



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 20-03199

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Alan Edmunds, Esquire  
The Edmunds Law Firm

November 1, 2021

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 13, 2020. (Government Exhibit 1.) On December 16, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 28, 2020, and requested a decision on the written record without a hearing before an administrative judge. On March 3, 2021, Applicant requested that the case be heard before an administrative judge. Department Counsel was prepared to proceed on March 4, 2021. The case was assigned to me on March 16, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 15, 2021. The case was heard by video teleconference on May 25, 2021. DOHA received the transcript (Tr.) of the hearing on June 9, 2021.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through I, which were also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant submitted Applicant Exhibits J and K in a timely fashion and they were also admitted without objection. The record closed on June 18, 2021.

### **Findings of Fact**

Applicant is 34 years old and unmarried. He has two children from a prior relationship. He has received an Associate's degree in Information Technology. Applicant has been employed by a defense contractor since October 2019. He is seeking to obtain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 13A, and 17; Applicant Exhibit E.)

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR alleged that Applicant had nine past-due or charged-off debts. The total amount of the past-due indebtedness was approximately \$31,453 as of the date of the SOR. Applicant admitted all nine allegations in the SOR. The existence and amount of indebtedness is supported by a credit report in the record dated April 29, 2020. (Government Exhibit 3.)

Applicant's financial issues had their genesis in about 2014. In May of that year Applicant was injured at work. In September 2014 he was cleared to go back to work, but his employer could not accommodate his work restrictions and he was let go. Applicant received a financial settlement after his termination and lived on that and disability until

he was reemployed in September 2016. Applicant had an additional three-month period of unemployment in 2017. Applicant stated that since becoming employed in 2017 he has worked diligently to resolve his debts. (Applicant Exhibit D; Tr. 17-20, 30-32, 34-35.)

The current status of the debts alleged in the SOR is as follows:

1.a. Applicant admitted owing a creditor \$13,190 for a debt that was charged off. He reached a payment agreement with the creditor for a reduced amount and paid that amount in March 2021. This debt is resolved. (Applicant Exhibit I; Tr. 17.)

1.b. Applicant admitted owing a bank \$3,647 for a charged-off debt. Applicant has not paid this debt and has no current plans to pay this debt. It is not resolved. (Tr. 20-22.)

1.c. Applicant admitted owing a bank \$3,278 for a charged-off debt. He has not paid this debt. Applicant testified that he is currently in negotiations with the creditor to resolve this debt. It is not yet resolved. (Tr. 20-21.)

1.d. Applicant admitted owing a bank \$2,482 for a charged-off account. Applicant has not paid this debt and has no current plans to pay this debt. It is not resolved. (Tr. 21.)

1.e. Applicant admitted owing a creditor \$2,240 for a past-due account. Applicant has not paid this debt and has no current plans to pay this debt. It is not resolved. (Tr. 23.)

1.f. Applicant admitted owing a creditor \$2,126 for a past-due account. Applicant paid this debt off in March 2021, as confirmed by documentation from the creditor. This debt is resolved. (Applicant Exhibit G; Tr. 23.)

1.g. Applicant admitted owing a creditor \$2,089 for a charged-off account. Applicant has not paid this debt and has no current plans to pay this debt. It is not resolved. (Tr. 23.)

1.h. Applicant admitted owing a creditor \$1,358 for a past-due debt. Applicant paid this debt, as confirmed by documentation from the creditor. This debt is resolved. (Applicant Exhibit K; Tr. 23-24.)

1.i. Applicant admitted owing a creditor \$1,043 for a charged-off account. Applicant testified that he believed the account had been resolved. As stated, the record was left open for the receipt of additional documentation. No additional documentation was received concerning this particular debt. It is not resolved. (Tr. 24-25.)

Applicant testified that he began attempting to resolve his past-due indebtedness in approximately 2019. He submitted documentation showing that he had paid off several

creditors that were not listed in the SOR during 2019 and 2020. (Applicant Exhibit J; Tr. 36-38.)

## **Paragraph 2 (Guideline E: Personal Conduct)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he falsified material facts during the clearance screening process. Applicant admitted the allegations under this paragraph, with qualifications.

Applicant filled out an e-QIP on March 13, 2020. (Government Exhibit 1.) Section 26 of that questionnaire concerned Applicant's financial record and has several subparts. As stated in the SOR, with regard to this case, Applicant was asked if, in the seven years before the date he filled out the questionnaire, he had bills or debts turned over to a collection agency, or had an account suspended, charged off or cancelled for failing to pay as agreed. Applicant answered these questions, "No." This was a false answer to a relevant question about Applicant's financial history.

Applicant stated in his Answer about his negative response to the financial questions, "I admit to improperly reading and answering the question." During his testimony Applicant stated, "I believe I misread the question or read it too fast." (Tr. 25, 38-39.)

Section 13A of the same questionnaire asked Applicant about his employment thusly, "List all of your employment activities, including unemployment and self-employment, beginning with the present and working back 10 years." For each period of employment the questionnaire also asked the reason for leaving. The reasons include, "Fired, Quit after being told you would be fired, Left by mutual agreement following charges or allegations of misconduct, Left by mutual agreement following notice of unsatisfactory performance." For the period from December 2016 to December 2017 Applicant stated that he had been unemployed. In fact, Applicant had been employed from March 2017 to June 2017 and had been fired from the position for poor work performance. This was also a false answer to a relevant question about Applicant's work history.

In his Answer Applicant stated about his false answer to the employment question, "I admit to incorrectly answering the question, subsequently leaving out a period of employment." Applicant testified about this answer, "I believe I just blanked on the dates because those dates are in fact on my resume (Applicant Exhibit A) so I did not intentionally leave them out." Applicant also testified that he was told he would be fired because he was a poor performer. Finally, he stated, "I mean, it was only a short period of time and this was several years ago." (Tr. 26, 33, 39-40.)

It is noted that Section 13C – Employment Record of the e-QIP specifically states, "Have any of the following happened to you **in the last seven (7) years** at employment

activities that you have not previously listed? (If 'Yes,' you will be required to add an additional employment in Section 13A.)" (Emphasis in original.) One of the reasons stated is, "Fired from a job." Applicant also answered this question, "NO."

## **Mitigation**

Applicant submitted two laudatory letters of recommendation. The writers state Applicant is a trustworthy individual. (Applicant Exhibit B.)

Applicant has received positive evaluations for his current employment. (Applicant Exhibit C at 3-6.)

Applicant served in the Marine Corps from 2004 to 2010. He received an Honorable Discharge. (Government Exhibit 1 at Section 13A; Applicant Exhibits B and F; Tr. 28-29.)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, "Any 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, "The 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 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 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. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

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 was alleged to owe approximately \$31,000 in past-due and charged-off commercial debts as of the date the SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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 has made strides in resolving his past-due indebtedness. Applicant began to resolve the debts in 2017, when he regained employment after a long period of unemployment and before receiving the SOR. Mitigating Condition (MC) ¶ 20(a) has application.

Applicant testified that the majority of these debts occurred during his period of unemployment. Once he regained full-time employment Applicant began to resolve them. He acted responsibly under the circumstances. MC ¶ 20(b) has application.

MC ¶ 20(c) has partial application. There is evidence that the problem is being resolved and is under control, as further described below.

MC ¶ 20(d) has application. Applicant has initiated a good-faith effort to repay overdue creditors. He has already paid out a large amount of money, and fully resolved four of the nine debts listed in the SOR, including the largest debt. Applicant has also resolved several other delinquent debts not alleged in the SOR. As the DOHA Appeal Board has stated, "An applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts

and has taken significant actions to implement that plan.” (ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).) Applicant has done so in this case.

Considering all the facts in this case, and after applying both the Disqualifying and Mitigating Conditions, I find that Applicant has sufficiently mitigated his financial issues. I have considered the fact that Applicant was dilatory in paying these debts. Under the particular facts of this case, his current record of payments has mitigated that fact. Paragraph 1 is found for Applicant.

## **Paragraph 2 (Guideline E: Personal Conduct)**

The concern under this guideline 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The following disqualifying condition is applicable under 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.



Applicant's e-QIP contained incorrect information concerning his finances and his employment record. The record is clear that Applicant knew of the delinquent debts, and that he had been fired from employment in 2017. The stated disqualifying condition applies to the facts of this case because of those omissions.

The following conditions are potentially mitigating under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; 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.

Turning first to the financial question, Applicant's argument is that he misread the question or read it too fast. The question is straight-forward, and Applicant was certainly knowledgeable he had bad debts in 2020 because he was paying them off in 2019 and 2020. His explanation is insufficient to support his argument that this was a mistake instead of an intentional act.

Applicant acting intentionally in falsifying his questionnaire is also shown by his conduct in answering the relevant question about his employment record. The questionnaire asks applicants twice about whether they had been fired, once in Section 13A, which goes back ten years. Then, just to make sure, Section 13C specifically asks about leaving a job within seven years under adverse conditions. His termination occurred three years before filling out the questionnaire. Once again, his explanation is insufficient to support his argument that this was a mistake and not an intentional act.

Based on the foregoing I cannot find that Applicant mitigated the allegations under this guideline. Guideline E is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for 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.

Under AG & 2(c), the ultimate determination of whether to grant national security 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 pertinent facts and circumstances surrounding this case. Applicant has successfully mitigated the concerns regarding his financial situation. He did not mitigate the personal conduct concerns. He has not demonstrated rehabilitation and the potential for pressure, coercion, or duress has not been mitigated. Overall, the record evidence does create doubt as to Applicant=s present suitability for national security eligibility and a security clearance.

### **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:	FOR APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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 or continue Applicant=s national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge