



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



In the matter of: )  
 )  
----- ) ISCR Case No. 19-03787  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Mary Margaret Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

04/08/2022

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the national security concerns arising from his problematic financial history and his personal conduct. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 8, 2017. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on May 7, 2021, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on September 3, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On September 30, 2021, Department Counsel submitted the Government’s file

of relevant material (FORM), including documents identified as Items 1 through 6. Applicant was sent the FORM on October 5, 2021, and he received the FORM on November 17, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted without objection. The case was assigned to me on January 25, 2022.

### **Findings of Fact**

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 66 years old, married, with two adult children. He has a bachelor's degree. Applicant has worked for a defense contractor since February 2015. He served in the U.S. Army on active duty from March 1974 until September 1987, and in Army Reserve components from 2000 to 2015. All of his discharges were honorable. (Item 3.)

Under Guideline F, the SOR alleged that Applicant has 11 delinquent debts totaling \$117,979. Applicant denied those Guideline F delinquencies, except for one. He admitted ¶1.b. He denied ¶¶ 1.a., 1.c., and 1.d. (duplicate charges), ¶¶ 1.e. and 1.f. (invalid collections), ¶¶ 1.g., 1.i., and 1. j. (paid), ¶1. k. (invalid charge), and ¶ 1.h. ("never had card in his name").

Under Guideline E, SOR ¶ 2.a. alleged that Applicant deliberately failed to disclose the delinquent accounts listed in SOR ¶ 1. SOR ¶ 2.a. alleged that Applicant additionally failed to disclose a mortgage account that went into foreclosure in 2015. To SOR ¶ 2.a., he answered that "rental property went into foreclosure."

Applicant provided no documents in support of his Answers to the SOR. The evidence supports the delinquent accounts alleged in the SOR. (Items 5 and 6.) Aside from one mortgage account in foreclosure, Applicant claimed no knowledge of the delinquent accounts alleged in the SOR. (Item 4.) He was, however, knowledgeable enough to answer with some detail about those accounts, including details about the mortgage account. (Items 2 and 4.)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 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 access to classified information 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. 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. 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.

## **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. . . .

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

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The SOR debts are established by the Government's credit reports. Applicant's carelessness about his financial affairs demonstrates a potential and an actual risk of compromise of classified information. AG ¶¶ 19(a) and 19(b) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Applicant produced no documents supporting his answers. The DOHA Appeal Board has previously held that it is reasonable to except applicants to produce documents showing that debts have been or are being resolved. See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). I find that none of the mitigating conditions under AG ¶ 20 apply in this case.

### **Guideline E - Personal Conduct**

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). Under Guideline E for personal conduct, the concern is that "[c]onduct 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." A statement is false or dishonest when it is made deliberately (knowingly and willfully).

In this case, the SOR alleged that Applicant falsified facts by failing to disclose his financial delinquencies. The record shows that Applicant had sufficient knowledge and information to identify his delinquent accounts in his SCA. I find that he deliberately failed to disclose his financial delinquencies in his SCA. Therefore, I find against Applicant on SOR ¶ 2(a).

### **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):

(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 Guideline F and Guideline E in my whole-person analysis.

Under AG ¶ 2(a), 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 also considered the whole-person concept.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that 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.-k.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented, it is clearly not consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Philip J. Katauskas  
Administrative Judge