



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



In the matter of: )  
)  
) ISCR Case No. 18-00648  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

04/01/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 21, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 5, 2018 and October 9, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department

Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on January 15, 2019. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not submit a response to the FORM or object to the Government's documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on March 27, 2019.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.i, and denied the allegations in ¶¶ 2.a and 2.b. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He attended college for approximately two years, but did not earn a degree. He married in 2014, and has a four-year-old child. He served in the Army Reserve from March 2006 to May 2016, and was honorably discharged. He has been employed by a federal contractor since February 2017.<sup>1</sup>

In his June 2017 Questionnaire for National Security Positions (SF 86), Applicant disclosed his work history and periods of unemployment: he worked part-time from February 2006 to April 2010, and was a drilling reservist from March 2006 to April 2010; active duty from April 2010 to February 2013; unemployed from February 2013 to April 2014; active duty from April 2014 to May 2016; and unemployed from May 2016 to February 2017.<sup>2</sup>

In Applicant's response to Section 26 of his SF 86 that requested information about financial delinquencies, he disclosed one debt owed to a satellite television service in the amount of \$173. He noted that it would be paid immediately. No other debts turned over to a collection agency, defaulted loans or debts that had been delinquent over 120 days or were currently over 120 days delinquent were disclosed.<sup>3</sup>

In December 2017, Applicant was interviewed by a government investigator. Applicant attributed his financial problems to unemployment after being discharged from the military. He took a job with a federal contractor working overseas so he could address those financial problems. He intended to pay all of his delinquent debts. In his answer to each debt alleged in the SOR, he stated: "I admit. However, the conditions occurred under unique such circumstances that are unlikely to recur and should not cast doubt on my current reliability, trustworthiness or good judgment."<sup>4</sup>

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<sup>1</sup> Item 3.

<sup>2</sup> Item 3.

<sup>3</sup> Item 3.

<sup>4</sup> Item 2, 4.

Applicant further disclosed to the investigator that in February and March 2017, he was unable to pay his rent. His wife was working at the time, but he was not. Her income was insufficient. He arranged a payment plan with the landlord to pay the overdue rent.<sup>5</sup>

Applicant disclosed to the investigator that in July 2014, he received notice that because he failed to return his apartment's pool pass he owed \$30. He was employed at this time, but his wife was not. He did not have the money to pay that debt. He was notified by mail in July 2014 that the debt was turned over to a collection company. He intended to pay the debt in January 2018. He told the investigator that he was now earning \$85,000 tax free while he was working in Kuwait. He forgot to list this debt when he completed his SF 86.<sup>6</sup>

Applicant told the investigator that he owed approximately \$18,000 to the DOD due to an overpayment made to him for a period of six months. He said that he was released from the military in May 2016, but he did not receive his official DD 214 discharge document until September 2016. He said he continued to receive pay from May 2016 to September 2016. He said he did not think anything of the fact that he was still receiving pay. After he received his DD 214 the pay stopped. He said he thought this was normal.

In January 2017, Applicant was notified by the Defense Financial and Accounting Service about the overpayment and informed that he owed \$18,000. Applicant did not take action to repay this debt because he did not have the money. He told the investigator that he did not have the address to contact the creditor for this debt. He intended to obtain a copy of his credit report to obtain the information. He believed the debt may have been turned over to a collection company. He intended to repay the debt in full beginning in January 2018. He reiterated to the investigator that his current income was \$85,000, and he planned to use his income to repay all of his debts. He failed to disclose this debt on his SF 86 because he forgot about it. (SOR ¶ 1.a-\$17,655). Applicant did not provide evidence that he has made arrangements to repay this debt.

The debts in SOR ¶¶ 1.b (\$10,409), 1.c (\$8,866), 1.d (\$7,692) 1.e (\$5,780) and 1.h (\$589) are credit card debts, and the debt in ¶ 1.g (\$820) is owed to a furniture store. The debts were incurred while Applicant was unemployed from May 2016 to February 2017. He used the credit cards to pay living expenses. During this period, Applicant was unable to pay the credit cards and furniture store. He told the investigator that the credit cards were in collections. He said he did not have a payment plan, and he could not afford to pay the debts. He planned to use his salary to repay the debts. He intended to obtain a credit report and start making payments on the debts in January 2018. He failed to

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<sup>5</sup> Item 4. I have not considered for disqualifying purposes any derogatory information that was not alleged in the SOR. I may consider information when making a credibility determination, in the application of mitigating conditions, and in my whole-person analysis.

<sup>6</sup> Item 4.

disclose these debts on his SF 86 because he forgot them. He did not provide any information about the status of these debts. They are unresolved.<sup>7</sup>

The debt in SOR ¶ 1.j (\$96) is a medical debt owed for services provided to Applicant's daughter in May 2016. Applicant told the investigator he was unable to pay the debt when it was due. He said that it was still unresolved, but he would use his salary as a federal contractor to pay it. He did not provide evidence the debt is paid.

Applicant was confronted by the investigator with the debts in SOR ¶¶ 1.i (\$176); 1.k (\$1,464), and 1.l (\$80). He said he was unfamiliar with these accounts. He told the investigator he would obtain a credit report and begin contacting creditors and establish payment plans.

The delinquent debts alleged in the SOR are corroborated by Applicant's admissions in his answer to the SOR, statements to the government investigator, and credit reports from July 2017 and February 2018.<sup>8</sup>

Applicant denied that he intentionally failed to disclose on his June 2017 SF 86 that he had debts turned over to a collection agency; had a credit card suspended, charged off, or canceled for failing to pay as agreed; in the past seven years had been over 120 days delinquent on any debt; or was currently over 120 days delinquent on any debt. His answer stated: "I used a credit report pulled that same day. However, I was unaware that the report was incomplete or inaccurate."<sup>9</sup>

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching adjudicative goal is a fair, impartial, and commonsense 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, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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<sup>7</sup> Item 4.

<sup>8</sup> Items 2, 3, 4, 5, 6.

<sup>9</sup> Item 2.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” 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. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 EO 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**

The security concern relating to the guideline for financial considerations 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. 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 or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

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. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>10</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has 12 delinquent debts totaling approximately \$56,813 that are unresolved. He told the investigator he intended to pay the debts because he was now working for a federal contractor. No evidence was provided to show he has resolved any of the debts. There is sufficient evidence to establish the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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<sup>10</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant has 12 delinquent debts that are unresolved. He attributed his financial problems to periods of unemployment. Despite telling the government investigator in December 2017 that he was now employed and would pay his delinquent debts, he failed to provide evidence that he has taken any action to resolve them. Applicant's failure to pay his financial obligations casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's unemployment was beyond his control, but he failed to act responsibly after he obtained employment. Despite his promise to pay the delinquent debts after he started working, he failed to show he has taken action. AG ¶ 20(b) partially applies. There is no evidence he has participated in financial counseling, and there are no clear indications his financial problems are being resolved or under control. There is no evidence that he made good-faith efforts to pay or resolve his delinquent debts. AG ¶¶ 20(c) and 20(d) do not apply.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I have considered that Applicant was an experienced military drilling reservist and served on active duty for two extended periods. Although he should have been aware that he was not eligible to receive pay when he was not serving, I am unable to conclude he knowingly and willfully accepted unearned pay from the DOD. I find in his favor for SOR ¶ 2.a.

Applicant was unemployed from May 2016 until February 2017, and used credit cards to pay his expenses that he could not afford to pay. He acknowledged to the investigator that he knew some of his accounts were in collection. He was notified in January 2017 that he was overpaid by the DOD, and he owed \$18,000. He said he accepted a federal contractor job to work overseas so he could address his financial

problems. He said he forgot to list these debts on his SF 86. Applicant was aware he was not working and was using credit cards to pay expenses for a period of time. His explanation that he forgot about the delinquent debts he was required to disclose is not credible. I find he deliberately failed to disclose that he had delinquent debts and some that had been turned over to collection agencies or were currently past due more than 120 days. AG ¶ 16(a) applies to SOR ¶ 2.b.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(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.

The evidence does not support the application of AG ¶ 17(a). There is insufficient evidence to conclude that Applicant made a prompt, good-faith effort to correct his omissions prior to being confronted by the investigator.

Applicant was aware he had numerous delinquent debts and deliberately failed to disclose them. The government relies on people to be forthcoming and honest on their SF 86, even when there is derogatory information in their history. AG ¶ 17(c) does not apply because Applicant's deliberate failure to disclose information on his SF 86 and certifying its accuracy are not minor offenses. I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good 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(d):

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

Applicant is 33 years old. He experienced financial problems when he was unemployed. He told the government investigator that he was now employed by a federal contractor working overseas and his income was tax free. He intended to use his income to repay his delinquent debts. He failed to provide evidence that he has resolved any of the alleged delinquent debts. When Applicant completed his SF 86, he was aware he had debts that were in collections or delinquent, but he deliberately failed to disclose them. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

### **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
Subparagraphs 1.a-1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge