



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



In the matter of: ) ) [Redacted] ) ) Applicant for Security Clearance )	ISCR Case No. 17-01075
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**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2019

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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). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 7, 2015. On June 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on August 24, 2018, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on September 24, 2018. In her submission, Department Counsel amended the SOR by withdrawing SOR ¶¶ 1.d and 1.f. On September 25, 2018, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on November 15, 2018, and did not respond. The case was assigned to me on February 12, 2019.

The FORM included summaries of personal subject interviews (PSI) conducted on July 13, August 25, September 27, October 28, November 18, and December 29, 2016 (FORM Item 10). The PSI summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summaries; make any corrections, additions, deletions or updates; or object to consideration of the PSI summaries on the ground that they were not authenticated. I conclude that he waived any objections to the PSI summaries by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### Findings of Fact<sup>1</sup>

In Applicant's answer to the SOR, he admitted all the allegations. His admissions are incorporated in my findings of fact.

Applicant is a 42-year-old messaging analyst employed by a defense contractor since April 2015. He worked for federal contractors from November 2000 to November 2005, was unemployed from November 2005 to December 2006, and worked for federal contractors from December 2006 to December 2007, November 2009 to October 2011, and November 2011 to mid-2013. He left his job as a federal contractor in 2013, because he had not completed required training. (FORM Item 10 at 3.) He has worked intermittently as an independent contractor since April 1998. When he has a full-time job, he works as an independent contractor on weekends. (FORM Item 10 at 2.)

Applicant is a high school graduate. He has never married and has no children. He has held a security clearance since at least November 1998 (FORM Item 10 at 5.)

The SOR, as amended, alleges six delinquent debts reflected in credit reports from April 2015 (FORM Item 9), February 2017 (FORM Item 7), and September 2018 (FORM Item 6). The evidence concerning these delinquent debts is summarized below.

**SOR ¶ 1.a: mortgage loan past due for \$16,834, in foreclosure with balance of \$271,350.** Applicant submitted no documentary evidence of the status of this debt. The September 2018 credit report reflects that the last payment on this debt was in July 2017. It is not resolved.

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application (FORM Item 5) unless otherwise indicated by a parenthetical citation to the record.

**SOR ¶ 1.b: home-improvement loan charged off for \$33,381.** In his answer to the SOR, Applicant stated that he had an agreement to pay \$50 per month on this account. The September 2018 credit report reflects that the last payment on this debt was in August 2017. He did not provide any documentary evidence of a payment agreement or payments.

**SOR ¶ 1.c: credit-card account charged off for \$10,327.** In his answer to the SOR, Applicant stated that he had a payment agreement providing for monthly \$195 payments. The September 2018 credit report reflects that the last payment on this debt was in July 2017. He did not provide any documentary evidence of a payment agreement or payments.

**SOR ¶ 1.d: withdrawn.** This debt was resolved before Applicant submitted his answer to the SOR.

**SOR ¶ 1.e: judgment filed in 2016 for \$7,962.** This debt is for delinquent taxes. In his answer to the SOR, Applicant stated that his “tax person” is working to resolve or set up a payment agreement for this debt. It is not resolved.

**SOR ¶ 1.f: withdrawn.** This debt is a duplicate of the debt alleged in SOR ¶ 1.a.

**SOR ¶ 1.g: debt to local government, placed for collection of \$180.** In his answer to the SOR, Applicant stated that he thought that this debt was a traffic ticket. In the August 2016 PSI, he stated that it was a delinquent utility bill. (FORM Item 10 at 6.) It is not resolved.

**SOR ¶ 1.h: debt to fitness club, placed for collection of \$125.** In his answer to the SOR, Applicant stated the collection account was closed and returned to the original creditor. He did not provide any documentary evidence showing that the debt is resolved.

When Applicant submitted his SCA, he answered “no” to all questions asking whether he had any financial delinquencies. He did not disclose any of the delinquent debts alleged in the SOR. In his answer to the SOR, he stated that all debts reflected in his credit report were paid off before he purchased his home and that, if he had any recent delinquent debts, he must have misread the question due to haste in completing the SCA. The credit reports reflect that his mortgage loan was opened in April 2016, about a year after he submitted his SCA. (FORM Item 6 at 2; FORM Item 7 at 1.)

Applicant submitted his SCA on April 7, 2015. The credit report from April 21, 2015 reflected five delinquent debts: (1) a credit card that was past due for \$1,365, on which the last activity was in October 2013; (2) a telecommunications account that was past due for \$564, on which the last activity was in January 2014; (3) a telecommunications account that was past due for \$238, on which the last activity was in October 2013; (4) a delinquent traffic ticket for \$180, alleged in SOR ¶ 1.g; and (5) a delinquent \$125 debt to a fitness club, alleged in SOR ¶ 1.h.

When Applicant was confronted with these debts during the August 2016 PSI, he told an investigator that he did not list these debts in his SCA because he paid the \$238 telecommunication bill in December 2015 and paid the other debts on specific dates he could not recall in 2015. (FORM Item 10 at 6-7.) The credit reports from February 2017 and September 2018 reflected that the delinquent credit-card account and one of the two delinquent telecommunications accounts had been paid at some time after the April 2015 credit report was issued, but the \$564 telecommunications account and the debts alleged in SOR ¶¶ 1.g and 1.h were not resolved. (FORM Item 7 at 2.)

Applicant attributed his delinquent debts to inadequate self-employment income when he was not employed full time between mid-2013 and April 2015. (FORM Item 10 at 9.) He has not provided any specific information about his income and expenses during his period of unemployment, nor has he provided any specific information about his income and expenses since he began his current job in April 2015.

### **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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.” 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

## **Analysis**

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

The security concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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 and the documentary evidence in the record establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”); AG ¶ 19(b) (“unwillingness to satisfy debts regardless of the ability to do so”); and

AG ¶ 19(c) (“a history of not meeting financial obligations”). 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

None of these mitigating conditions are 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. The record does not reflect whether Applicant's failure to complete the training that was required for his continued employment in mid-2013 was a condition largely beyond his control. Even if it was beyond his control, he has not acted responsibly. He resolved several delinquent debts after he submitted his SCA, apparently because the debts were impediments to qualifying for a mortgage loan. He has been employed full time for almost four years, but he produced no documentary evidence of significant actions to resolve the debts alleged in SOR ¶¶ 1.a-1.c, 1.e, 1.g, and 1.h.

## **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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition is AG ¶ 16(a):

[D]eliberate 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

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. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Based on the limited record, I am satisfied that Applicant knew he had delinquent debts when he submitted his SCA. His resolution of some of the debts shortly after submitting his SCA suggests that he did not list them in his SCA because he hoped to be able to pay them before they became a security-clearance issue. His resolution of the telecommunication bill in December 2015 reflects this state of mind at the time he submitted his SCA. I conclude that AG ¶ 16(a) is established.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Neither mitigating condition is established. Applicant made no effort to correct the omissions in his SCA until he was confronted with them during the August 2016 PSI. His falsification is arguably infrequent, but it is recent and it is not "minor." Falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

### **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 and applying the adjudicative factors in AG ¶ 2(d).<sup>2</sup>

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<sup>2</sup> The factors are: (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)

I have incorporated my comments under Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

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 not mitigated the security concerns raised by his delinquent debts and falsification of his SCA.

### **Formal Findings**

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

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

Subparagraphs 1.a-1.c, 1.e, 1.g, and 1.h: **Against Applicant**

Subparagraphs 1.d and 1.f: **Withdrawn**

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

Subparagraph 2.a: **Against Applicant**

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge

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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.