



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



In the matter of: )  
)  
) ISCR Case No. 18-00811  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Jan Lauver, Esq.

05/15/2019

---

**Decision**

---

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 30, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. DOD acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on May 25, 2018, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 28, 2019, and the hearing was convened as scheduled on March 8, 2019. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and offered exhibits

(AE) A through C, which were admitted without objection. The record was kept open until April 30, 2019, and Applicant submitted AE D through H, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 5, 2019.

### **Procedural Issue**

Department Counsel moved to amend the SOR at hearing to add an additional allegation under Guideline F. Applicant was given the choice to proceed to hearing with the amended allegation or request a continuance, which I would grant, to allow him at least 15 days to prepare for the new allegation. He chose to proceed with the hearing on the condition that I leave the record open to allow him to present additional evidence on any allegation and in particular the amended allegation. I granted the motion to amend and I also kept the record open until April 30, 2019. The new SOR allegation is identified as ¶ 1.e and reads as follows: "You are indebted to [school name] for a delinquent debt that was charged off in the amount of \$1,216. The status of the debt is unknown."<sup>1</sup>

### **Findings of Fact**

Applicant admitted all the Guideline F allegations (except ¶ 1.e, which was neither admitted nor denied) and those admissions are incorporated into these findings of fact. He denied the Guideline E allegation. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 37-year-old employee of a defense contractor. He began working at his present job in October 2016. He served in the Air Force from 2001 until 2003 as a security forces airmen (military police) when he was discharged under other than honorable conditions (UOTHC). He held a security clearance before his discharge. His discharge was so characterized because he received Article 15 UCMJ punishment from his commander for having an adulterous affair with the spouse of another military member. He has a high school diploma and has completed several college (technical) courses resulting in him receiving information technology (IT) certifications. He is married (since 2001) and has one son, age 17.<sup>2</sup>

The SOR (and subsequent amendment) alleged three delinquent debts totaling approximately \$2,624 (no amount was alleged for SOR ¶ 1.d). The debts were listed in credit reports from February 2017 and March 2019 (SOR ¶¶ 1.b – 1.e). The SOR also alleged Applicant failed to file his federal tax returns for tax years 2014-2016. It was further alleged that Applicant deliberately failed to list his 2015 marijuana use when asked if he had used any illegal drug or controlled substance within the past seven years on his December 5, 2016 security clearance application (SCA). He stated "no" to the question on his SCA. (SOR ¶ 2.a).<sup>3</sup>

---

<sup>1</sup> Tr. at 16-22.

<sup>2</sup> Tr. at 34-35, 41, 47; GE 1-2 (Personal Subject Interview-September 2017).

<sup>3</sup> GE 3-4.

Applicant's financial difficulties began in approximately 2013. His wife worked as the family's sole means of financial support. Applicant remained at home caring for their son who has emotional and social issues that manifest in behavioral problems. Applicant's wife worked in the commercial transportation industry and made approximately \$30 per hour. In late 2013 and early 2014, Applicant's wife suffered from medical issues that restricted her ability to work and caused her to use Family Medical Leave in February 2014. She was unable to return to work until August 2015. She received six weeks' worth of short-term disability pay in 2014. Applicant began working at a convenience store to assist with the family finances. He attended school at night seeking certifications in the IT field. In 2015 he was hired in an IT position. They accrued medical debts during Applicant's wife's period of illness. Those debts were not specifically identified in the record.<sup>4</sup>

The status of the SOR debts is as follows:

**SOR ¶ 1.b (consumer debt)-\$548.** Applicant presented documentation showing that this debt was settled in full in April 2019. This debt is resolved.<sup>5</sup>

**SOR ¶ 1.c (medical debt)-\$860.** Applicant incurred this medical debt from a motorcycle accident he was in. He presented documentation showing that this debt was paid in February 2016. This debt is resolved.<sup>6</sup>

**SOR ¶ 1.d (consumer debt).** Applicant incurred this debt in the amount of approximately \$1,000 for a gaming computer. In April 2019, he arranged to have \$50 monthly payments made from his bank account by electronic funds transfers (EFT) for 21 months to pay this debt. This debt is being resolved.<sup>7</sup>

**SOR ¶ 1.e (college course debt)-\$1,216.** Applicant incurred this debt when he enrolled in a course that his employer agreed to pay for on the condition that Applicant achieved at least a "B" grade in the course. He failed to achieve a "B" and was required to pay for the course himself. He negotiated a settlement with the creditor, which has him making a \$611 payment on April 30, 2019, and a \$300 payment on May 30, 2019. No proof of payment was submitted. This debt is being resolved.<sup>8</sup>

Applicant claimed that the reason he did not timely file his 2014-2016 tax returns was because his brother-in-law, who is not a tax professional, told him that if he is due a refund, he did not have to file his tax returns by the April 15 annual deadline.

---

<sup>4</sup> Tr. at 23-24; AE C.

<sup>5</sup> Tr. at 25; AE E.

<sup>6</sup> Tr. at 25; AE G.

<sup>7</sup> Tr. at 26; AE F.

<sup>8</sup> Tr. at 26-27; AE H.

Additionally, his wife had prepared their tax returns in the past and because of her health issues and her job situation, she was overwhelmed and the tax returns for 2014-2016 were not timely filed. In 2018, a friend helped prepare their missing tax returns using tax preparation software. The 2014 tax return shows no filing date, but Applicant testified that it was filed in April 2018. The 2015 tax return was filed March 2, 2018 and the 2016 tax return was filed April 2, 2018. Applicant also stated that their 2017 tax return was timely filed in April 2018.<sup>9</sup>

In Section 23 of his December 5, 2016 SCA, Applicant was asked, “In the last seven years, have you illegally used any drugs or controlled substance?” He responded by checking the “No” option. In September 2017, when interviewed by an investigator during his background check, Applicant was again asked if he used any drugs or controlled substances in the last seven years. He responded with a “No” answer. He was then asked again by the investigator if he had ever used illegal drugs. Applicant responded by asking if the investigator meant “ever?” The investigator clarified that he meant had Applicant used illegal drugs in the past seven years. Applicant responded to this question with an affirmative response and explained that he had used marijuana in December 2015 when a friend gave him a small amount.<sup>10</sup>

Applicant claimed during his hearing testimony that when he answered the question in his SCA that he had “a lot going on with my family and my personal life.” He also claimed he misunderstood the question and thought it was asking if he used illegal drugs as a manager or supervisor. He then claimed he came forward during his background investigation and admitted his use of marijuana in December 2015. He failed to mention that he initially denied such use to the investigator and it was only after the investigator repeated the question and clarified it that Applicant admitted to the marijuana use. I found Applicant’s testimony to be not credible.<sup>11</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(a), the entire process is a conscientious scrutiny of a number of variables known as

---

<sup>9</sup> Tr. at 33, 36, 49-50; GE 2 (Answers to Interrogatories- April 18, 2018).

<sup>10</sup> GE 2 (Personal Subject Interview-September 2017).

<sup>11</sup> Tr. at 27-29, 42.

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.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 to obtain 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 about 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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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 has delinquent debts that remain unpaid or unresolved. He also failed to timely file his 2014-2016 federal tax returns. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant either paid or has set up payment plans for his four delinquent debts. AG ¶ 20(d) is applicable to his debts. Concerning his taxes, while his wife's medical issues were beyond their control, Applicant did not take responsible action to timely file his 2014-2016 tax returns. His delay in filing until in either March or April 2018, shows a lack of reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(g) partially apply.

## Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security 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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant intentionally omitted information about his 2015 marijuana use when he completed his SCA. I do not find credible his explanation that he was overwhelmed at the time he completed his SCA or that he misunderstood the question. He held a security clearance while in the Air Force so he had filled out a SCA before and was familiar with the process. I conclude that he intentionally withheld this information when he completed his SCA. AG ¶ 16(a) applies to SOR ¶ 2.a.

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

(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.

Applicant failed to disclose his marijuana use when he was initially asked about past drug use by the investigator during his background interview. Upon further questioning on the subject, Applicant finally admitted his use. AG ¶ 17(a) does not apply. Honestly completing an SCA is the initial crucial step in gaining access to classified information. The Government expects, and must rely on, the honesty of applicants during this process. Therefore, providing false information at this stage is not a minor offense. Such deliberate action casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply.

## 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's wife's medical conditions resulting in limited employment for her and their son's behavioral issues. However, I also considered his untimely efforts to resolve file his 2014-2016 tax returns. He also deliberately failed to list his 2015 marijuana use on his SCA. Both issues cause me to question his trustworthiness, reliability, and good judgment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or the personal conduct security concerns.

## 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
Subparagraph: 1.a:	Against Applicant
Subparagraphs: 1.b-1.e:	For Applicant



Paragraph 2, Guideline E:                   AGAINST APPLICANT

Subparagraph: 2.a:                         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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Robert E. Coacher  
Administrative Judge