



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 11-11344  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Kathryn D. MacKinnon, Esq., Department Counsel  
For Applicant: *Pro se*

06/26/2013

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. He has a history of not paying his financial obligations and has accumulated over \$25,000 in delinquent debt. He also falsified his security clearance application by deliberately failing to disclose his negative financial history and that he was twice fired in 2009 for job-related misconduct. Clearance is denied.

**Statement of the Case**

On December 20, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging the security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). On January 27, 2013, Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record.

On March 14, 2013, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government's proposed

findings of facts, argument, and eight documentary exhibits. Applicant did not object to Government Exhibits (Gx.) 1 through 8, and they are hereby admitted into evidence.

On April 26, 2013, Applicant submitted his response to the FORM (Response). With his Response, Applicant submitted a copy of his associate's degree and an agreement to rehabilitate his delinquent student loans. These documents were marked Applicant's Exhibits (Ax.) A and B, and admitted into evidence without objection. On May 24, 2013, I was assigned Applicant's case.

### **Findings of Fact**

Applicant, 54, is twice divorced and has two adult children. He is a security guard and has been working for his current employer since April 2011. He served on active duty in the U.S. military from 1979 to 1981, and was discharged due to a medical condition. He served in the U.S. Army National Guard from 1993 to 2012, at which point he retired and received an honorable discharge. (Gx. 4, Gx. 8)

Applicant's financial trouble dates back to 2007, when he graduated from school and could not find a job paying a sufficient wage to pay his monthly bills and student loans. He defaulted on the loans. (Gx. 8, Personal Subject Interview (PSI) at 8-10)

In April 2011, Applicant submitted his security clearance application (SCA). He responded "no" to all questions asking whether he had any negative financial information to report. (Gx. 4 at 26-27) In June 2011, Applicant was interviewed as part of his background investigation and was asked about his finances. Applicant told the investigator that he was aware of his delinquent student loans and some credit cards. (Gx. 8, PSI at 8)

Applicant was then confronted by the agent with the negative financial information from his credit report, to include three minor delinquent debts for \$38, \$148, and \$91 that were all due to one creditor. Applicant promised to resolve these three minor debts by July 2011. (Gx. 8, PSI at 11-12) Over a year later, he was sent an interrogatory asking for an update regarding his debts, including the three minor debts totaling \$277. Applicant stated that he had paid the three minor debts, but claimed the receipts had not arrived in time prior to submitting his interrogatory response. (Gx. 8) He did not submit proof of having satisfied any of his delinquent debts, to include the three minor debts for \$277, which are listed in SOR ¶ 1.b – 1.d.

With his Response, Applicant submitted a recent agreement to rehabilitate his student loans. He did not submit proof of having made any payment per the agreement, even though the first payment of \$50 was due a month before he submitted his Response. (Ax. B, first payment due on "3/28/2013.")

Applicant's admissions in his Answer and the credit reports submitted with the FORM substantiate the 14 delinquent debts listed in the SOR, which total \$27,960. (Gx.

5 — 7; Answer) Applicant was alerted to these debts during his background interview in June 2011. (Gx. 8, PSI)

Applicant's financial trouble deepened in 2009, when he was fired from two separate jobs as a security guard. He was fired from one job because he was sleeping on the job site. He was fired from the second job for insubordination, when he failed to report to his security post. On his SCA, which he submitted in connection with his new job as a security guard, he only listed being fired from a job in 1997, but not his two job terminations in 2009. He told the investigator conducting his background interview that, at the time he was fired from the first job, he was informed of the reason he was fired, namely, sleeping on the job. He provided no explanation for not disclosing this adverse employment information on his SCA. He also told the investigator that he did not list being fired from the second job because he felt the termination was without cause. (Gx. 8, PSI at 4-5) In his Answer, Applicant admits he intentionally falsified his SCA when he failed to disclose being fired from both jobs in 2009.

After being fired from his security guard positions in 2009, Applicant was unemployed or underemployed until April 2011, when he secured another security guard job with his current employer. He did not submit any evidence regarding his current job performance. He has not received financial counseling. His recent personal financial statement indicates that, before paying on his student loans and other delinquent debts, his monthly expenses exceeds his monthly income by about \$300. (Gx. 8)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. Furthermore, "[o]nce a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

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. 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 an 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 made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## **Analysis**

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

The security concern relating to financial problems is articulated at 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.

One aspect of the concern is that an individual who is financially overextended may be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's history of not paying his financial obligations and accumulation of over \$25,000 in delinquent debt raises this concern. This evidence also establishes the disqualifying conditions listed at AG ¶¶ 19 (a), "inability or unwillingness to satisfy debts," and 19 (c), "a history of not meeting financial obligations."

Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

- (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 and provides documented proof to substantiate the basis of the dispute.

None of the mitigating conditions apply. Applicant has accumulated over \$25,000 in delinquent debt since 2007. He defaulted on his student loans shortly after he received his associate's degree in 2007, and made no efforts to resolve his delinquent student loans until after the SOR was issued. His recent period of unemployment and underemployment was partially attributable to his own workplace misconduct, which resulted in his terminations in 2009. He submitted no evidence of having resolved any of the SOR debts, including the three minor debts for \$277 he previously promised to satisfy by July 2011. He has not sought financial counseling, his current finances indicate that the likelihood of future financial problems is high, and he has been less than candid about his finances since the start of his security clearance investigation. In short, Applicant's financial situation continues to cast doubt on his current reliability, trustworthiness, and good judgment.

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

The personal conduct concern is set forth at 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 guideline notes several disqualifying conditions that could raise a security concern under AG ¶ 16, and only the following warrants discussion:

(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 security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA. An applicant should disclose any potential derogatory information. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or her SCA. Instead, an administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.<sup>1</sup>

Applicant intentionally falsified his responses to questions on his SCA regarding his finances and employment history.<sup>2</sup> Applicant's admission in his Answer to deliberately failing to disclose his negative financial history is corroborated by his prior statements. Although, due to his poor financial management, Applicant was likely not aware of all his delinquent debts, he was well aware, at the time he filled out his SCA, that he was delinquent on his student loans and several of his credit cards. He deliberately failed to disclose this adverse financial history in response to clear cut questions requiring an affirmative response.

Applicant's further admissions in his Answer to falsifying his SCA by failing to disclose that he had been fired from two jobs as a security guard in 2009 are also corroborated by the statements he made during his background interview. Applicant specifically told the investigator that he did not list one of the terminations because he disagreed with his employer's determination that he was fired for cause. Applicant's disagreement as to the reason why he was fired from a prior job was not a valid excuse for not listing this adverse information on his SCA. Furthermore, he provided no credible explanation for why he did not list his other termination for sleeping on the job.<sup>3</sup>

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<sup>1</sup> See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

<sup>2</sup> In reaching this conclusion, I considered the Government's concession that Applicant did not falsify his SCA. See FORM at 4-5. However, an administrative judge is not bound by either party's view of the evidence, especially when such view is contradicted by an applicant's answer and the evidence.

<sup>3</sup> ISCR Case No. 10-02330 at 2-3 (App. Bd. Nov. 25, 2011) (once an applicant admits a falsification allegation, the burden of persuasion shifts to them).

After considering Applicant's admissions, the evidence, and all reasonable inferences, I find that AG ¶ 16(a) applies. Furthermore, after carefully reviewing all the mitigating conditions listed at AG ¶ 17, I find that none apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>4</sup> I specifically considered Applicant's military service. However, after weighing the disqualifying and mitigating conditions, and evaluating all the evidence in the context of the whole person, I conclude Applicant did not mitigate the security concerns at issue. Overall, the record evidence leaves me with substantial doubts about Applicant's eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.n:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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<sup>4</sup> The non-exhaustive list of adjudicative factors are: (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.