



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
(Redacted) ) ISCR Case No. 18-00795  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
For Applicant: *Pro se*

09/20/2021

**Decision**

MODZELEWSKI, Moira, Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 3, 2018, the Department of Defense Consolidated Adjudications Facility (DOD 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 (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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on June 6, 2018, and elected to have his case decided on the written record in lieu of a hearing. Following a loss of jurisdiction and subsequent regaining of sponsorship, Department Counsel submitted the Government's

file of relevant material (FORM) on April 30, 2021. Applicant received the FORM on May 17, 2021, and was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt. The Government's evidence is identified as Items 1 through 8. Applicant did not submit a response to the FORM or object to the Government's documents. Items 1 through 8 are admitted into evidence. The case was assigned to me on September 9, 2021.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. A 1999 high school graduate, Applicant has taken some college classes, but has not earned a college degree. He served in the U.S. military on active duty from 1999 – 2005, was honorably discharged, and affiliated with the Reserve in 2007. In the Reserve, Applicant has mobilized on at least five occasions, including for a 2007 – 2008 deployment to Iraq. At the time of his background interview in April 2016, Applicant was still serving in the Reserve. (Items 3 and 8) Applicant is twice divorced. He married for the first time in 2000 and divorced in 2004. He married for the second time in 2004 and divorced in 2014; he has a 16 year-old son from his second marriage. (Item 3)

Applicant reports one period of unemployment, from June 2005 – June 2006, after his discharge from active duty and while he was a student. When he rejoined the work force in 2006, he initially worked as a security officer for a private contractor and then as a police officer for a municipality. From October 2007 through October 2012, Applicant was continuously mobilized. After his most recent mobilization ended in 2012, Applicant worked first as a police officer onboard a military installation and subsequently as a security officer for three contractors; he is currently sponsored by a federal contractor as a security officer. (Item 3)

In September 2015, Applicant completed a security clearance application (SCA). In Section 26: Delinquency Involving Enforcement, Applicant disclosed a relatively minor child-support arrearage. In Section 26: Delinquency Involving Routine Accounts, the SCA asked if, in the past seven years, Applicant had any bills or debts that were turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled; or, had any financial obligations that were over 120 days delinquent. Applicant responded "no" to the inquiry. (Item 3)

The SOR alleges six debts that accumulated from approximately 2014 to 2016 (SOR ¶¶ 1.a-1.f). Additionally, the SOR alleges that Applicant filed for Chapter 13 bankruptcy in July 2016, that it was dismissed in May 2017, and that five additional debts included in the bankruptcy remain unpaid (SOR ¶¶ 1.g(1)-1.g(5)). Combined, the eleven alleged delinquencies total approximately \$71,851 and include credit-card debts totaling \$18,692, an automobile-loan deficiency of \$21,101, a motorcycle-loan deficiency of \$7,796, and a recreational-vehicle loan deficiency of \$11,240. Finally, SOR ¶ 2.a alleges that Applicant deliberately failed to disclose five specific debts (SOR ¶¶ 1.e, 1.f, 1.g(3),

1.g(4), and 1.g(5)) when he completed his SCA. (Item 1) These were slightly older debts that were already delinquent, charged off, or in collections when Applicant completed the SCA; the other debts alleged became delinquent following completion of the SCA. (Item 4-6)

The allegations are established by Applicant's admissions, credit reports, the bankruptcy trustee's Final Report, and the summary of Applicant's background interview. (Items 2, 4-8) Applicant attributes his financial problems to a bitter divorce and insufficient income. (Item 2)

During Applicant's April 2016 background interview, the government investigator asked Applicant if he was delinquent on any accounts. Applicant confirmed that he was delinquent on his child-support obligations and volunteered that he was also delinquent on a Military Star card account, but volunteered no other delinquencies. (Item 8) The investigator then confronted Applicant with the delinquent debts alleged in SOR ¶¶ 1.e, 1.f, 1.g(3), 1.g(4), and 1.g(5). Applicant acknowledged all five debts, admitted that he knew each was delinquent, and confirmed that creditors and collection agencies had contacted him about the delinquencies. He asserted that his failure to disclose the delinquent debts on his SCA was due to an oversight. (Item 8) Given the totality of the circumstances, I find that Applicant's failure to disclose the debts on his SCA was deliberate, as he was familiar with the debts when confronted, spoke in detail with the investigator about each account, and admitted that collection agencies and creditors had been attempting to contact him. (Item 8)

At the close of his interview, Applicant stated his intent to get a second job in the summer of 2016 and to clear the debts by the end of 2016. (Item 8) In July 2016, Applicant instead filed for Chapter 13 bankruptcy; it was dismissed for a failure to perform in May 2017. (Item 7)

In Applicant's June 2018 answer to the SOR, he notes that the debts alleged at SOR ¶¶ 1.b. and 1.c. are the same delinquency. (Item 2) The credit reports support Applicant's assertion, and I find for the Applicant on SOR ¶ 1.c. (Items 4, 5, and 6) The remaining ten delinquencies total \$60,891. In explanation for his debts, Applicant states that he "fell on hard times between the years 2014 – 2016 due to a bitter divorce," but that he is "back on my feet now." (Item 2) Applicant provided no information on any action he may have taken to repay the debts and provided no explanation for his failure to disclose delinquencies on his SCA. (Item 2)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(c), the entire 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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. 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 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 the guideline for 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 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.

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 (See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has ten delinquent debts that began accumulating in approximately 2014. There is sufficient evidence to support the application of the above disqualifying conditions.

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 (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; and

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

Applicant attributes his financial problems to his divorce in October 2014, an event largely beyond his control. When completing his SCA in September 2015, he was put on notice that delinquent debts were of security concern. In his background interview of April 2016, Applicant was again reminded of the security concerns raised by the debts, as the investigator confronted him about individual debts. Although Applicant then indicated his intent to repay the debts, he has provided no evidence of any actions he has taken in the ensuing five years to contact any creditor, establish a payment plan, or make payments, either before or after receipt of the SOR in June 2018. Moreover, Applicant failed to perform in the one remedial action that he did undertake – that of filing for Chapter 13 bankruptcy. I find Applicant did not act responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant's failure to meet his financial obligations casts doubt on his current reliability, trustworthiness, and good judgment. There is no evidence the problem is under control or being resolved. Applicant has not made a good-faith effort to repay his creditors. AG ¶¶ 20(a), 20(c), and 20(d) do not apply.

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

AG ¶ 15 expresses the security concern for 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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.

When he completed his SCA in September 2015, Applicant was aware that he was delinquent on the five debts alleged in SOR ¶¶ 1.e, 1.f, 1.g(3), 1.g(4), and 1.g(5). Although Applicant attributed his failure to disclose the debts to oversight, there is

sufficient evidence to support application of the above disqualifying condition – that he made a deliberate decision not to disclose the debts to the Government. When confronted with the debts, Applicant recognized each of them, acknowledged them, discussed them in detail with the investigator, and described attempts by creditors to collect on the accounts.

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

- (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.

During his background interview, Applicant did not volunteer the debts when given an opportunity to do so, requiring the investigator to confront him on each individual debt. AG ¶ 17(a) does not apply. The Government relies on people to be forthcoming and honest on their SCA, even when it involves derogatory information. AG ¶ 17(c) does not apply because deliberately failing to disclose information on an SCA and swearing to its accuracy is not a minor offense. I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment.

### **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, but some warrant additional comment.

Applicant is 40 years old. He served honorably in the military for at least 17 years. Applicant attributed his financial problems to his 2014 divorce, but failed to provide evidence of any actions to resolve delinquent debts in the years since that divorce. Ignoring one's legal responsibilities for years raises questions about their reliability, good judgment, and trustworthiness. Applicant also deliberately failed to disclose the delinquent debts on his SCA. At this juncture, Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

### **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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	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 national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Moira Modzelewski  
Administrative Judge