

The failure to pay debts in a timely manner places an individual at risk of committing acts of poor judgment to generate funds.

### **Personal Conduct (PC)**

Conduct involving questionable judgment, dishonesty or unwillingness to follow the rules can raise doubts about a person’s trustworthiness and ability to protect classified information.

## CONCLUSIONS

Applicant has encountered recurrent financial problems since he was discharged from his debts under a Chapter 7 bankruptcy petition in June 1990. Less than two years later, an IRS tax lien was filed against him in March 1992 for failing to pay taxes. In 1994, Applicant was arrested for failing to pay child support. He did not catch up on the arrearage in support until April 1997. Delinquent debts began appearing on Applicant’s credit report starting in February 2000 with the department store debt. The number of delinquent debts continued to grow until March 2007 when Applicant owed \$28,904.00 to 16 creditors. The number, duration and amount of debt falls within the purview of FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*). Applicant’s federal tax problems also trigger the application of FC DC 19.g. (*failure to file annual Federal, state, or local income tax*

*returns required or the fraudulent filing of the same*) even though the lien was filed about 15 years ago. In October 2005, the IRS had to garnish Applicant's wages because he did repay the lien as promised.

FC mitigating condition (MC) 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*) is inapplicable as Applicant still owes 13 creditors almost \$22,400.00, and he tried to conceal various elements of his indebtedness, including repossessions and judgments.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control*) applies to a limited degree since 1997 when Applicant began his employment at this facility. But, while Applicant was laid off in the late 1990s, he has enjoyed uninterrupted employment since 2002. Though his former wife may have complicated his financial obligations until their divorce in August 2005, she had little to do with (1) a federal lien filed against him in March 1992 for failing to file his federal return and pay federal income taxes (2) his child support problem with another former wife in 1994, and (3) the garnishment of his wages in October 2005 by IRS for not complying with his repayment agreement to pay off the 1992 federal tax lien.

I have carefully evaluated FC MC 20.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*) and FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). There is no evidence of counseling. Applicant knew he had delinquent debts when he submitted his SCA (GE 1) in January 2006. Though one of the listed debts (and three unlisted debts) have been paid or settled, action was not taken on the debts until after Applicant received the SOR in March 2007. The mitigation Applicant receives under FC MC 20.b., 20.c., and 20.d. is insufficient to satisfy his ultimate burden of persuasion under the FC guideline. Subparagraphs 1.c., 1.k., 1.l., 1.p., 1.q., and 1.s. are resolved in Applicant's favor. The remaining allegations are found against him.

Regarding the personal conduct allegations relating to Applicant's deliberate omissions of material information from his SCA in January 2006, Applicant has put forth a number of explanations for the omitted information from health problems to deaths in the family, to a lack of reasonable time to complete the SCA, to not really knowing why he omitted the information. Though all the explanations could have played a part in causing him to omit the required information on the application, the most reasonable explanation, and one he denies, is that he deliberately concealed information about his debts over the years. He knew when he filled out the form in January 2006 that he had delinquent debts. He may not have known about all the debts but he knew about some of the debts. Since he knew about some of the debts, his decision to conceal must have been motivated, at least in part, by his decision to conceal. After he received the SOR, he went to his security department and entered the correct information. PC DC 16.a. (*deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility*) applies.

The PC guideline has three mitigating conditions (MC) that are potentially applicable to the circumstances of this case, but all three must be removed from consideration as Applicant continues to deny he deliberately falsified the SCA. PC MC 17.a. (*the individual made prompt, good-faith*

*efforts to correct the omission, concealment, or falsification before being confronted with the facts)* does not apply based on Applicant's ongoing disavowal that he exhibited dishonesty on the security form. PC MC 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)* is inapplicable as no one advised or suggested to Applicant to falsify his security form.

PC MC 17.c. *(the offense was minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment)* does not apply in view of the recency of the omission. His continuing belief he did not falsify raises lingering doubt about his trustworthiness and judgment. Subparagraphs 2.a. through 2.c. are found against Applicant.

### **Whole Person Model**

The adverse conclusions under the FC and PC guidelines support the same outcome under the whole person model. Applicant was 45 years old when he discharged certain debts in 1990. In the remainder of the 1990s, he encountered tax problems that were not resolved until October 2005. He was arrested for failing to pay child support in 1994. His other debts began falling delinquent in 2000, and by early 2007, the debts had grown to almost \$29,000.00. Applicant was 61 years old before he began to take any action to pay off his overdue debt. That action was clearly influenced by his receipt of the SOR. It took him about 13 years to pay off his federal lien. The government had to garnish his wages in October 2005 to obtain the \$1,800.00 balance due on the lien. Finally, Applicant deliberately tried to conceal his financial problems. Having considered the entire record, together with Applicant's reputation among his coworkers and supervisors, and his outstanding job performance, Applicant's mitigating evidence does not outweigh the aggravating evidence under the FC and PC guidelines.

### **FORMAL FINDINGS**

Formal Findings required by Paragraph 25 of Enclosure 3 are:

Paragraph 1 (Financial Considerations, Guideline F): **AGAINST THE APPLICANT.**

Subparagraph 1.a.	Against the Applicant.
Subparagraph 1.b.	Against the Applicant.
Subparagraph 1.c.	For the Applicant.



Subparagraph 1.d.	Against the Applicant.
Subparagraph 1.e.	Against the Applicant.
Subparagraph 1.f.	Against the Applicant.
Subparagraph 1.g.	Against the Applicant.
Subparagraph 1.h.	Against the Applicant.
Subparagraph 1.i.	Against the Applicant.
Subparagraph 1.j.	Against the Applicant.
Subparagraph 1.k.	For the Applicant.
Subparagraph 1.l.	For the Applicant.
Subparagraph 1.m.	Against the Applicant.
Subparagraph 1.n.	Against the Applicant.
Subparagraph 1.o.	Against the Applicant.
Subparagraph 1.p.	For the Applicant.
Subparagraph 1.q.	For the Applicant.
Subparagraph 1.r.	Against the Applicant.
Subparagraph 1.s.	For the Applicant.

Paragraph 2 (Personal Conduct, Guideline E):      AGAINST THE APPLICANT.

Subparagraph 2.a.	Against the Applicant.
Subparagraph 2.b.	Against the Applicant.
Subparagraph 2.c.	Against the Applicant.

### **DECISION**

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 a security clearance for Applicant. Clearance is denied.

Paul J. Mason  
Administrative Judge