



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



In the matter of: )  
)  
) ISCR Case No. 18-02280  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*  
03/06/2019

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline E, personal conduct, or Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

On October 5, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government’s file of relevant material (FORM) on December 20, 2018. Applicant received the FORM on January 3, 2019, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and he provided no response to the FORM. The Government’s evidence, identified as Items 1 through 5, is admitted into evidence without objection. The case was assigned to me on March 1, 2019.

## Findings of Fact<sup>1</sup>

Applicant is 56 years old. No information was provided about his education. He has been employed as a senior systems engineer by a federal contractor since October 2016. He reported a previous assignment with a federal contractor at a military academy from December 2005 to October 2016. Applicant served honorably on active duty in the U.S. Air Force from 1981 to 1985. He reports a previous security clearance from his time in the service, with no issues. Applicant has been married since February 2019, and he has two adult daughters.

Applicant reported one credit-card debt owed to a bank that was more than 120 days delinquent (SOR ¶ 1.b) in section 26 of his security clearance application (SCA).<sup>2</sup> The SOR alleged 10 delinquent debts totaling \$12,305. In his Answer to the SOR, Applicant admitted all of the ten delinquencies alleged in the SOR and the falsification alleged in SOR ¶ 2.a. Applicant claims to be working on resolving his delinquent debts. He stated that his wife's business took losses.<sup>3</sup> No further information was provided. He provided no documentation to substantiate any efforts to contact creditors or resolve these delinquencies. No information was provided to amplify or elaborate on the reasons for his delinquent debts, or any repayment plans.

In his Answer to the SOR, Applicant admitted the past-due account in the amount of \$241 owed to a housing agency at SOR ¶ 1.i, but states that he is current now. It is unclear what progress has been made on this debt because no documentation has been provided. Applicant has provided no explanation or documentary evidence either with his Answer to the SOR or in response to the FORM. Applicant admitted to all of the other SOR delinquent debts, and they are confirmed in his credit reports. He provided no evidence of financial counseling or budget showing income against expenses.

## Policies

This 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 Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's May 26, 2017 Security Clearance Application (SCA) (Item 3).

<sup>2</sup> Item 3.

<sup>3</sup> Item 3, p. 28.

introductory explanations, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

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 adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, 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 ¶ E3.1.15, 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 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. 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 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 abuse, 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.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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's delinquent debts alleged in the SOR are confirmed by his credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>4</sup>

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 . . . , 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 non-profit credit

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<sup>4</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

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; 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 has not provided any explanation how he became delinquent on these debts in the first place, other than his spouse's business losses, or what he is doing about them going forward. He has not identified any circumstances or conditions that were beyond his control. He has produced no relevant or responsive documentation either with his Answer to the SOR, or in response to the FORM. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. Applicant has not met that burden.

None of the mitigating conditions fully apply. Applicant's credit reports and the SOR list 10 delinquent debts totaling \$12,305. Applicant did not provide enough details with documentary corroboration about what he did to address his SOR debts. He did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;<sup>5</sup> (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

In the FORM, Department Counsel informed Applicant that it was important for him to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 3) Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or

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<sup>5</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or his] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

otherwise resolved any of the SOR debts. He did not provide his budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information.

### **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 conditions are 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.

Since Applicant admitted his intent to provide false information as alleged at SOR ¶ 2.a, his intent is not an issue. Applicant responded negatively when asked if he had any delinquencies regarding routine accounts in the last seven years in section 26 of his SCA (Financial). He only disclosed one debt that was more than 120 days past due. The wording of the questions in section 26 of his SCA could not be more straightforward and unambiguous. He disclosed only one delinquent credit-card debt owed to a bank in his SCA. Applicant did not answer the SCA questions honestly. I conclude that he had the specific intent to deceive when he provided false answers in section 26, and he deliberately falsified the SCA. This deliberate falsification has not been mitigated.

### **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 E and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Notably, Applicant has not persuasively addressed the specific allegations in the SOR. He has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline E, personal conduct, or Guideline F, financial considerations.

### **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 through 1.j:	Against 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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge