



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 14-01740
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: Marisa Postma, Personal Representative

11/14/2014

---

**Decision**

---

FOREMAN, LeRoy F., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application on November 22, 2013. On June 9, 2014, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD acted 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 (AG) implemented by DOD on September 1, 2006.

Applicant received the SOR on June 19, 2014; answered it on July 3, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 14, 2014, and the case was assigned to me on August 19, 2014.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 20, 2014, scheduling the hearing for September 11, 2014. I convened the hearing as scheduled. Government Exhibits (GX) 1, 2, 4, 5, and 7 were admitted in evidence without objection. GX 3 and 6 were not admitted, for the reasons set out below. Department Counsel's letter to Applicant, providing him with copies of documents she intended to submit at the hearing, is attached to the record as Hearing Exhibit (HX) I. Applicant testified, called one witness, and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection.

I kept the record open until September 23, 2014, to enable Applicant to submit additional documentary evidence. He timely submitted AX D through G, which were admitted without objection. Department Counsel's comments regarding AX D through G are attached to the record as HX II. DOHA received the transcript (Tr.) on September 25, 2014.

### **Evidentiary Rulings**

GX 3 and 6 are unauthenticated summaries of personal subject interviews conducted on December 7, 2013, and August 24, 2011. I explained the authentication requirement in Directive ¶ E3.1.20 to Applicant, and he declined to waive it. (Tr. 27-30.) Thus, I did not admit GX 3 and 6.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.i. He admitted that his negative answers to two questions about delinquent debts and arrests (SOR ¶¶ 2.a and 2.b) on his SCA were incorrect, but he denied intentional falsification. I have treated his responses to SOR ¶¶ 2.a and 2.b as denials. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant married in July 1988. He and his wife have two daughters, ages 24 and 25, and a 22-year-old son. One of their daughters lives with them and is pregnant with twins. Their daughter receives no financial help from the father of the twins. (Tr. 43, 92.)

Applicant served on active duty in the U.S. Navy from June 1985 to June 2005, retiring as a petty officer first class and receiving an honorable discharge. He worked in the private sector from June 2005 to February 2008. He worked for his current employer, a defense contractor, from March 2008 to September 2009, when he was terminated for "violation of base policies." He was unemployed from September 2009 to September 2010, worked in the private sector from September 2010 to July 2011, and was rehired by the same defense contractor in July 2011. He received eligibility for a public trust position in 2011. (GX 1 at 9-16; GX 4.)

Applicant's "violation of base policies" consisted of being stopped by police on a Navy base, where he worked as a contractor employee, for riding a motorcycle with no mirrors and an expired base registration. He was accused of directing vulgar language

at the policeman, attempting to flee, and illegally possessing a weapon (a knife in his boot). He was barred from the base for one year, which made it impossible for him to continue working for his employer. (GX 7.)

Applicant submitted a Questionnaire for Public Trust Positions in July 2001. He disclosed that he was fired in September 2009 for “violation of company policy.” (GX 4 at 4.) In response to a question whether, in the past seven years, he had been arrested for, charged with, or convicted of any offenses, he disclosed the incident on the Navy base. He answered “No” to questions whether, in the past seven years, he had any judgments rendered against him and whether he was currently more than 180 days delinquent on any debts. (GX 4 at 7.) He admitted at the hearing that he was confronted with his financial record by a security investigator, and that he told the investigator that he was unaware of his delinquent debts because his wife handled the family finances. (Tr. 50-51.) He also admitted that he filed a Chapter 13 petition in October 2003 and that it was dismissed in February 2004. (Tr. 59.)

When Applicant submitted his SCA in November 2013, he answered “No” to two questions: (1) whether, during the past seven years, he had a judgment entered against him, had bills or debts turned over to a collection agency, or had been more than 120 days delinquent on any debt; and (2) whether, during the past seven years, he had been arrested by any police officer, sheriff, marshal or another type of law enforcement officer. He did not disclose any judgments, delinquent debts, or his arrest on the Navy base.

Applicant’s credit bureau report (CBR) dated December 27, 2013 (GX 2), reflects the following debts:

SOR ¶ 1.a: unsatisfied judgment filed in July 2012 (\$11,860);

SOR ¶ 1.b: unsatisfied judgment for unpaid medical bill filed in May 2012 (\$412);

SOR ¶ 1.c: unsatisfied judgment for unpaid medical bill filed in April 2009 (\$294);

SOR ¶ 1.d: mortgage loan 90 days or more past due, with last activity in December 2013 (\$1,904, with balance of \$114,350);

SOR ¶ 1.e: delinquent car loan charged off in April 2013 (\$6,013);

SOR ¶ 1.f: delinquent debt referred for collection in April 2007 (\$942);

SOR ¶ 1.g: credit card account 60 days or more past due, with last activity in October 2013 (\$90, with balance of \$400);

SOR ¶ 1.h: credit card account 60 days or more past due, with last activity in November 2013 (\$60, with balance of \$322); and

SOR ¶ 1.i: credit card account 120 days or more past due, with last activity in August 2013 (\$197, with balance of \$313).

In his answer to the SOR, Applicant attributed the delinquent medical bills to a motorcycle accident in February 2004. He was on active duty at the time and assumed that all medical expenses were covered by TRICARE. He attributed his other delinquent debts to inattention during his Navy service, when he was frequently deployed and relied on his wife to manage the family finances. He stated that he answered “No” to the financial questions on his November 2013 SCA because he was unaware of his delinquent debts.

Applicant stated in his answer that he answered “No” to the question about arrests, because he did not realize that he was under arrest. At the hearing, he testified that he consulted with security personnel at the Navy base and concluded that he had been detained, but not arrested. (Tr. 72-73.) At the hearing, he admitted that he was handcuffed, transported to the police station in a police vehicle, and held for several hours. (Tr. 74.) He also admitted that, when he applied for a public trust position in July 2011, he answered “Yes” to the same question and disclosed his September 2009 arrest at the Navy base. At the hearing, he testified that he was in a rush when he completed the November 2013 SCA and “didn’t even think about the background check” that was completed in 2011. (Tr. 54.)

On September 12, 2014, the day after the hearing, Applicant and his wife filed a joint petition for Chapter 13 bankruptcy. (AX A, AX E through G.) They listed assets of \$269,610 (including the family home valued at \$250,110) and liabilities of \$173,107. (AX G at 11.) All the creditors alleged in the SOR are included in the bankruptcy. In addition to the delinquent car loan alleged in SOR ¶ 1.e, Applicant testified that his pay was being garnished for another delinquent car loan, which is included in the Chapter 13 bankruptcy petition but not alleged in the SOR.<sup>1</sup> (Tr. 67-69.) In the bankruptcy petition, Applicant and his wife listed total monthly income of \$6,652 and expenses of \$5,816. Applicant has been advised by his attorney that the monthly payments to the Chapter 13 trustee probably will be \$500 or \$600. (Tr. 93.)

Applicant’s friend and co-worker testified that she has known Applicant for three years, spent “numerous hours” working with him, and traveled with him to work-related field locations. She considers him “very trustworthy” and “someone you can count on

---

<sup>1</sup> Applicant’s arrest on the Navy base, his termination from employment after being barred from the base, and the garnishment of his pay were not alleged in the SOR. Conduct not alleged in the SOR may not be used as an independent basis for denying or revoking a security clearance, but it 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 a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered Applicant’s conduct that was not alleged in the SOR for these limited purposes.

and rely on if you need help or assistance for anything.” She testified that Applicant is one of the first people to volunteer for assignments. (Tr. 34-40.)

Applicant’s immediate supervisor and his site manager submitted letters stating that Applicant is “an exemplary employee.” (AX B; AX C; Tr. 79-80.) Another supervisor submitted a letter stating that his work ethic and leadership set him apart from his peers, that he “can always be called upon to do the job right the first time,” and his integrity has never been in question. (AX D.)

Applicant loves his job. He testified that, other than spending time with his family, there is nothing that he would rather do. (Tr. 41.) He testified that his wife handled the family finances when he was on active duty in the Navy, and that he became accustomed to having her take care of financial matters without his involvement. (Tr. 63-64, 82-83.)

### **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.” *Id.* 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.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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.” See Exec. Or. 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. 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 (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. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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. See 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; see AG ¶ 2(b).

## **Analysis**

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

The concern under this guideline is set out in AG ¶ 18:

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

Applicant's admissions and his December 2013 CBR establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially applicable:

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

AG ¶ 20(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;

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

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant attributed his medical debts to a motorcycle accident in February 2004. However, the judgments for medical bills were filed in April 2009 and May 2012, long after the motorcycle accident. Even if the judgments were the result of his accident in 2004, he has not acted responsibly, because he did nothing to resolve them.

AG ¶ 20(c) is not established. Except for the counseling required by the bankruptcy courts, Applicant has not sought or received financial counseling, and his financial problems are not yet under control. Even if his bankruptcy petition is granted, I am not convinced that he will comply with any payment plan established by the bankruptcy court. He initiated a Chapter 13 bankruptcy in October 2003 but it was dismissed within four months. He does not have a track record of compliance with financial obligations.

AG ¶ 20(d) is not established. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case

No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). While bankruptcy is a legally available option, it does not constitute a “good-faith” effort. See ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006). Furthermore, Applicant does not have a track record of compliance with his financial obligations.

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

### **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 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.

The relevant disqualifying condition in this case is AG ¶ 16(a): “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . .” When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant’s state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant’s level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

When Applicant submitted his application for public trust position in July 2011, he answered “No” to the financial questions, was confronted with his debts by a security investigator, and claimed that he was unaware of his delinquent debts because his wife handled the family finances. When he submitted his November 2013 SCA, his financial situation was basically unchanged. Nevertheless, he again answered “No” to the pertinent financial questions, and at the hearing he gave the same excuse for not disclosing his delinquent debts.

When Applicant applied for a public trust position in July 2011, he disclosed his September 2009 arrest on the Navy base. He did not disclose it in his November 2013 SCA, explaining that he had since decided that he was detained but not arrested, even though he had been handcuffed, transported to the police station, and held for several hours.



I find Applicant's explanations for not disclosing his delinquent debts and his September 2009 arrest on his current SCA implausible and unconvincing. Accordingly, I conclude that the disqualifying condition in AG ¶ 16(a) is established.

The following mitigating conditions are potentially relevant:

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

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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(a) is not established. Applicant did not disclose his delinquent debts and his arrest until he was confronted with the evidence.

AG ¶ 17(c) is not established. Applicant's falsifications were not minor because they undermined the integrity of the security clearance process. They were recent, because they occurred during his current application for a security clearance. They did not occur under unique circumstances.

AG ¶ 17(e) is established. Applicant eventually admitted his delinquent debts in his response to the SOR and at the hearing. He reluctantly admitted at the hearing that he had been arrested.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

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

Applicant served honorably for 20 years in the U.S. Navy. He has a good reputation among his supervisors and coworkers. He has held a public trust position since 2011. He is deeply devoted to his work. Nevertheless, his lack of attention to his financial obligations and his lack of candor during the security clearance process raise doubts about his reliability, trustworthiness, and good judgment.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial problems and his lack of candor during the security clearance process. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.i: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a-2.b: **Against Applicant**

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge