



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-03291
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

03/12/2015

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Applicant refuted the allegation that he deliberately falsified his security clearance application (SCA), but he has not mitigated the security concerns raised by his delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted an SCA on September 25, 2013, seeking to continue a security clearance that he has held since 1963. On August 7, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on August 18, 2014; answered it on August 30, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 5, 2014, and the case was assigned to me on December 22, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 5, 2015, scheduling the hearing for January 28, 2015. On January 26, 2015, DOHA issued an amended notice of hearing, rescheduling the hearing for January 30, 2015, due to inclement weather at the hearing venue. I convened the hearing as rescheduled. Applicant waived the 15-day notice requirement of Directive ¶ E3.1.8. (Tr. 5-6.) Government Exhibits (GX) 1 through 5 were admitted in evidence without objection.<sup>1</sup> Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until February 13, 2015, to enable Applicant to submit additional evidence. He timely submitted AX D through G, which were admitted without objection. On March 2, 2015, after the record closed, he submitted AX H, which was admitted without objection. Department Counsel's comments regarding Applicant's post-hearing submissions are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on February 18, 2015.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶ 1.a-1.e and denied SOR ¶ 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is an 81-year-old senior engineer employed by a defense contractor. He served as an artilleryman in the U.S. Army from April 1953 to April 1955, during the Korean War. He received a bachelor's degree in electrical engineering in 1961, and he has worked on various projects for defense contractors since 1960. (GX 1 at 9-12; AX B.) He has held a security clearance since 1963, and it was last revalidated in 2004. (GX 5 at 3.)

Applicant married in 1962. (GX 2 at 13.) He and his wife have a 38-year-old son. He and his wife have not cohabited for about ten years, and they each manage most of their own financial affairs. His wife is a retired teacher and receives a retirement pension. (AX A.) Because of work requirements, they maintained separate residences during the work week for about 15 years preceding their decision to no longer cohabitate. For about 25 years, Applicant has relied on his wife to take care of all expenses related to the family home where she resides as well as a residence in another state. (AX D; Tr. 62-63.) Applicant and his wife own several properties, but only the family home is encumbered by a mortgage loan. (Tr. 41-42.)

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<sup>1</sup> GX 5, a summary of a personal subject interview, was not authenticated as required by Directive ¶ E3.1.20. I explained the authentication requirement to Applicant, and he waived it. (Tr. 19-20.)

About four years ago, Applicant's wife and their son decided to purchase and operate a restaurant. Applicant agreed to allow his wife and son to use the equity in the family home, where his wife still resides, to finance the purchase of the restaurant. Applicant gave his wife a general power of attorney, and she refinanced the home. (AX E.) She also used the power of attorney to incur other debts related to the restaurant in Applicant's name without his knowledge. In his post-hearing submission, he stated, "I am prepared to rescind that Power-of-Attorney," but he produced no evidence showing that it was rescinded. (AX D.)

Applicant's wife and son had no business experience, and the restaurant encountered financial problems as well as labor problems. Applicant was unable to testify in detail about the restaurant-related debts because he has no interest in his wife's financial affairs, even though he knows that she is incurring debts in his name. He testified that what his wife does with the business or her personal affairs is not his business, because he has "much bigger things to worry about." (Tr. 56.) He testified that his wife's *modus operandi* for running the restaurant is to intentionally fall behind on debt payments and then negotiate a settlement for less than the full amount. (Tr. 28.)

Applicant's credit bureau reports<sup>2</sup> (CBRs) reflect the following delinquent debts:

**SOR ¶ 1.a, judgment filed by heating oil company (\$1,270).** This judgment was filed in August 2013 and was reflected on Applicant's October 2013 CBR as unsatisfied. (GX 4 at 2.) The judgment was satisfied by Applicant's wife in May 2014, after an "income execution" was filed against Applicant's pay in April 2014. (AX C; Tr. 13-14.)

**SOR ¶ 1.b, past-due mortgage account (\$64,248).** Applicant's October 2013 CBR reflected that this property, the family home, was in foreclosure, with payments past due for \$45,509. (GX 4 at 3.) His June 2014 CBR reflected that partial payments were being made on the real estate mortgage, which was past due for \$64,248. (GX 3 at 1.) In April 2014, Applicant's wife, acting on behalf of Applicant and herself pursuant to the power of attorney, entered into a trial period plan for a mortgage modification, satisfied the requirement for three consecutive payments, and obtained the mortgage modification in August 2014, thereby avoiding foreclosure on the property. (AX F.) The first payment was due in September 2014, but Applicant produced no evidence that any payments have been made on the modified mortgage loan.

**SOR ¶ 1.c, charged-off credit card account (\$19,000).** Applicant's October 2013 CBR reflected that this account was past due for \$4,700. (GX 4 at 3.) His June 2014 CBR reflected that the account was past due for \$6,695 and that partial payments had started in April 2014. (GX 3 at 2.) In February 2015, the creditor agreed to a partial-payment plan providing for payments of \$316.66 per month. (AX G.) The payment plan was negotiated solely by Applicant's wife, with no participation by Applicant. (AX D.)

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<sup>2</sup> Applicant's October 2013 CBR includes information from all three credit reporting agencies. His June 2014 CBR reflects only the information reported by one agency.

Applicant's wife made the initial \$316.66 payment required by the plan on February 10, 2015. (AX H.)

**SOR ¶ 1.d, telecommunications account referred for collection (\$54).**

Applicant's October 2013 CBR reflected that this account was referred for collection in October 2011. (GX 4 at 7.) His June 2014 CBR reflected the same information. (GX 3 at 2.) Applicant testified that he knows nothing about this debt and that he does not have an account with this creditor. (Tr. 61.) However, the October 2013 CBR reflects that this is an individual account in Applicant's name. (GX 4 at 7.)

**SOR ¶ 1.e, telecommunications account referred for collection (\$225.)**

Applicant's October 2013 CBR reflected that this account was referred for collection in May 2012. It is listed as an individual account in Applicant's name. (GX 4 at 7.) His June 2014 CBR, which is from only one credit reporting agency, does not reflect this debt. Applicant testified that he knows nothing about this debt and that he does not have an account with this creditor. (Tr. 61.) Both this debt and the debt alleged in SOR ¶ 1.d are for services received at the family home where Applicant's wife resides.

When Applicant submitted his security clearance application in September 2013, he answered "No" to questions whether, during the last seven years, he had a judgment entered against him, defaulted on any type of loan, had bills or debts turned over to a collection agency, or had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. He also answered "No" to the question whether he was currently 120 days delinquent on any debt. He did not disclose any of the debts alleged in the SOR.

In his answer to the SOR and at the hearing, Applicant stated that he was unaware of the debts incurred in his name by his wife. He did not check his credit report before submitting his SCA, because he knew that he had not personally incurred any debts. He admitted that it would have been more responsible to check his credit report, but he was overwhelmed with work, trying to complete a project for the Navy. (Tr. 48-50.)

After Applicant received the SOR, he did not contact any creditors or check his credit report, because he considered any debts on the credit report to be his wife's business and not his. He explained: "It wasn't my business. I don't care. I don't care if that business goes under. I don't care if they take that house. I gave that house up when I gave her power of attorney to re-mortgage it." (Tr. 56-57.)

Applicant's wife files the couple's joint state and federal tax returns. Applicant has never signed a tax return or seen a copy of the return. When asked why he has never asked for copies of the tax returns or reviewed them, he responded, "I don't care." (Tr. 30-31.)

Applicant has a debit card that is solely in his name. He and his wife have a joint checking account, on which he writes checks. He testified that he does not know if there

are funds in the account to cover his checks, but his checks have never been dishonored for insufficient funds. (Tr. 33-35.)

Applicant did not contact his wife or any creditors after learning during his PSI that there were delinquent debts in his name. His attitude was, "I don't care. . . . [T]hat was not my business, that was her business, not mine. . . . I have much bigger things to worry about." (Tr. 56.) He admitted that he was legally responsible for the debts incurred in his name. (Tr. 65.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

“Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (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. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions, his CBRs, and his testimony at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The evidence reflects that Applicant has the ability to satisfy the debts in the SOR but is unwilling to do so.

The following mitigating conditions are potentially relevant:

AG ¶ 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;

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;

AG ¶ 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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's delinquent debts are the product of his conscious decision to give his wife a general power of attorney, not a circumstance beyond his control. He has not revoked or limited the power of attorney. He has not acted responsibly. His response to the delinquent debts has been, "I don't care."

AG ¶ 20(c) is not established. Applicant has not sought or received counseling, and the problems are not under control

AG ¶ 20(d) is not established. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). Applicant made it clear at the hearing that he does not care about the delinquent debts incurred in his name. His frequent response at the hearing, "I don't care," shows his lack of a sense of duty or obligation regarding the debts incurred by his wife in his name. There is no evidence that any payments were made on the modified mortgage loan alleged in SOR ¶ 1.b. Applicant's wife made the initial payment on the payment plan for the delinquent credit card account alleged in SOR ¶ 1.c. However, in light of Applicant's testimony about his wife's practice of financial brinkmanship, it is too soon to determine if she will continue to make the agreed payments on the credit card account.

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts. To the contrary, he admitted at the hearing that he is responsible for them.

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

The concern under this guideline 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 relevant disqualifying condition in this case is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . ." When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.

Applicant is an intelligent, well-educated engineer. For reasons known only to him and his wife, he has decided to have no part in his wife's life and no interest in her financial affairs, even when they affect him. When he submitted his latest SCA, he knew that he had incurred no delinquent debts. He and his wife are geographically separated, and his testimony that he received no notice of the judgment or other delinquent debts was plausible and credible. He was candid and sincere throughout the hearing. While he may have been culpably negligent in not checking his CBR before submitting his SCA, culpable negligence does not equate to intentional concealment. However, I have considered Applicant's culpable negligence in my whole-person analysis set out below. Based on all the evidence, I conclude that AG ¶ 16(a) is not established.

### **Whole-Person Concept**

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant has given valuable service to the national defense for many years, holding a security clearance for the entire period. However, at the hearing, he appeared to be unconcerned about the impact of his wife's financial dealings on his credit rating, security clearance, or professional reputation. He made it clear that he feels no obligation to resolve the debts alleged in the SOR. His obstinate refusal to discharge his legal obligations raises doubts about his reliability and good judgment.

While Applicant's omission of derogatory information from his SCA was not deliberate, his culpable negligence in the preparation and submission of his SCA raises concern about his reliability. His failure to cancel or limit his wife's power of attorney raises concern about his good judgment.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegation that he deliberately falsified his SCA, but he has not mitigated the security concerns raised by his unwillingness to take any action to resolve the debts for which he is liable. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

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

Subparagraph 1.a: For Applicant

Subparagraphs 1.b-1.e: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): **FOR APPLICANT**

Subparagraph 2.a: For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge