



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



In the matter of: )  
)  
) ISCR Case No. 11-01950  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

01/31/2013

**Decision**

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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 Questionnaire for Investigations Processing (e-QIP) on June 29, 2010. On June 14, 2012, the Department of Defense (DOD) issued 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 July 16, 2012, Applicant answered the

SOR and elected to have his case decided on the written record in lieu of a hearing. On November 5, 2012, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 11. On November 5, 2012, a copy of the FORM was mailed to Applicant. He was given 30 days from its receipt to submit objections and information in mitigation or extenuation. He timely submitted documents that were marked as Applicant's Exhibits (AE) A through C. Items 1 through 11 and AE A through C were entered into the record without objection. The case was assigned to me on January 4, 2013.

### **Findings of Fact**

Under Guideline F, the SOR alleged that Applicant had 11 delinquent debts totaling \$72,716. Under Guideline E, it alleged that he falsified four e-QIP responses by deliberately omitting information about his delinquent debts. In his Answer to the SOR, he admitted seven of the delinquent debts (SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.g, and 1.k), denied three (SOR ¶¶ 1.b, 1.h, and 1.j), and did not provide a response to one (SOR ¶ 1.i). He admitted each falsification allegation (SOR ¶¶ 2.a – 2.d). His admissions are incorporated as findings of fact. The delinquent debts listed in the SOR are supported by credit reports dated July 22, 2010, and April 30, 2012.<sup>1</sup>

Applicant is a 52-year-old employee of a defense contractor. He has worked for that contractor since August 1995. He graduated from high school in June 1978 and served honorably in the U.S. Air Force from September 1981 to July 1989. He married in 1996 and divorced in 2008. No children are listed in his e-QIP. He has held a security clearance without incident since 1999.<sup>2</sup>

Applicant attributed his financial problems to his girlfriend losing her job in August 2008. Before her unemployment, she worked as an administrative assistant and earned about \$58,000 annually. He was supporting her after she lost her job, but indicated that he and she have since "gone our separate ways." He also stated that he discovered that someone had fraudulently used his checking account in August 2009. He claimed he lost \$6,000 to \$7,000 due to that fraud and was never able to determine who was responsible for that theft.<sup>3</sup>

During an Office of Personnel Management (OPM) interview on August 4, 2010, Applicant acknowledged that some of his debts became past due before he submitted his e-QIP. He stated that he made payment arrangements for two of his delinquent debts (SOR ¶¶ 1.j and 1.k) in May 2010, *i.e.*, one month before submission of his e-QIP. He also indicated that he made payment arrangements for the debts in SOR ¶¶ 1.d and 1.e and intended to make such an arrangement for the debt in SOR ¶ 1.h. He provided

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<sup>1</sup> Items 1, 3, 8, 9, and 10.

<sup>2</sup> Items 4 and 11.

<sup>3</sup> Items 5.

no proof of payments for any of the purported payment arrangements. In the interview, he also indicated that he had no knowledge of two debts (SOR ¶¶ 1.b and 1.i) and claimed another (SOR ¶ 1.g) was not his debt. He said he was capable of meeting his current financial obligations and indicated his net monthly remainder was about \$1,150.<sup>4</sup>

Applicant paid the debt in SOR ¶ 1.h (\$521) in February 2012. In his Answer to the SOR, he admitted the debt in SOR ¶ 1.g, which he claimed was not his debt during the OPM interview. He disputed the debt in SOR ¶ 1.b, and his latest credit report reflected it had a zero balance. He stated he paid the debt in SOR ¶ 1.j, but provided no proof of that payment. He claimed the debts in SOR ¶¶ 1.f and 1.k were duplicates of each other. A review of the credit reports supports his claim that those two allegations are duplicates. In his Answer, he also stated, "I admit that judgment was extremely questionable when dealing with these circumstances. I was totally embarrassed and in complete denial that my financial situation had spiraled so far out of control."<sup>5</sup>

In 2012, Applicant filed Chapter 13 bankruptcy. In doing so, he would have completed mandatory financial counseling. A Chapter 13 Plan dated June 18, 2012, indicated that he will pay the bankruptcy trustee \$56,519 over 60 months. In his Response to the FORM, he provided a trustee's report dated October 1, 2012, that reflected the Chapter 13 Plan was confirmed in August 2012. The report also indicated the total creditor claims were \$79,404, including a U.S. Treasury priority claim for \$1,380. He will be paying the trustee \$843 per month. From July to September 2012, he made five payments to the trustee totaling \$2,043.<sup>6</sup>

In his e-QIP, Applicant was asked whether he had any debts turned over to a collection agency in the last seven years (Section 26g); whether he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed in the last seven years (Section 26h); whether he had been over 180 days delinquent on any debts in the last seven years (Section 26m); and whether he was currently delinquent on any debts (Section 26n). He responded "No" to those questions and did not disclose that he had encountered any financial problems. In his Answer to the SOR, he stated, "I was at fault for trying to hide the financial information during an investigation."<sup>7</sup>

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<sup>4</sup> Items 5, 8, 9, and 10.

<sup>5</sup> Items 3, 8, 9, and 10. Item 9 reflected the exact same high credit amount (\$4,507) for the debts in SOR ¶¶ 1.f and 1.k. In his Answer, Applicant claimed that the debts in SOR ¶¶ 1.a and 1.h were duplicates and that he paid in full the debt in SOR ¶ 1.h. However, he also contradicted his statements that the debts in SOR ¶¶ 1.a and 1.h were duplicates by stating he still owed \$180 to the creditor of the debt in SOR ¶ 1.a.

<sup>6</sup> Items 5 and 6; AE B, C. Although Applicant indicated that he began the bankruptcy filing process in 2011, a credit report dated April 30, 2012, reflected no bankruptcy filing had yet occurred. The IRS debt was not alleged in the SOR. Debts not alleged in the SOR were not considered in applying the disqualifying conditions.

<sup>7</sup> Items 3 and 4.

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 a number of delinquent debts that he was unable or unwilling to satisfy for several years. This evidence is sufficient to raise the above disqualifying conditions.

Five 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;

(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 indicated that his delinquent debts arose because his girlfriend lost her job and he was the victim of a fraud. Those events occurred in 2008 and 2009 and were the result of conditions beyond his control. To receive full credit under AG 20(b), however, an applicant must show that he or she acted responsibly under the circumstances. In this case, Applicant's actions in responding to the conditions beyond his control are largely unknown. He acknowledged that his judgment was "extremely questionable" in dealing with his financial situation. He was employed during this entire period, but the record shows that he paid only one debt in the amount of \$521 before filing bankruptcy in 2012. From the evidence presented, I cannot find that he acted responsibly under the circumstances to avoid falling behind on his debts or in addressing them once he fell behind. AG ¶ 20(b) partially applies.

In filing bankruptcy, Applicant was required to complete financial counseling. His Chapter 13 Plan was confirmed in August 2012, and he has been making monthly payments to the trustee. While it appears that his delinquent debts are being resolved in the bankruptcy, his failure to explain the long delay between incurring the delinquent debts and instituting action to resolve them remains a continuing concern. Additionally, he did not provide sufficient evidence to show his delinquent debts are unlikely to recur. AG ¶¶ 20(a) and 20(d) do not apply. AG ¶ 20(c) applies. Despite the presence of some mitigation, the delinquent debts continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant successfully disputed the debt in SOR ¶ 1.b. The allegations in SOR ¶¶ 1.f and 1.k pertain to the same debt. AG ¶ 20(e) applies to SOR ¶¶ 1.b and 1.k.

### **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 one condition that could raise a security concern and 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.

Applicant deliberately omitted required information from his e-QIP. AG ¶ 16(a) applies.

Five 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; and

(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 omitted information regarding 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 for eight years. He has held a security clearance for many years without incident. Nevertheless, he failed to show that he acted responsibly in resolving his delinquent debts, and he intentionally falsified responses in his e-QIP. Even though he admitted the e-QIP falsifications in his Answer to the SOR, those deceptions 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.d:	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