



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



In the matter of: )  
)  
) ISCR Case No: 18-01033  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel  
For Applicant: *Pro se*

07/19/2019

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. Based upon a review of the case file, including pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of Case**

On May 9, 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). The action was taken 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective on June 8, 2017.

Applicant submitted an undated Answer to the SOR, and requested that his case be decided by an administrative judge on the written record without a hearing. On March

26, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant and received by him on April 14, 2019. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's evidence. Items 1 through 9 are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on June 20, 2019.

### **Findings of Fact**

Applicant admitted five of the ten debts alleged debts in Paragraph 1 of the SOR: ¶¶ 1.a, 1.b, 1.c, 1.e, and 1.h. He denied the other five alleged debts: ¶¶ 1.d, 1.f, 1.g, 1.i, and 1.j. He denied the three falsification charges alleged in Paragraph 2 of the SOR: ¶¶ 2.a, 2.b, and 2.c.

Applicant is 30 years old and single. He served on active duty in the Marine Corps from 2008 to 2012. He received a general discharge under honorable conditions. After being discharged from military service, he worked from 2013 to 2016 for non-government employers. In his January 2017 security clearance application (SCA), he indicated that he had been unemployed since October 2016. (Item 4)

### **Financial Considerations**

During a June 2017 interview with a government investigator, Applicant discussed several charged-off accounts, subsequently alleged in the SOR. He said he did not have knowledge of several listed debts. He intended to pay two credit card debts. He said he stopped paying debts when he became unemployed in October 2016. (Item 3) Applicant noted in his 2017 SCA that he experienced periods of unemployment before he enlisted in the Marines. (Item 4)

Based on credit bureau reports (CBR) from April 2017 and March 2018, the SOR alleged ten debts that became delinquent between 2012 and 2016, and totaled about \$23,124. They included an automobile loan, a medical bill, a school loan, and credit card debts. (Item 6, Item 7).

Applicant did not submit proof that he paid, is paying, or otherwise resolved any of the five delinquent debts he admitted owing. He did not submit proof that he successfully disputed any of the five delinquent debts that he denied owing, or proof that they are not his debts. He did not provide evidence that he participated in credit or budgetary counseling. He did not provide a budget or other information related to his financial obligations from which to determine current financial solvency.

## Personal Conduct

The SOR alleged that Applicant did not disclose requested adverse information in his 2017 SCA: the type of military discharge; any discipline he received while serving; and delinquent debts.

Applicant disclosed that he received an honorable discharge, and not a general discharge under honorable conditions. He said he did not know the distinction between an honorable discharge and a general discharge under honorable conditions. (Item 3)

Applicant did not disclose that in 2010 he went to Non-Judicial Punishment (NJP) for having violated Article 92 (failure to obey a lawful order or regulation), and two specifications of Article 121 (larceny and wrongful appropriation). He and another Marine wrongfully took money from a wallet that had been turned into them while they were on duty. (Item 5) He was reduced in rank to E-2, forfeited \$811 of pay for two months, and was restricted for 60 days. (Item 8) Applicant stated that he forgot the date the NJP occurred, so he did not disclose it. (Item 3)

Applicant stated that he did not disclose any delinquent debts, which were within the seven-year timeline, because he did not know about them, and creditors had not contacted him. (Item 3)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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.

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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant has a history of being unable to meet financial obligations, which began in 2012 and continues into the present. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial problems. The following 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, or 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.

Applicant's financial delinquencies are ongoing and there is insufficient evidence to demonstrate that similar problems will not recur in the future. AG ¶ 20(a) does not apply. Applicant attributed his financial delinquencies to being unemployed for a period of time after he left military service in 2012. That may have been a circumstance beyond his control. However, he did not provide evidence that he attempted to responsibly manage his financial obligations under those circumstance; thus, AG ¶ 20(b) provides minimal mitigation. There is no documentary evidence that he participated in credit or financial counseling, or that any of the ten debts are paid and under control. He did not submit evidence that he initiated to a good-faith effort to resolve or repay overdue creditors. The evidence does not establish mitigation under AG ¶¶ 20(c) or 20(d).

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

AG ¶ 15 explains the security concerns relating to 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 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. One may be potentially disqualifying:

(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 denied that he deliberately failed to disclose requested information pertinent to the type of the military discharge he received; the 2010 NJP that he received; and the ten delinquent debts he had at the time he completed his 2017 SCA. None of his explanations are sufficiently credible to justify his non-disclosure of the requested information. His assertions that he did not know he received a General discharge, and could not remember the date of the NJP or the debts that he had been accumulating, are not persuasive. His failure to disclose the information was deliberate. The evidence established disqualifying security concerns under AG ¶ 16(a).

AG ¶ 17 provides conditions that could mitigate the above security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not provide evidence that would support mitigation under any of the foregoing conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

During his June 2017 interview, Applicant discussed his delinquent debts. Despite being placed on notice that those debts created concerns for the Government at that time, he took no action to resolve them. Applicant deliberately failed to disclose pertinent adverse information on his security clearance application. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not mitigate the financial considerations and personal conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c:	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 access to classified information. National security eligibility is denied.

SHARI DAM  
Administrative Judge