



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 20-03627
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
 For Applicant: *Pro se*  
 08/31/2022

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**Decision**

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HOGAN, Erin C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

On February 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F and Guideline E. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on February 28, 2021, and requested a decision based on the written record in lieu of a hearing. On August 3, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 10. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation,

or explanation to the Government's evidence. He received the FORM on August 11, 2021. He submitted two documents in response to the FORM, which are admitted without objection as Applicant Exhibits (AE) A and B. The case was assigned to me on August 18, 2022.

### **Findings of Fact**

Applicant, age 42, is married with one adult stepchild and two minor children. He received his high school diploma in 1998. He served on active duty in the US Army from 1998 until he retired in May 2019. He is currently employed with a Department of Defense federal contractor and is seeking a security clearance. He was granted a Secret security clearance in January 2006 and in January 2017. (Item 4)

The SOR alleged under Guideline F, a Chapter 7 bankruptcy filing on October 23, 2015. The bankruptcy discharge occurred on February 1, 2016. (SOR ¶ 1.a: Item 7). The SOR also alleged five delinquent debts to include: a \$916 catalog account that was placed for collection (SOR ¶ 1.b: Item 6 at 8; Item 9 at 10; Item 10 at 2-3); a \$444 credit card account that was charged off (SOR ¶ 1.c: Item 6 at 9; Item 9 at 3-4, 9-11; Item 10 at 2); a \$790 account, past due in the amount of \$194 (SOR ¶ 1.d: Item 9 at 3); a \$16,556 delinquent automobile account that was charged off (SOR ¶ 1.e: Item 6 at 10, Item 9 at 9); and a delinquent automobile account that that was charged in the amount of \$12,157 (SOR ¶ 1.f: Item 6 at 8, Item 9 at 10, 13)The total amount of the delinquent debt incurred after the 2016 bankruptcy discharge is approximately \$30,267.

Under Guideline E, Personal Conduct, it is alleged that Applicant deliberately omitted his delinquent debts on an Electronic Questionnaires for Investigation Processing (e-QIP) in response to Section 26 - Financial Record Delinquency Involving Routine Accounts, which was signed and certified by Applicant on February 5, 2020. (Item 4)

Applicant admits to all of the SOR allegations.

Applicant filed bankruptcy on October 23, 2015. He claimed total assets of \$250,433 and total liabilities of \$101,795. Applicant's dischargeable debts were discharged on February 1, 2016. (Item 7) After the discharge, Applicant continued to struggle financially.

In response to DOHA Interrogatories, dated January 18, 2021, Applicant authenticated the unsworn summary of his background investigation interview as accurate. The interview was held June 8, 2020. At the beginning of the interview, Applicant was asked twice whether he had any debts that were currently over 120 days late. He answered, "No." He was also asked twice whether he had any debts that were over 120 days late since his bankruptcy. He again answered, "No." He was also asked twice about whether he had any repossessions. He answered, "No." He was then confronted with numerous delinquent accounts that were not included in his bankruptcy. (Item 6) Applicant admitted to all of the delinquent accounts to include the two automobile repossessions. He did not list the delinquent accounts on his security clearance application because he was not aware they were delinquent. His wife handles all of the

finances. The two car repossession debts alleged in SOR ¶¶ 1.e and 1.f resulted from his wife not making the car payments because she has a gambling addiction. The two cars were repossessed in December 2017. Applicant believed that he would not owe anything after the two cars were repossessed. His wife spends about \$2,000 every two months on gambling and refuses to let Applicant handle the finances. (Item 6 at 4-5)

Applicant believed that he did not need to pay any accounts that were charged off. There was only one debt (SOR ¶ 1.b) that was not charged off. He claims he was unable to make any payments towards this account because his employer and the union were negotiating, which resulted in reduced work hours and pay. (Applicant provided no details about the negotiations as well as specifics about his reduced pay and work hours.) (Item 7 at 7-11)

In his response to the FORM, Applicant states that he does not contest the allegations about falsifying his e-QIP application. He states he had a lack of moral and ethical judgment, but states he “came clean” when he spoke to the investigator and when he answered the interrogatories. He requests that his security clearance not be denied due to one moral and ethical lapse in judgment. Applicant admits his finances have been less than perfect. He reiterated that he was under the impression that the automobile repossessions were written off. He admits that he did not live within his means for a small period of time. He has not taken action towards any of these debts because he is paying his accounts that are in good standing. He has not incurred additional debt. (AE A at 1 - 2)

In September 2021, Applicant was able to move to on-base housing, which allowed his rent to be reduced to \$1,500 a month. Other monthly payments include: \$400 car insurance; \$240 family cell phone plan; \$100 internet; \$80 streaming services; \$140 gas; \$400 groceries; and \$100 miscellaneous. His total monthly expenses are approximately \$2,960. (AE B). He did not list his current monthly income, but mentioned during his background investigation interview that his monthly income was \$4,890. (Item 6 at 5) Based on this figure, he has approximately \$1,930 left over each month after expenses.

Applicant states that although he is required to have a SECRET clearance to work in his building, he never handles classified information. Applicant states that he is highly respected by his supervisors and co-workers. He is trying to mitigate his financial issues and is aware of the risks associated with financial difficulties. He would never engage in espionage, subversion, or anything that would cause discredit upon himself, his job, or his country. He requests that he be allowed to continue to have his security clearance. (AE A at 3)

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant

applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

## Analysis

### Guideline F: Financial Considerations

The concern under this guideline 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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))

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

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

Applicant has a long history of financial irresponsibility, resulting in a Chapter 7 bankruptcy in 2015. He continued to incur delinquent debts even after his debts were discharged in February 2016. The total amount of delinquent debt incurred after the bankruptcy discharge is \$30,267. The above disqualifying conditions apply.

AG ¶ 20 notes several factors that could mitigate the concern under this guideline, I find the following relevant:

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; and

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

I find none of the mitigating conditions apply. Applicant has not attempted to resolve any of the delinquent accounts alleged in the SOR. He provided insufficient information to indicate the financial problems were caused by circumstances beyond his control. He states his wife has a gambling problem, yet he lets her handle the household finances, even though she neglects to pay the bills because she spends the money gambling. I am unable to conclude Applicant's financial issues are unlikely to recur and no longer cast doubt on his reliability, trustworthiness, or good judgment. Thus, I find that Applicant has not mitigated the Guideline F concerns at this time.

### **Guideline E – Personal Conduct**

The security concern relating to the guideline 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. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant's case:

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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 16(a) applies because Applicant admits that he deliberately omitted his delinquent accounts in response to Section 26 of his e-QIP. When confronted by an investigator interviewing him during his background investigation, Applicant denied he had delinquent accounts, including two automobile repossessions. He only admitted the debts after the investigator confronted him about his delinquent accounts. Applicant also claimed that he was unaware of the accounts. In his response to the FORM. Applicant finally admitted that he deliberately omitted his delinquent accounts on his security clearance application. Applicant's deliberate omission of his delinquent accounts and two automobile repossessions on his e-QIP application raises questions about his judgment, trustworthiness, reliability, and willingness to comply with rules and regulations. This raises questions about Applicant's ability to handle classified information.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Neither mitigating condition applies. Applicant did not make a prompt, good-faith effort to correct his omitted financial delinquencies. He did not admit to his delinquent accounts until after the investigator confronted him with the information about his delinquent debts including two automobile repossessions. His deliberate omission of his delinquent accounts on his security clearance application was serious and raised questions about Applicant's reliability, trustworthiness, and judgment.

### **Whole-Person Analysis**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I considered Applicant's active duty service in the U.S. Army. I considered his work as a contractor for the Department of Defense. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his delinquent debts and his intentional omission of his delinquent debts on his security clearance application. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings 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.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant eligibility for access to classified information. Clearance is denied.

Erin C. Hogan  
Administrative Judge