



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



In the matter of: )  
)  
) ISCR Case No. 12-07758  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Jr., Esq., Department Counsel  
For Applicant: *Pro Se*

05/29/2014

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guidelines F (financial considerations) and E (personal conduct). Clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on March 19, 2012. On December 19, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On January 27, 2014, and February 5, 2014,

Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. On February 28, 2014, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 7. On that same day, a copy of the FORM was mailed to Applicant. He was given 30 days from its receipt to submit objections or supply additional information. He did not submit a response to the FORM. The case was assigned to me on May 13, 2014. Items 1 through 7 are entered into the record.

### Findings of Fact

Under Guideline F, the SOR alleged that Applicant had seven delinquent debts totaling \$41,946. Under Guideline E, it alleged that he falsified two e-QIP responses by deliberately omitting information about his delinquent debts. In his Answer to the SOR, Applicant admitted all of the delinquent debts (SOR ¶¶ 1.a – 1.g) and denied the falsification allegations (SOR ¶¶ 2.a – 2.b). His admissions are incorporated as findings of fact. The delinquent debts listed in the SOR are established by credit reports dated April 6, 2012 (Item 6), and September 17, 2013 (Item 7).<sup>1</sup>

Applicant is a 44-year-old employee of a defense contractor. He has worked for that contractor since 1993. He earned a bachelor's degree in 2002. He served honorably in the U.S. Air Force Reserve from July 1988 to November 1992. He married in July 2002 and divorced in June 2008. He has two children, ages 7 and 9. He has held a security clearance while in the Air Force and again since 2001.<sup>2</sup>

Applicant attributed his financial problems to his divorce. The divorce was unexpected and resulted in Applicant going from two incomes to one. He indicated that he never had delinquent debts before his divorce or since then. He also stated that he would like to begin paying the delinquents debt once his financial situation improved. During an Office of Personnel Management (OPM) interview on May 22, 2012, he stated that he had placed himself on a budget and hoped to start repaying the delinquent debts within the next year.<sup>3</sup>

In his response to financial interrogatories on October 17, 2013, Applicant indicated that he has not paid any of the delinquent debts. The credit reports contained the following information about these debts:

SOR No.	Amount	Date Opened	Date of Last Activity	Status
SOR ¶ 1.a	\$420	Unknown	May 2009	Placed for collection June 2010.

<sup>1</sup> Items 1, 2, 6, and 7.

<sup>2</sup> Items 4, 5, and 6.

<sup>3</sup> Item 5.

SOR No.	Amount	Date Opened	Date of Last Activity	Status
SOR ¶ 1.b	\$12,990	October 2006	August 2009	Charged off/closed.
SOR ¶ 1.c	\$2,892	June 2006	August 2009	Charged off/closed.
SOR ¶ 1.d	\$8,435	July 2007	April 2008	Charged off.
SOR ¶ 1.e	\$15,956	January 2008	September 2008	Charged off/closed.
SOR ¶ 1.f	\$1,253	April 2005	September 2005	Charged off/closed.
SOR ¶ 1.g	\$90	Unknown	March 2010	Placed for collection November 2009.

Applicant did not provide any information showing he contacted the creditors in an attempt to resolve these debts. He has not received any financial counseling. Two of the above accounts (SOR ¶¶ 1.b and 1.d) were for vehicle loans that resulted in voluntary repossessions. Both of those vehicles incurred repair problems that Applicant could not afford to pay. During the OPM interview, he claimed he was unaware of the debts in SOR ¶¶ 1.a and 1.g, but acknowledged that he had other accounts that were placed for collection.<sup>4</sup>

In his response to interrogatories, Applicant provided a Personal Financial Statement (PFS) that reflected his total net monthly income was \$3,344 and his total monthly expenses were \$3,040, which left him a net monthly remainder of \$304. The PFS did not include payments for any of the alleged debts.<sup>5</sup>

The SOR alleged that Applicant falsified his e-QIP by responding “No” to questions that asked whether he had bills or debts turned over to a collection agency in the last seven years or whether he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed in the last seven years. In fact, he responded “No” to all of the questions in the e-QIP that asked if he had encountered any financial difficulties in the past seven years, including whether he defaulted on any type of loan or had any property voluntarily or involuntarily repossessed. In his Answer to the SOR, Applicant denied both falsification allegations and stated he did not intentionally omit this information but rather could not find where to enter the information on the website. He also pointed out that he admitted this e-QIP error to the investigator during the OPM interview.<sup>6</sup>

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<sup>4</sup> Items 2, 5, 6, and 7.

<sup>5</sup> Item 5.

<sup>6</sup> Items 1, 2, 4, and 5. The SOR did not allege that Applicant falsified his e-QIP by failing to disclose that he had defaulted on any loan or by failing to disclose that he had any repossessions. Conduct not alleged in the SOR may be considered to assess an applicant’s credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of the whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006). Applicant’s failure to disclose that he defaulted on loans or had repossessions will be considered for these limited purposes.

Applicant presented no reference letters, work performance evaluations, or other character evidence. Since he elected to have his case decided without a hearing, I was unable to hear his testimony, ask him questions, evaluate his demeanor, or assess his credibility.

## **Policies**

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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. See *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 (4<sup>th</sup> Cir. 1994). The guidelines

presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

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

Applicant accumulated seven delinquent debts that he was unable or unwilling to satisfy for several years. This evidence is sufficient to raise the above disqualifying conditions.

Four financial considerations 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

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

Applicant indicated that his delinquent debts arose because of his divorce in June 2008. He also encountered vehicle repairs that he could not afford. Although his divorce and vehicle problems were conditions beyond his control, Applicant has not met the full requirements of AG ¶ 20(b) because he has failed to show that he acted responsibly under the circumstances. When Applicant separated from his ex-wife is unknown, but the dates of last activity on his delinquent debts span from September 2005 to March 2010, which was well before and well after his divorce. Even though Applicant has a small positive net monthly remainder, he has not made any payments toward the delinquent debts, including two relatively small debts of \$90 and \$420. He has not received financial counseling nor has he made any attempts to resolve these debts. There are no clear indications that his financial problems are under control or are being resolved. His delinquent debts are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), and 20(d) do not apply.

### **Guideline E, Personal Conduct**

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

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 a condition that may be disqualifying in this case:

(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 Applicant submitted his e-QIP, he knew that he had delinquent debts. He knew then that some of those debts were either placed for collection or charged off. Yet, he answered “No” to all of the questions in the e-QIP that asked if he had encountered any financial problems in the past seven years. His claim that he could not find where to enter the debt information on the website is unconvincing and does not explain why he answered “No” to financial questions that he should have answered in the affirmative. Sufficient information was presented to establish that Applicant deliberately falsified material facts on his e-QIP. AG ¶ 16(a) applies.

Six personal conduct mitigation conditions under AG ¶ 17 are potentially applicable:

(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 improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant knew about some of his delinquent debts when he submitted his e-QIP and intentionally concealed information about them in responding to pertinent questions. His false statements on his e-QIP are recent and significant. In falsifying his e-QIP, he seriously undermined the security clearance adjudication process. I find that none of the mitigating conditions apply to his falsifications.

## **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(a):

(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.

My comments under Guidelines F and E are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served honorably in the Air Force Reserve for four years. He has worked for his current employer for 21 years. He has held a security clearance for a number of years without incident. Nonetheless, he failed to show that he acted responsibly in resolving his delinquent debts. His e-QIP falsifications also continue to raise serious concerns about his reliability, trustworthiness, and good judgment. Overall, the record evidence leaves me with questions and doubts about his eligibility and suitability for a security clearance. From the foregoing, I conclude Applicant failed to mitigate the security concerns under Guidelines F and E.

## **Formal Findings**

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: Subparagraphs 1.a – 1.g:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a – 2.b:	AGAINST APPLICANT Against Applicant



## **Decision**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Clearance is denied.

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James F. Duffy  
Administrative Judge