



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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XXXXXXXXXXXXXXXXXXXX. ) ISCR Case No. 14-01884  
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 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

03/31/2015

**Decision**

HOWE, Philip S., Administrative Judge:

On February 13, 2012, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On June 26, 2014, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 21, 2014. Applicant admitted all the allegations, including the falsification but denied he did it deliberately. Applicant requested his case be decided on the written record in lieu of a hearing.

On December 29, 2014, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on January 15, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on January 26, 2015. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on February 25, 2015. I received the case assignment on March 16, 2015. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted all allegations. He claimed the debts were paid and that he did not deliberately falsify his answers to the e-QIP. (Items 2-6)

Applicant is 33 years old, married, and has two children. He works for a defense contractor. (Items 3, 4, 7)

Applicant owed \$443 on a cell telephone debt dating from 2013 (Subparagraph 1.a). As of the date of the SOR the debt was not paid, but Applicant's Answer states it was paid July 7, 2014. The debt does not appear on the October 2014 credit report, but does appear on the 2013 and 2012 credit reports. Applicant did not support his assertion of payment with any documentary proof of actual payment. This debt is unresolved. (Items 1-6)

Applicant owed a bank \$42,762 on a mortgage account that was 180 days past due at the time of the SOR was issued (Subparagraph 1.b). The account is in foreclosure and the balance of the mortgage debt is \$267,918. Applicant asserts in his Answer that on July 7, 2014, the bank told him the house was sold on April 27, 2014, and he is no longer indebted to the bank for \$42,762. Applicant did not submit any documents to verify his claim. He also submitted a letter dated July 18, 2014, stating that this property was a rental home and that he "took steps" for the property to be sold in a "short sale." He states further that he "assumed this had been taken care of" and that is why he did not think he had any delinquent accounts. He also "understands" he is no longer responsible for the account. Applicant submitted a letter from the mortgage company dated June 17, 2014. This letter stated the foreclosure started on October 22, 2010, and the property was sold on June 27, 2013. It provides other information to Applicant but does not state he no longer owes any additional money. The October 2014 credit report shows the debt is in foreclosure. This debt is unresolved. (Items 1-6)

Applicant owed \$65 on an account in collection to a local organization dating from 2010 (Subparagraph 1.c). Applicant contends he paid the debt on July 7, 2014, but

does not submit any documents to show it was paid. This debt is on the 2012 credit report, but not the 2013 and 2014 credit report. While Applicant claims all his debts were paid on July 7, 2014, he does not submit any explanation as to what occurred on that date to pay the debts or that he actually paid them, causing them to be removed from his credit report. This debt is unresolved and is owed. (Items 1-6)

Applicant admits he falsified his answer to Section 26 about any financial delinquencies on the e-QIP (Subparagraph 2.a). He denies he deliberately did so. Section 26 asks if in the past seven years Applicant had any delinquencies or past due debts. He knew he failed to keep current his mortgage obligation on the property at issue starting in 2010, within the seven year period. He also owed the \$65 debt from 2010. He should have disclosed these debts. Applicant deliberately failed to disclose these two debts on his 2012 e-QIP. (Items 1-6)

Applicant stated to the government investigator that his wife lost her job and the decline in family income did not allow him to pay his debts. However, Applicant did not submit any documentation to show when his wife lost her job, what her income was, how that loss adversely affected his ability to repay his debts, or any information beyond his statement. (Items 1-6)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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(c), 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 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline for Financial Considerations 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2010 to the present, Applicant accumulated three delinquent debts, totaling \$43,270 that remain unpaid or unresolved.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions might have partial applicability.

(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; and

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

AG ¶ 20 (b) would apply if the loss of his wife's employment were shown by Applicant to have a substantial effect on his ability to repay his debts. Applicant does not state when his wife lost her job or how the decline of income adversely affected his ability to pay his debts. He also made assertions about selling the house whose mortgage was in foreclosure but did not submit any documents beyond a July 2014 letter from the mortgage holder to show it was sold or he was free of that debt. He did not submit any documents to support his assertion that on July 7, 2014, the two other debts were paid. He merely makes a statement to that effect without any objective financial documents. He failed to meet his burden of proof on that issue.

Applicant claims he paid two debts and he no longer owes any money on the rental home on whose mortgage he was delinquent. He has not shown by any documents, such as copies of checks, receipts, or written statements from the bank mortgage holder that any of the three debts are in fact paid. Applicant claims both small debts were paid on July 7, 2014. The significance of July 7, 2014, for payment is unexplained by Appellant and not supported by any objective financial proof. He fails to meet his burden of proof on this mitigating condition, AG ¶ 20 (d), and it 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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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.

Applicant did not disclose his financial delinquencies as alleged in SOR Paragraph 2. He disclaims any intentional action in doing so. However, his mortgage, which was the most significant debt, became delinquent in 2010. The e-QIP required him to report the seven-year history in Section 26 of the e-QIP. His \$65 debt was also due and owing from 2010. He did not disclose it, either. Therefore, regardless of Applicant's statements about payments, he did not disclose the debts that existed at the time he submitted his e-QIP. AG ¶ 16 (a) does not apply.

## 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any demonstrable action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts.

Applicant did not disclose his financial delinquencies that had occurred in the previous seven years on his e-QIP. His mortgage delinquency was a significant debt and he should have disclosed it in Section 26. He deliberately failed to disclose his debts in 2012 when he signed the e-QIP.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Financial Considerations or Personal Conduct. I conclude the whole-person concept against Applicant.

### **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:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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PHILIP S. HOWE  
Administrative Judge