



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



In the matter of: )  
 )  
----- ) ISCR Case No. 19-00581  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel  
For Applicant: *Pro se*  
07/03/2019

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On March 13, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (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 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 or after June 8, 2017. In an April 12, 2019, response, he admitted or partially admitted six of 11 allegations under Guideline F, both allegations under Guideline E, and also requested a determination based on the written record. On May 8, 2019, the Government issued a File of Relevant Material (FORM) with seven attachments (“Items”). I was assigned the case on June 14, 2019. Based on my review of the record, I find Applicant mitigated Guideline E security concerns, but failed to mitigate Guideline F security concerns.

**Findings of Fact**

Applicant is a 29-year-old contractor who has completed some college. He experienced periods of unemployment from September 2017 to April 2018, June 2017 to August 2017, and, during periods when he was attending college intermittently, from April 2008 to December 2014. At some point during these periods of unemployment, during a

time Applicant emphasized was in his youth and during a time he could not make all payments on his accounts due to “circumstances beyond his control,” he initiated a voluntary repossession of his vehicle to reduce his monthly obligations. (SOR Response at 5) Applicant is single and the father of a nine-year-old child. He is enrolled in a credit repair program to aid in restoring his credit.

In April 2018, Applicant completed a security clearance application (SCA). On the SCA, he answered “no” in response to Section 22, which inquired whether he had ever been charged with an offense involving alcohol or drugs despite a March 2009 arrest for driving under the influence of alcohol (DUI). He answered in the negative because he believed the DUI would be removed from his record when he completed his probation.

Applicant also answered “no” in response to Section 26, which inquired whether he had any bills or debts which had been turned over to a collection agency or had any accounts or credit cards suspended, charged off, or cancelled for failure to pay in the preceding seven years. In his SOR Response, Applicant noted “(t)wo of these instances occurred due to my not being with a job. The other accounts were situations that I did not know of, and situations where I was accused of things that did not happen. Most of these accounts were disputed.” Since learning of all of the accounts at issue, Applicant has “made a good faith effort to be fully transparent with this reviewing body.” (SOR Response at 7).

At issue in the SOR are 11 delinquent debts, amounting to approximately \$41,600. Applicant fully admits those noted at 1.f (charged off account; \$568) and 1.g (charged off auto-related account; \$21,313), attributing their delinquency to his periods of unemployment. He partially admitted the delinquent student loan debts noted in the SOR at 1.a-1.d (totaling about \$17,600), noting that he had been previously unaware that the accounts had been turned over for collection due to their delinquency status. (SOR Response at 3-4)

Of the remaining five accounts at issue in the SOR, Applicant noted:

1.e – Medical balance of \$424 – Applicant denied liability for this account, noting that he had medical insurance at the time and was never made aware of any balance owed.

1.h – Collection for telecommunications entity balance of \$197 – Applicant denied knowledge of this debt.

1.i – Collection for apartment rental entity balance of \$967 - Applicant wrote, “I left my apartment in good standing. There was a dispute with the rental company regarding a broken set of blinds. I disputed this claim and the account was settled.” (SOR Response at 5)

1.j – Medical balance of \$79 – Applicant denied liability for this debt, noting that he was fully covered by medical insurance at the time and was not made aware of a balance owed.

1.k – Collection account balance of \$486 – Applicant denied liability for this account, noting that “during the time I conducted business with this company they switched to a new management company. The new company accused me of missing a payment which I disputed and the charged was removed.” (SOR Response at 5)

In the FORM, the Government was noted that Applicant failed to provide documentary evidence reflecting action taken on the accounts at issue in the SOR, including settlements, payments, or disputes. In his FORM Response, Applicant included multiple pages issued by his credit repair entity reflecting that many accounts had been deleted from his credit report after dispute. The disputed and deleted accounts include the names of some of the entities at issue in the SOR – such as the accounts noted at SOR both 1.f and 1.g, 1.h, 1.i, and 1.k - but do not reflect account numbers, balances, or other information that might help identify and link the referenced accounts in the credit repair effort’s papers with the actual accounts in the SOR. (For example, one entity cited in the credit repair company’s papers is noted in the SOR at both allegations 1.f and 1.g, but it is unclear whether the disputed account is for the debt at 1.f for \$561 or the debt at 1.g for over \$21,000.) That documentation also fails to identify the reasoning behind both the disputes and deletions. It is equally impossible to tell which of the over 10 student loans referenced in the credit repair paperwork are the same as the four of interest in the SOR.

## **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 adjudicative goal is a fair, impartial, and commonsense decision. This 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, in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends duty hours. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions shall be in terms of the national interest and are in no sense a determination as to an applicant's loyalty.

## **Analysis**

### **GUIDELINE F, Financial Considerations**

Under Guideline F, AG ¶ 18 sets forth the security concern that failure or inability 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.

Here, Applicant admitted or partially admitted over half of the delinquent accounts set forth in the SOR, thus acknowledging almost all of the actual delinquent debt at issue. Those admitted or partially admitted allegations include over \$17,000 in student loans and nearly \$22,000 in charged-off accounts. Such facts are sufficient to invoke the following financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the financial security concerns posed:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c): the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attributed his debts, in part, to his inexperience and “circumstances beyond his control.” Assuming the circumstances beyond his control were related to one or more of his three periods of unemployment. At one point, he initiated a voluntary repossession of a vehicle to reduce his monthly obligations. While this singular act demonstrates minimal effort by Applicant under the circumstances, especially in the absence of documentation reflecting efforts to contact his creditors during his times of financial distress, it is sufficient to raise AG ¶ 20(b) in part.

Otherwise, the debts at issue were created by less than extraordinary circumstances. They remained virtually unaddressed until after the SOR was issued. While he has retained the services of a credit repair entity, there is no indication he has received financial counseling. The credit repair entity has apparently conducted a blanket dispute of Applicant’s credit report entries. While this apparently has led to some deletions, the documentation offered inadequately identifies most of the accounts disputed for linking to those accounts at issue in the SOR. Consequently, the degree to which Applicant’s accounts are being resolved or are now under control remains unclear. Because of the success of several disputes of credit report entries, however, I find AG ¶ 20(d) applies in part.

## **GUIDELINE E, Personal Conduct**

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

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.

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

AG ¶ 16(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, and

AG ¶ 16(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single

guideline, but which, when considered as a whole, supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified or sensitive information.

Here, Applicant denied having ever been charged with an offense involving alcohol or drugs, neglecting to note his 2009 DUI. He also failed to identify debts or bills turned over to collection in the preceding seven years, or having has an account or credit card suspended, charged off, or cancelled for failing to pay as agreed within the same time framed. Purposefully inaccurate or false answers on any of these documents would raise AG ¶ 16(a) and AG ¶ 16(c).

By way of explanation, Applicant wrote that he failed to disclose his DUI because he did a poor job in reading the question. He stressed that he believed the DUI would be removed from his record after he completed probation. While candor and good judgment should have resulted in disclosure of the DUI arrest and charge, at a minimum, he was 18 at the time and may not have understood his situation fully. Without more indications that his omission was purposefully committed to falsify or mislead, it cannot be said to have been intentional.

With regard to not disclosing all his delinquent debts, Applicant wrote that two of the debts at issue arose because of his periods of unemployment. He then noted other accounts were previously unknown to him before he received the SOR. As written, it is unclear whether he purposefully concealed the existence of the two delinquent debts he noted were the result of his unemployment. Regardless, there is insufficient evidence to conclude his omissions were the result of fraud or an intent to conceal. Guideline E security concerns are not established.

### **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 adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guidelines at issue in my whole-person analysis.

Applicant is a 29-year-old contractor who experienced periods of unemployment between his college years and April 2018. With insufficient income, bills went unpaid and delinquent accounts were forgotten or otherwise neglected. Although Applicant has relied on counsel in preparing his case and on a credit repair entity for disputing his credit report entries, the documentation provided inadequately identifies the accounts disputed in such a way that they cannot be clearly matched with the delinquent accounts at issue in the SOR. A clear link through identifying information such as account numbers or balances,

preferably along with some helpful narrative, is needed to sufficiently show that the delinquent accounts at issue have been addressed.

To his credit, Applicant provided sufficient information to refute allegations that he intentionally provided false or misleading information on his SCA. Due to the insufficient documentary evidence provided regarding the delinquent debts at issue, however, financial considerations security concerns are sustained. I find that Applicant failed to mitigate financial considerations 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
Subparagraphs 1.a-1.k:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge