



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-09987  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

June 12, 2013

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 23, 2011. (Item 5.) On November 16, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning Applicant. 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 January 10, 2013, and requested a decision by an administrative judge without a hearing. (Item 4.) Department Counsel submitted the Government's written case (FORM) to Applicant on March 19, 2013. The FORM contained nine documents. Applicant acknowledged receipt of the FORM on April 1, 2013. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant submitted an additional personal statement on April 17, 2013. Department Counsel indicated she had no objection to this document, and it is admitted

into evidence as Applicant Exhibit A. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 32 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.a, 1.d, 1.e, 1.f, 1.k, 1.l, 1.o, 1.q, and 1.r in the SOR under this Paragraph. Those admissions are findings of fact. Applicant denied the other allegations. He also submitted additional information to support his request for a security clearance.

The SOR lists 20 delinquent debts, totaling approximately \$84,217. The existence and amount of these debts is supported by credit reports dated March 2, 2011; August 7, 2012; and March 18, 2013. (Items 9, 8, and 7.) (*See also* undated Interrogatories submitted by Applicant. (Item 6.)) The current status of the debts is as follows:

1.a. Applicant admits that he is indebted to a creditor for a judgment in the amount of \$29,280. He has attempted to resolve this judgment without success. (Applicant Exhibit A at 1.) No payments have been made on this judgment. This debt is not resolved.

1.b. Applicant denies that he is indebted to his state Employment Development Department for a judgment regarding an overpayment in the amount of \$770. He states that this amount was taken out of his income tax refunds. (Applicant Exhibit A at 1.) The most recent credit report in the file, Item 7, dated March 18, 2013, continues to show this debt as being unpaid. This debt is not resolved.

1.c. Applicant denies in his Answer that he is indebted to a power company in the amount of \$172. In Applicant Exhibit A at 2 he states that his mother and brother fraudulently opened this account in Applicant's name. He also states that he is accepting responsibility for this debt and that it is unpaid. In addition, there is no information that he has disputed the debt with the credit reporting agencies, or taken any other actions with regards to his mother's alleged misconduct. This debt is not resolved.

1.d. Applicant admits that he is indebted to a creditor for a mobile phone debt in the amount of \$1,129. (Applicant Exhibit A at 2.) He has not made any recent

payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.e. Applicant admits that he is indebted to a creditor for a returned check in the amount of \$319. He states in Applicant Exhibit A at 2 that this incident occurred because his mother wiped out his bank account. He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.f. Applicant admits that he is indebted to a creditor for a mobile phone bill in the amount of \$3,031. (Applicant Exhibit A at 2.) He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.g. Applicant denies that he is indebted to a creditor on a past-due credit card debt in the amount of \$589. He states that it is his belief his mother fraudulently opened this account in his name. (Applicant Exhibit A at 2.) However, there is no information that he has disputed the debt with the credit reporting agencies, or taken any other actions with regards to his mother's alleged misconduct. He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.h. Applicant denies that he is indebted to a creditor on a past-due credit card debt in the amount of \$397. He states that it is his belief his mother fraudulently opened this account in his name. (Applicant Exhibit A at 2.) However, there is no information that he has disputed the debt with the credit reporting agencies, or taken any other actions with regards to his mother's alleged misconduct. He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.i. Applicant denies that he is indebted to a creditor on a past-due credit card debt in the amount of \$398. He states that it is his belief his mother fraudulently opened this account in his name. (Applicant Exhibit A at 2.) However, there is no information that he has disputed the debt with the credit reporting agencies, or taken any other actions with regards to his mother's alleged misconduct. He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.j. Applicant denies that he is indebted to a creditor on a past-due debt in the amount of \$11,795 for an automobile loan. He indicates that he has been making payments on the debt. (Applicant Exhibit A at 2.) The most recent credit report in the file shows that the debt only amounts to \$6,323. Applicant did not provide any evidence supporting his payments, such as a cancelled check or statement from this creditor. This debt is not resolved.

1.k. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$14,646 for an automobile loan he cosigned with his mother. According to Applicant she did not make the payments and he is now responsible. (Applicant Exhibit

A at 2-3.) He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.l. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$4,136. He indicates that he has made a payment arrangement on the debt. (Applicant Exhibit A at 3.) Applicant did not provide any evidence supporting any payments, such as a cancelled check or statement from this creditor. This debt is not resolved.

1.m. Applicant denies in his Answer that he is indebted to a creditor in the amount of \$249 for cable services. In Applicant Exhibit A at page 3 he states that his brother fraudulently opened this account in Applicant's name. He also states that he is accepting responsibility for this debt and that it is unpaid. In addition, there is no information that he has disputed the debt with the credit reporting agencies, or taken any other actions with regards to his brother's alleged misconduct. This debt is not resolved.

1.n. Applicant denies that he is indebted to a creditor on a past-due debt in the amount of \$11,713 for an automobile repossession. He states that he has no knowledge of this debt, but is accepting responsibility for this debt. (Applicant Exhibit A at 3.) In his Answer he states that this debt was in connection with an automobile loan on which he was a cosigner. (Item 4 at 7.) No evidence was submitted showing that payments are being made, or that the debt is being disputed to the credit reporting agencies. This debt is not resolved.

1.o. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$4,320 for an automobile loan. According to Applicant, this debt should have been resolved from an insurance payout after an accident involving the vehicle. (Applicant Exhibit A at 3.) None of the credit bureau reports in the record support the current existence of this debt. While Applicant's admission would normally be sufficient to prove this debt, under the particular circumstances of this case I find that the existence of the debt is not supported by sufficient evidence. This debt is unproven and this subparagraph is found for Applicant.

1.p. Applicant denies that he is indebted to a creditor on a past-due debt in the amount of \$76. He states in his Answer that it is his belief an unstated person fraudulently opened this account in his name. (Item 4 at 7.) However, there is no information that he has disputed the debt with the credit reporting agencies, or taken any other actions with regards to this person's alleged misconduct. He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.q. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$108. He has not made any recent payments on this debt and has no current plans to pay this debt. (Item 4 at 7.) This debt is not resolved.

1.r. Applicant admits that he is indebted to a creditor on a past-due debt in the amount of \$137. He has not made any recent payments on this debt and has no current plans to pay this debt. (Item 4 at 7.) This debt is not resolved.

1.s. Applicant denies that he is indebted to a creditor on a past-due debt in the amount of \$30. He states that it is his belief an unstated person fraudulently opened this account in his name. (Item 4 at 7-8.) However, there is no information that he has disputed the debt with the credit reporting agencies, or taken any other actions with regards to this person's alleged misconduct. He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

1.t. Applicant denies that he is indebted to a creditor for a past-due debt in the amount of \$922. He states that this debt was in regards to one of the vehicles he cosigned for. (Item 4 at 8.) He has not made any recent payments on this debt and has no current plans to pay this debt. This debt is not resolved.

Applicant submitted no evidence that he has received any financial counseling. He states that some periods of unemployment, which encompass ten months from September 2006 to date, had an impact on his finances, along with his wife's illness and his mother's fraud. The evidence also shows that he has been gainfully employed since 2009, making approximately \$200,000 a year with a monthly remainder of approximately \$1,800. (Item 5 at 13; Item 6 at 23.) He submitted evidence that he had paid off one debt, which was not alleged in the SOR. (Item 6 at 26.)

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process.

Applicant filled out a Government questionnaire in February 2011 in which he stated that he had not had any property repossessed, had not had a judgment entered against him, had not had bills turned over to a collection agency, and that he had not had a credit card charged off for failing to pay as agreed. (Item 6 at questions 26(b), 26(e), 26(g), and 26(h).) These answers were not true, as set forth in detail under Paragraph 1, above.

Applicant states that he did not intend to mislead the Government in regards to his answers on the questionnaire. He states in his Answer and in Applicant Exhibit A that he was simply unaware of his financial situation, including the judgments, automobile repossessions and bad debts. He states that an unnamed "trustworthy" person was handling his affairs. From other evidence in the record, this person would appear to be his mother, who he accuses of opening several fraudulent accounts in his name. However, even giving Applicant the benefit of the doubt with regards to those particular debts, his financial situation was precarious and he knew, or should have known, the extent of his problems. Applicant has simply not presented enough evidence

to show that the alleged falsifications were the result of innocent error. Therefore, under the circumstances, I find that they were intentional.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. 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**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. 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. Under Directive ¶ E3.1.15, "The 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The Applicant has over \$80,000 in past-due debts, all of which had been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties have been in existence since at least 2006. With the exception of allegation 1.o. he has not resolved any of the debts that caused the problems, which continue to date. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant stated, but did not support, allegations that some of the debts were the result of his wife’s illness, periods of unemployment, and particularly his mother’s malfeasance. No evidence was introduced showing that he had acted responsibly with regards to any of these debts.

AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not submitted any evidence to show that he has made successful payment arrangements with, or made payments to, any of the creditors listed in the SOR. He was interviewed by an investigator connected with the Defense Department in June 2011. (Item 6 at 7-18.) Accordingly, he has had knowledge for almost two years that his financial situation was of concern to the Government.

Applicant stated that his mother and brother fraudulently opened accounts in his name and ran up debts. However, he submitted no evidence that he had taken any action to contest the debts, or otherwise correct their misconduct. Accordingly, AG ¶ 20(e) does not apply to those debts. It requires that “the individual [have] 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.”

In conclusion, as stated above, looking at Applicant’s entire financial situation at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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 knowingly and purposely falsified his security clearance application on February 23, 2011. He alleges that his failure to list his financial difficulties was due to oversight, and not an intentional act. However, the fact remains that for years he has had financial difficulties, which he attempts to blame, at least in part, on his mother. It simply strains credulity for Applicant to have virtually no knowledge of his very bad financial situation.

I have reviewed the mitigating conditions and find none of them apply to the facts of this case. In particular, I have examined the span of time, just about two years, since the falsification. There is insufficient evidence that Applicant currently shows good judgment or is reliable. Paragraph 2 is found against Applicant.

### **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 the relevant circumstances. 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. The administrative judge must 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 considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, which have not been resolved. He made some very poor financial choices, and has a long history of not paying his debts. Applicant's conduct with regards to his finances was not mitigated. In addition, Applicant failed to show that the omission of relevant and material information from his e-QIP was accidental and not intentional.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not mitigated the security concerns arising from his financial situation, and falsifications to the Government. Accordingly, the evidence supports denying his request for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, 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.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	For Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	Against Applicant
Subparagraph 1.s.:	Against Applicant
Subparagraph 1.t.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	Against Applicant
Subparagraph 2.d.:	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.

WILFORD H. ROSS  
Administrative Judge