



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-03769

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

04/26/2019

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**Decision**

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WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding his personal conduct and financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On September 4, 2018, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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 Security Executive Agent, Directive 4, *National Adjudicative Guidelines* (SEAD 4), effective June 8, 2017.

Applicant responded to the SOR on October 29, 2018, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 21, 2019, and interposed no objections to the materials in the FORM. He supplemented the FORM with an explanatory letter, which was admitted without objection as Item 12.

### **Summary of Pleadings**

Under Guideline E, Applicant allegedly was (a) issued a written notice from his employer (Company A) in December 2012 for dishonesty and unsatisfactory work performance; (b) terminated by Company A in February 2013 for cited violations of conduct and performance expectations (including his use of a business account to purchase personal items); (c) terminated by Company B in January 2014 following unsatisfactory behavior, including a security breach, lengthy breaks, failure to meet deadlines, and habitual tardiness; and (d) reprimanded by Company C in January 2015 for unsatisfactory performance.

Under Guideline F, Applicant allegedly (a) used a business account to purchase personal items while employed by Company A; (b) accumulated 13 delinquent debts exceeding \$8,200; (c) accrued two judgments: one in August 2012 for \$13,191 and another in June 2014 for \$537; and (d) incurred a federal tax lien in September 2008 in the amount of \$6,006. Allegedly, these debts, entered judgments, and incurred federal tax lien remain unresolved and outstanding.

In his response to the SOR, Applicant admitted most of the allegations with explanations. He denied the allegations covered by SOR ¶ 1.c (pertaining to security breaches) He also denied the allegations covered by SOR ¶ 2.q, claiming he is making payments to resolve his tax lien. He denied without explanation the allegations covered by SOR ¶¶ 2.b, 2.d-2.e, 2.j, 2.m, and 2.p.

### **Findings of Fact**

Applicant is a 44-year-old office administrator for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant never married and has no children. (Items 4-5) He earned a high school diploma, but did not report any post-high school education credits. He reported no military service.

Since April 2015, Applicant has worked for his current employer. (Items 4-5) Previously, he worked for other employers in various jobs. He reported unemployment between January 2014 and July 2014, and between March 2013 and September 2013. (Items 3 and 6)

## **Applicant's employment separations**

In December 2012, Applicant received written notice from his employer (Company A) that he had demonstrated dishonesty and unsatisfactory work performance. (Items 5-6) The notice cited Applicant for (a) disappearance from the department for long periods with no valid reason, (b) falsely claiming he had witnessed a code blue that accounted for tardiness, and (c) asking for a patient affairs specialist to lie for him about his new patient's appointment. (Item 6) As the result of his recurrent late reporting to work, he was terminated by Company A in February 2013 for cited violations of conduct and failures to meet performance expectations. (Item 7)

In January 2014, Applicant was terminated by another employer (Company B) following his receipt of notices of unsatisfactory behavior and performance that included a security breach, lengthy breaks, failure to meet deadlines, and habitual tardiness. (Items 6 and 8) The cited security breach consisted of Applicant's leaving his computer unlocked from the day before, which exposed it as an open site, containing all physician salary information and other sensitive data. (Item 8) Before his termination, he was written up on a disciplinary action form and afforded two weeks to improve his performance and demonstrate timely completion of assigned projects. (Item 5) When Applicant did not show improvement in meeting assigned performance expectations, he was terminated by Company B.

Records document that Applicant was reprimanded by Company C in March 2015 (following nine months of employment beginning in July 2014) for unsatisfactory attendance. Embarrassed by the reprimand, Applicant elected to resign his position in April 2015. (Items 4-5)

## **Applicant's finances**

Between 2014 and 2016, Applicant accumulated 13 delinquent debts, in addition to accruing two judgments (one in August 2012 for \$13,191 and another in June 2014 for \$537), and incurring a federal tax lien in September 2008 for \$6,006. (Items 9-12)

To date, Applicant has made no documented progress in addressing his listed delinquent debts, judgments, or federal tax lien. His post-FORM claim that he has fulfilled his federal tax liability with the Internal Revenue Service (IRS) is neither documented nor corroborated in any way and cannot be accorded much weight. Addressing the six debts he denies (SOR debts ¶¶ SOR ¶¶ 2.b, 2.d-2.e, 2.j, 2.m, and 2.p), Applicant failed to provide any proof that he favorably resolved any of these denied debts by payment, by successful dispute, or by other acceptable means. Without evidence to document and corroborate his claims, the information taken from his credit reports must be accorded presumptive accuracy and reliability. (Items 9-11)

Applicant did not provide any character references, performance evaluations, or personal financial information to assess her available income sources and any extenuating circumstances to consider in evaluate her overall financial situation.

## Policies

The SEAD 4, App. A lists adjudicative guidelines (AGs) to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### Personal Conduct

*The Concern:* 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. . . . AG ¶ 15.

## Financial Considerations

*The Concern:* 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

## Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## Analysis

Security concerns are raised with respect to Applicant's history of reprimands and terminations for cause from three relatively recent employers: Companies A-C. Additional concerns relate to Applicant's accumulation of delinquent debts, judgments, and a federal tax lien that to date have not been resolved by Applicant.

### Personal conduct concerns

Records substantiate that Applicant encountered a series of adverse personnel actions between 2012 and 2015, based on cited lateness and other violations of company policy and displayed dishonesty, unsatisfactory behavior, and failure to meet employment expectations. Applicant's collective actions were not probatively refuted and fall within the coverage of DC ¶ 16(c), "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulation, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information."

Despite repeated attempts by his managers to upgrade his behavior to company standards, Applicant recurrently displayed behavior incompatible with the performance expectations of his employers (Companies A-C) over an extended period of years (2012-2015). Applicant's furnished explanations for his actions are insufficient to surmount the probative findings supplied by his previous employers responsible for Applicant's reprimands and terminations. Based on the information compiled in the record, none of the potentially available mitigating conditions apply to Applicant's situation.

### Financial concerns

Applicant's accumulation of delinquent debts, judgments, and a federal tax lien covering taxes owed for tax year 2008 that have not been addressed to date invite the application of four of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19(b), "unwillingness to satisfy debts regardless of the ability to do so," 19(c), "a history of not meeting financial obligations."; and 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required."

Applicant's admitted delinquent debts negate the need for any independent proof. See Directive 5220.6 at E3.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's admitted debts are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that

entitles him to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving tax filing lapses and debt delinquencies.

Historically, the timing of addressing and resolving federal and state tax delinquencies and other debt delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited circumstances (i.e., recurrent periods of unemployment) entitle Applicant to some mitigation credit for his failure to address his debt delinquencies. MC ¶ 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." His failure to address his debt delinquencies after he returned to full-time employment status precludes him, however, from taking advantage of the "acted responsibly" prong of MC ¶ 20(b).

Similarly, satisfaction of Applicant's evidentiary burden of providing probative evidence of his addressing his judgments, tax lien, and other debt delinquencies requires more documentation of his addressing his debts than he has provided in his submissions. While his recurrent periods of unemployment offer some extenuating credit, they are not enough to mitigate his major financial delinquencies without more evidence of past and recent efforts to address his delinquent debts.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts, and implicitly where applicable the timely resolution of federal and state tax debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, his failures or inability to establish documented payment initiatives with his listed SOR creditors, both before and after the initiation of the security clearance process, preclude favorable findings and conclusions with respect to raised security concerns over the state of his finances.

### **Whole-Person Assessment**

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his delinquent debts to merit more than minimal credit to mitigate financial concerns. Overall, Applicant's actions to date in addressing his finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that his finances are not sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

## Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE E (PERSONAL CONDUCT):                      AGAINST APPLICANT

    Subparagraphs 1.a-1d:                                      Against Applicant

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

    Subparagraphs 1.a-1.q:                                      Against Applicant

## Conclusions

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 Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge





