



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-02137
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

10/30/2019

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 8, 2017. On September 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

Applicant responded to the SOR on October 3, 2018, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on May 16, 2019, and the hearing was convened on June 4, 2019.

Government Exhibits (GE) 1 through 6 with an exhibit list were admitted into evidence without objection. A department counsel discovery letter was marked as HE 1 and appended to the record. Applicant testified at the hearing. The record was held open for Applicant to submit any documentary evidence in mitigation. He submitted an e-mail narrative, and several receipts, statements and copies of money orders, on June 25, 2019. These exhibits were marked as Applicant Exhibit (AE) A, and admitted into evidence without objection. DOHA received the hearing transcript on June 17, 2019.

### **Findings of Fact**

Applicant is a 56-year-old security officer for a defense contractor, employed since 2014. He is also a part-time military police officer in the Army National Guard. Applicant received an associate's degree in 2017, a bachelor's degree in 2018, and is currently attending school for a graduate degree. He was previously married for six months. He remarried in 2008 and does not have children. He honorably served on active duty in the U.S. Army from 1982 to 1992, and in the Army National Guard from 2006 to present. He deployed to Kosovo for one year while in the National Guard. He currently has a security clearance.

In December 2009, Applicant filed a Chapter 7 bankruptcy petition. It was discharged in March 2010. In November 2010, Applicant's security clearance was suspended and an SOR was issued alleging under Guidelines F and E for two financial judgments, delinquent and charged-off credit accounts, and for failure to respond to government inquiries regarding the bankruptcy and the status of delinquent debts. In December 2010, a final clearance was granted with a "warning notice" that subsequent unfavorable information may result in the suspension of his security clearance.

The current SOR alleges under Guideline F that Applicant is indebted to the state for a tax lien for about \$10,417; a medical account for about \$4,610; and four collection accounts totaling about \$998; a Chapter 7 bankruptcy discharged in 2010; and under Guideline E for failure to report financial delinquencies on his 2017 SCA, and for receiving unemployment benefits from the state, knowing that he was not entitled to them. Applicant admitted the two large debts, one small debt, the 2010 bankruptcy, and the SCA falsification and unemployment benefits allegations, with explanations. He denied three small debts listed as SOR ¶¶ 1.c to 1.e, with explanations.

Regarding SOR ¶ 1.a (state lien), Applicant explained that the lien resulted from him receiving unemployment benefits for which he was not entitled to receive. From 2010 to 2013, Applicant worked full time as a counselor for a company. (GE 1) In his Answer to the SOR, he claimed that he worked part time, and collected unemployment benefits so that he could "make ends meet" and buy and repair a trailer house that was in "bad shape." (Answer) The state obtained a judgment against him for about \$10,417, and Applicant claimed he forfeited about \$4,000 in tax refunds that were applied toward the debt. He also testified that in mid-2017, he agreed to pay \$160 per month toward the debt to avoid a garnishment of his pay, but that he missed two to three payments since then. Applicant testified that he was unsure how much he owed on the debt, or

how much he has paid to date. In his post-hearing submission, Applicant provided a receipt showing a payment of \$163 on June 10, 2019, but no other documents were provided to show the current status of the debt or payment history. Applicant did not list this lien on his 2017 SCA or his other financial delinquencies because if he had, he would lose his clearance. (Tr. 51-52)

SOR ¶ 1.b is a medical debt for \$4,610 that is in collection. Applicant testified that he believed the debt may have been charged off. He did not provide evidence of the resolution of the debt. SOR ¶ 1.c is a finance company debt for \$442 that was placed for collection. Applicant testified that he has been paying about \$15 per month in a garnishment from his pay, and believes the debt has been satisfied, but he was not sure. He did not provide evidence of the garnishment payment history or the current status of the debt. SOR ¶¶ 1.d and 1.e are medical debts in collection by a collection company. In testimony, Applicant claimed that he could not inquire about these debts because he could not find the phone number for the collection agent. SOR ¶ 1.e is a collection account for \$147. In his Answer, Applicant claimed he would satisfy this debt, but he has not provided evidence of such.

In testimony, Applicant admitted that he had not paid his 2018 Federal income taxes as required. He indicated that as a result of a vehicle repossession, he received a cancellation of debt (1099-C) notice that unexpectedly raised his income tax liability that he was unable to pay when he filed his income tax return. In his post-hearing submission, he provided a copy of a June 2019 cashier's check to the "Department of the Treasury" for \$1,549, to satisfy the debt. Applicant did not provide the IRS notice of debt or other government document to show satisfaction of the debt. Applicant also admitted that he owed on school loans, but was unsure of how much, other to say maybe \$35,000, but that they were in deferment. Of note, he indicated that current school loan disbursements would be used to pay non-school related debts, leaving it unclear how his tuition payments will be made.

Applicant failed to report his delinquent debts and state lien on his 2017 SCA. When the investigator from the Office of Personnel Management (OPM) asked Applicant about any debts during his interview, Applicant again claimed he had nothing to report. When confronted with the SOR debts, past Chapter 7 bankruptcy, and tax lien, Applicant explained that he knew of the debts and discussed the efforts he was taking to resolve them. (GE 2) In his Answer to the SOR, Applicant admitted that he had filed bankruptcy, had two vehicles repossessed, was paying on the state debt, and that he knew of credit card debts but thought they were charged off or paid. (Answer) Applicant also admitted that he intentionally took state unemployment benefits for which he was not entitled to receive. He received benefits despite being employed, because he needed the money. (GE 2)

In testimony, Applicant stated that he was delinquent on credit card debts that were not listed in the SOR because of other financial obligations. He was unsure how much he owed, but in his post-hearing submission, he provided evidence of approximately \$2,200 in credit card accounts, and one with statements listing it as

“severely past due.” He was forced to use a credit card to fund a vehicle repair, but he is giving his other credit card to his mother for safekeeping or will shred it, so that he would not be tempted to use it. He also testified that he was behind on rent, utilities and credit card payments, but showed payments toward those debts in his post-hearing submission.

At the time of the hearing, Applicant had about \$205 in checking and savings accounts, and that his spouse is working part-time and helps with family expenses. He used a credit repair company in February or March 2019 to aid him with his debts, but they only sent letters to creditors and did not make any payments on his behalf. Applicant stated in his OPM interview that his debts resulted from living outside of his means, unexpected expenses to repair his trailer home, and his spouse’s propensity for online shopping. Applicant hoped to receive an advance on his inheritance from his mother and use student loan disbursements to pay his debts and expenses.

### **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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; see, AG ¶ 1(d).

## **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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

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

Applicant’s admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19 (a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's finances have been neglected for many years, resulting in a Chapter 7 bankruptcy in 2010, with a continuation of debt accumulation and an inability to satisfy debts. Applicant has not submitted sufficient evidence to mitigate the SOR debts or to show that his financial problems are under control and will not recur. Applicant's behavior casts doubt on his current reliability, trustworthiness, or good judgment.

Applicant admitted his own lack of financial stability and lives paycheck-to-paycheck while attending school for a graduate degree. His income appears to be insufficient to meet his financial obligations, and he does not have a reasonable plan to pay delinquent debts or to prevent further indebtedness. Overall, Applicant's financial status raises significant doubts about his financial management decisions and personal financial responsibility. He is unable to meet current financial needs and cannot pay past debts with his current family income. He borrows from credit cards and student loans to meet life expenses and pay toward his most recent debts, not to mention his SOR debts. In addition, Applicant owes the state for improperly claiming unemployment benefits that he was not entitled to receive. I am not convinced Applicant is financially responsible or makes good financial decisions, and he has not resolved the SOR debts. No mitigation fully applies.

## **Guideline E: Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. 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.

When falsification allegations are controverted, as here, the Government has the burden of proving the allegations. 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 level of education and business experience 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))

Applicant intentionally failed to report his delinquent debts on his SCA, as required, largely because he was concerned about the effect on his security clearance. He also wrongfully and intentionally claimed substantial state unemployment benefits for which he was not entitled to receive, and intentionally withheld his employment status to the state to continue to wrongfully receive benefits. There is sufficient evidence that Applicant knew of the delinquent debts and state lien, and that he knowingly omitted them from his SCA.

Conditions that could mitigate personal conduct security concerns are provided under AG ¶ 17. 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;

(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 caused 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's omissions from his SCA were knowing and intentional, and he made no effort to acknowledge the error when confronted by an OPM investigator. He also knowingly and willfully received state benefits to which he was not entitled. Applicant's behavior casts significant doubt on his trustworthiness, reliability, and judgment. No mitigating condition fully applies.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and E, in my whole-person analysis. I also considered Applicant's military service, recent efforts to pay toward current debts, and monthly payments toward his state debt. However, besides the unresolved SOR debts, I find Applicant's intentionally claiming unemployment benefits from the state when he was not entitled to them, is particularly egregious. I remain unconvinced of his trustworthiness, financial responsibility, and ability and willingness to meet his financial obligations.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.



## 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: Subparagraphs 1.a to 1.g:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a and 2.b:	AGAINST APPLICANT Against Applicant

## Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant or continue Applicant's eligibility for access to classified information. Applicant's security clearance is denied.

---

Gregg A. Cervi  
Administrative Judge