



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



In the matter of:	)	
	)	
	)	ISCR Case: 12-11006
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

02/29/2016

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant failed to produce sufficient evidence to mitigate the financial security concerns related to his defaulted mortgage and two other delinquent debts. He provided sufficient evidence to mitigate personal conduct security concerns raised by the non-disclosure of those debts in his security clearance application. Based on the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On July 18, 2012, Applicant submitted a security clearance application (SF-86) for re-investigation. On January 29, 2015, the Department of Defense (DoD) 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 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DoD after September 1, 2006.

Applicant answered the SOR on May 22, 2015 (AR), and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on August 12, 2015, and received by him on August 19, 2015. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit any documents or objections to the Government's Items; hence, Items 1 through 8 are admitted into evidence. DOHA assigned the case to me on December 10, 2015.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all three of the allegations contained in the SOR under Guideline F. He denied the sole allegation under Guideline E. (Item 4.) His admissions are accepted as factual findings.

Applicant is 64 years old and married for 44 years. He has worked for federal contractors since 1993 and held a security clearance since 2004. (Item 5.)

In 1978 Applicant purchased a home. In 2007 he refinanced his mortgage for about \$130,000, resulting in monthly payments of \$1,000. Between 2011 and 2012 he fell behind on the payments as a result of rising heating oil prices and medication costs for him and his wife. In February 2012 the bank modified his mortgage and he made payments accordingly. In February or March 2013, the bank rescinded the modification and refused to accept Applicant's payments. Applicant has spent \$15,000 on legal fees in an attempt to resolve the matter. When the SOR was issued in January 2015, Applicant's unpaid mortgage was \$19,889 past due with a balance of \$143,443. Applicant did not submit any documentation confirming his efforts to resolve this matter or to indicate that it was resolved.

In addition to an unpaid mortgage balance, the SOR alleged two other delinquent debts. One is owed to a cellular company for \$1,034 due since 2009; the other debt for \$581 is owed to another creditor since 2012. Both are unresolved.

When he completed his July 2012 SF-86 for re-investigation, Applicant failed to disclose the mortgage and cellular debts to the Government.<sup>1</sup> (Item 5.) In his Answer to the SOR, Applicant denied that he falsified his answers. He said he did not disclose the mortgage because the bank had modified the loan at the time he completed the SF-86, at which point he did not consider it delinquent. He thought the debt to the cellular company was paid. (Item 4.)

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<sup>1</sup> Under the personal conduct guideline, the SOR ¶ 2.a alleged that Applicant failed to disclose the mortgage default listed in SOR ¶ 1.a and the cellular debt listed in SOR ¶ 1.b. It did not allege that he failed to disclose the debt listed in SOR ¶ 1.c.

## Policies

When evaluating an applicant's suitability for a security clearance, 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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), 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 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. Directive ¶ E3.1.15 states that "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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 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 information.

## Analysis

### 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 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.

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.<sup>2</sup>

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

The three delinquent debts alleged in the SOR accumulated between 2009 and 2012. To date Applicant has been unable or unwilling to resolve the debts. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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;

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant failed to submit documentation that he has addressed the three alleged delinquent debts. Hence, they remain ongoing and raise questions about his reliability in managing financial obligations. The evidence does not support the application of AG ¶ 20(a).

Applicant provided some evidence that circumstances beyond his control contributed to the delinquent debts, namely an increase in the cost of heating oil and medications. However, he did not produce evidence to confirm his assertions that he attempted to manage the debt while it was accumulating. AG ¶ 20(b) does not provide mitigation of the security concerns. There is no evidence that he participated in financial counseling or that his financial problems are under control. Thus, he failed to establish mitigation under AG ¶ 20(c). Although he stated in his Answer that he spent \$15,000 to resolve the loan modification problem with the bank, he did not submit evidence to corroborate his assertions. Nor did he present information to establish that he made good-faith efforts to pay or resolve any of the three debts. AG ¶ 20(d) does not apply. Applicant did not dispute any of the alleged debts; thus, AG ¶ 20(e) does not apply.

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

AG ¶ 15 expresses the security concern pertaining to 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 a condition that could raise a security concern and may be disqualifying:

(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.

The Government alleged that Applicant intentionally falsified his SF-86 because he failed to disclose a defaulted mortgage and a delinquent debt. Applicant denied that allegation. He did not consider the mortgage to be delinquent because it had been modified by the bank and he thought he had paid the 2009 cellular debt. His explanation for not disclosing the mortgage delinquency or the cellular debt is adequate and credible. SOR ¶ 2.a is found in his favor. As a consequence, an analysis of mitigating conditions is not warranted.

### **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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is 64 years old. He has been employed by a defense contractor since 1993. In his Answer, he explained some of the problems related to his mortgage modification, but did not submit any documentation confirming his statement. Although the FORM gave him notice of the Department's argument that he failed to produce sufficient evidence about the mortgage problem and the status of the other two delinquent debts, he failed to submit any additional information in the 30 days he had available to do so. Overall, the record

evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. The personal conduct guideline is found in his favor; however, he did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.c:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM  
Administrative Judge