



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



In the matter of: )  
)  
) ISCR Case No. 11-11576  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

05/29/2013

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

As of November 2012, Applicant owed approximately \$28,000 in delinquent debt. He retained the services of a credit repair company to remove any inaccurate information from his credit record, but he had paid only a \$100 collection balance as of January 2013. His handling of his financial matters continues to generate security concerns. Applicant was also not candid about his delinquencies when he applied for a security clearance. Clearance denied.

**Statement of the Case**

On November 21, 2012, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F (financial considerations) and Guideline E (personal conduct), and explaining why it was unable to find that it is clearly consistent with the national interest to grant or continue his security clearance. The DOD CAF took action 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 allegations on January 2, 2013, and he requested a decision without a hearing. On February 28, 2013, the Government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to Applicant on March 1, 2013, and instructed him to respond within 30 days of receipt. Applicant received the FORM on March 14, 2013. He did not file a response by the April 13, 2013, due date. On April 26, 2013, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

### **Procedural Rulings**

The DOD CAF alleged under Guideline E (SOR 2.a) that Applicant falsified a November 17, 2009 Electronic Questionnaire for Investigations Processing (e-QIP) by responding negatively to questions 26.g, concerning any bills or debts turned over to a collection agency in the last seven years, and 26.h, concerning any account or credit card suspended, charged off, or cancelled for failing to pay as agreed in the last seven years. In its FORM, the Government moved to change the date of the e-QIP from November 17, 2009 to June 29, 2011, to conform to Item 4.

Applicant was notified of the proposed amendment on his receipt of the FORM on March 14, 2013. He submitted no response within the 30-day deadline. Good cause having been shown to correct the error, SOR 2.a is hereby amended to reflect June 29, 2011, as the date on which Applicant executed his e-QIP.

### **Findings of Fact**

The amended SOR alleges under Guideline F that as of November 21, 2012, Applicant owed approximately \$27,859 in delinquent debt (SOR 1.a-1.d). Under Guideline E (SOR 2.a), Applicant allegedly deliberately falsified his June 29, 2011 e-QIP by not disclosing debts that had been placed for collection (SOR 1.a, 1.b, and 1.d) or charged off (SOR 1.c). When he answered the SOR, Applicant admitted the debt allegations, but he also indicated that the debt in SOR 1.b had been paid in full, and that he was disputing the alleged debts in SOR 1.c and 1.d. He did not respond to the Guideline E allegation. Applicant filed no rebuttal to the FORM. His failure to respond to SOR 2.a is taken as a denial. Accordingly, the burden is on the Government to prove Applicant intentionally falsified an e-QIP completed and certified on June 29, 2011, by not disclosing known collection accounts or charged-off debts.

After considering the Government's FORM, including Applicant's Answer (Item 2), I make the following findings of fact.

Applicant is a 57-year-old aircraft electrician, who has worked for his current employer, a defense contractor, since May 2011. Applicant works on a military installation. (Item 4.)

Applicant was born in Vietnam, where he graduated from high school in September 1973. Applicant has variously claimed that he is a U.S. citizen by birth, born outside the United States (Item 4), and also that he was naturalized in the United States in May 1987. (Item 7.)

Applicant is currently married to his second wife.<sup>1</sup> He owns his present residence, where he has lived since January 2000. (Items 1, 7.) He earned his associate's degree in March 1985. Applicant worked as an aircraft electrician for a defense contractor from May 1995 to January 2006, until he was laid off due to lack of work. He worked as a sales associate from January 2006 until November 2009. The company ceased operations. During a lengthy unemployment from November 2009 to May 2011, Applicant reportedly cared for his children and was supported by other family members. (Items 4, 7.)

Shortly after Applicant began working for his present employer, he completed and certified an e-QIP on June 29, 2011. Applicant disclosed no issues of potential security concern, including in response to inquiries about any defaults on financial obligations within the past seven years. He responded negatively to questions 26.g, any debts turned over for collection, and 26.h, any accounts charged off or cancelled for failing to pay as agreed. (Item 4.)

As of July 28, 2011, the credit bureaus were reporting that some of Applicant's accounts had been referred for collection or charged off. An automobile loan of \$28,504, taken out in October 2003, was paid after collection as of December 2008. A credit card account (x1458) opened in February 2007 was \$3,128 past due on a charged-off balance of \$11,407 as of August 2009 (SOR 1.c). The date of last activity was reported to be December 2008. A newer credit card account with the same lender (x7228), opened in January 2008, was charged off and placed for collection due to nonpayment after February 2009 (SOR 1.a). As of July 2009, the account had a \$10,752 balance and was \$2,460 past due. In December 2010, a \$100 wireless services debt was placed for collection with the assignee in SOR 1.b. A \$5,759 balance on a consumer debt with a credit union (SOR 1.d) was referred for collection in July 2010 when it became 180 days past due. The credit reporting agencies were listing the account as both current after collection and as a charged-off balance in collection. (Item 5.)

Applicant was interviewed by an OPM investigator on August 11, 2011. After discussing his employment and activities, including a pleasure trip to Vietnam in June 2007, Applicant was asked about any updates or corrections to his e-QIP or to the information provided earlier in the interview. Applicant responded negatively. He was then confronted with the adverse information on his credit record. Applicant admitted that he had two credit card accounts with the same lender (SOR 1.a and 1.c) that became delinquent when he was unemployed. He did not dispute the information on his credit record about those debts, although he denied knowing any details about the debts, such as their balances or dates of delinquency, because his spouse handled their bills. Applicant

---

<sup>1</sup> Applicant indicated on his June 29, 2011 e-QIP that he was married to his first wife from March 22, 1997 to May 2004, and that he married his second wife on May 23, 1998. Applicant cannot legally have married his second wife before his divorce, so one or more of the dates are incorrect.

related that another account (SOR 1.d) had become \$1,000 past due because of his spouse's poor money management and his unemployment. Applicant had been in contact with the creditor about his repayment options. He indicated that the debts had not been listed on his e-QIP due to "error." Applicant denied knowing about the \$100 collection debt (SOR 1.b) on his record. He expressed his intent to contact his creditors and repay his debts. (Item 7.)

A subsequent check of Applicant's credit on September 10, 2012, revealed no progress toward resolving his delinquencies. In September 2011, the bank placed the account ending in x7228 for collection with the assignee in SOR 1.a. His other account ending in x1458 was listed as a charge-off. Applicant owed \$11,000 on each account. He also owed \$5,759 on his account with the credit union. The \$100 wireless telephone debt in SOR 1.b was still in collection, although Applicant was not continuing to incur new debt. (Item 6.)

In October 2012, DOHA asked Applicant to update the status of the four delinquent accounts on his credit record and to complete a personal financial statement. In addition to the \$100 balance on the account in SOR 1.b and \$11,407 on the account in SOR 1.c, Applicant reportedly owed \$11,816 on the credit card debt held by the assignee in SOR 1.a. On October 9, 2012, Applicant retained the services of an independent company to conduct an analysis of his credit report and to dispute or attempt to modify credit information that he believes is inaccurate or unverifiable.<sup>2</sup> Applicant signed a credit repair contract, agreeing to pay \$150 per month for up to six months. On October 15, 2012, Applicant completed a personal financial statement for DOHA on which he listed monthly expenses of \$4,530 on household net monthly income of \$7,189. He reported no debts or assets. (Item 8.)

As of December 2012, the bank that had extended high credit of \$10,752 to Applicant on the account in SOR 1.a was reporting a zero balance after a charge-off and sale.<sup>3</sup> The account identified in SOR 1.c was past due \$3,128 on an \$11,407 charged-off balance as of February 2007, and the account in SOR 1.d had a \$5,759 charged-off balance outstanding. On December 12, 2012, Applicant drafted letters of dispute to his creditors, including the bank (as to SOR 1.a and 1.c) and the credit union (SOR 1.d), challenging generally the accuracy of the information (i.e., inaccurate loan terms or extent of delinquency reported on his record; report of different open dates; failure to report charge-off date; account number wrong). He provided no detail or corroborating evidence

---

<sup>2</sup> Applicant submitted with his Answer (Item 2.) an email from a Mr. N, who confirmed that he has been working on resolving Applicant's credit and debt matters since October 9, 2012. Mr. N is not the financial advisor listed on the credit repair contract Applicant signed on October 9, 2012, which was submitted with his financial interrogatory response. Nor is the company employing Mr. N the firm on the contract. (Item 8.) It may be that Applicant decided to back out of the contract with the firm in Item 8. Alternatively, the company could have changed its name, or Mr. N could have changed his employer. The credit report status information which Applicant submitted with his answer is dated December 3, 2012. It bears a similar logo but not the same web address as that found on the company on the credit repair contract. In any event, it is unclear exactly what has been done on Applicant's behalf with regard to correcting his credit report or rehabilitating his credit.

<sup>3</sup> Applicant had filed disputes with all three credit reporting agencies regarding the collection debt held by the assignee in SOR 1.a. However, he presented no information showing the balance being reported by the collection agency.

to substantiate his dispute with the creditors. He demanded that the creditors immediately delete any reference to his accounts being charged off as bad debts. Applicant satisfied the \$100 collection debt (SOR 1.b) sometime between August 2012 and December 2012, when Trans Union deleted it from his credit record. (Item 2.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 that the applicant may deliberately or inadvertently fail to 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. Section 7 of Executive Order 10865 provides that decisions shall be “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

### Guideline F, Financial Considerations

The security concerns about financial considerations are 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.

Available credit report information (Items 2, 5, 6.) shows that Applicant had four accounts charged off or referred for collection that totaled about \$28,000. Two credit card accounts, with high credit of \$10,752 and \$11,407, were charged off by the creditor bank in 2009 due to nonpayment. As of June 2011, Applicant's account with a credit union was in collection with a balance of \$5,759. In December 2010, a telephone company placed a comparatively minor \$100 balance for collection. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are established.

Concerning potentially mitigating conditions, 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," cannot reasonably apply. The debts at issue became delinquent within the last five years, and Applicant has made little progress toward resolving them.

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," is partially implicated because of his unemployment from November 2009 to May 2011. However, it is difficult to fully apply AG ¶ 20(b). Available credit information shows that he or his spouse stopped paying on his account in SOR 1.c well before he lost his job. When asked about his debts in August 2011, Applicant attributed the debt in SOR 1.d in part to his unemployment, but also to his spouse's poor money management. Applicant had an obligation to ensure that his debts were being paid, whether or not his spouse handled the household bills. There is no evidence that Applicant contacted the bank about arranging repayment terms for his two large credit card delinquencies. Applicant was notified of the \$100 collection debt during his August 2011 interview. One year later, it was still unpaid, despite net monthly household income that exceeded expenses by \$2,659. Applicant's desire to verify debt balances is understandable, but he provided no reasonable explanation for waiting until October 2012 to retain professional assistance to repair his credit.

Applicant has been working with a financial advisor since October 9, 2012. However, as noted by the Government in the FORM, the financial services do not appear to include any debt repayment plans or settlement negotiations for the debts in SOR 1.a, 1.c, and 1.d.

Applicant is not required to satisfy every debt in full before he can be granted a security clearance, but his belated resolution of a \$100 debt is not sufficient to satisfy either 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,” or AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” He has no plans in place to resolve most of his past-due debt.

Applicant’s present demands that the debts in SOR 1.a, 1.c, and 1.d be deleted from his credit profile, without some proof of their illegitimacy, do not qualify for mitigation under 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.” Applicant admitted the validity of the accounts in SOR 1.a, 1.c, and 1.d in August 2011. AG ¶ 20(e) applies only in that Applicant apparently paid the debt in SOR 1.b sometime between August 2012 and December 2012. Trans Union has deleted the debt from his credit report. With about \$28,000 in debt remaining on his credit record, and no repayment arrangements in place, it would be premature to conclude that his financial problems are safely behind him.

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

The security concerns about personal conduct are 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.

Applicant did not disclose any charged-off or collection debts on his June 29, 2011 e-QIP. When he was interviewed by the OPM investigator on August 11, 2011, Applicant admitted knowing that the accounts in SOR 1.a, 1.c, and 1.d had become delinquent while he was unemployed. He reported that he was in contact with the credit union holding the debt in SOR 1.d about repayment options. His July 2011 credit report shows that the debts in SOR 1.a and 1.c had been charged off for two years and the debt in SOR 1.d for one year. As reported by the OPM investigator, Applicant fully agreed with the content of the credit report as to the accounts that he recognized. So, the evidence establishes not only that the debts in SOR 1.a, 1.b, and 1.d. should have been reported on his e-QIP in response to 26.g or 26.h or both, but also that he knew about those debts. Applicant indicated that the debts were omitted from his e-QIP due to error. There is no evidence to suggest that Applicant failed to disclose the debts due to inadvertence, good-faith mistake, or other reason that negates the reasonable inference of willful omission. Disqualifying condition AG ¶ 16(a) applies:

(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.

None of the potentially mitigating conditions under Guideline E apply. At the end of his subject interview in August 2011, Applicant was asked about any necessary changes, updates, or corrections to his security clearance application, and he responded negatively. So, even though he did not deny the adverse credit information concerning the debts in SOR 1.a, 1.c, and 1.d when confronted with the information, AG ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” is not implicated.

Applicant falsely certified to the accuracy of his responses to questions 26.g and 26.h on the e-QIP, despite being advised that a knowing and willful false statement on the form can be punished by a fine or imprisonment or both under Title 18, Section 1001 of the United States Code. His knowing false statement is too serious and too recent to reasonably qualify for mitigation under 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 circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment.”

AG ¶ 17(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,” is difficult to satisfy when Applicant had to be confronted with the adverse credit information. Applicant has been largely silent about his motivations for not listing his debts other than to indicate that the omission was due to error.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>4</sup>

Applicant’s lengthy unemployment is partially mitigating of the financial judgment concerns. That being said, Applicant had an obligation to his creditors to make every effort to address his debts timely once he was in a position to do so. Certainly as of his August 2011 interview, Applicant was on notice that his delinquencies were of concern to the DOD. He continues to demonstrate little urgency about resolving his debts, despite being in a

---

<sup>4</sup> The factors under AG ¶ 2(a) are as follows:

- (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.



financial position to make payments to his creditors. A similar unacceptable tendency to act in self-interest is evident in Applicant's false denials of any collection or charge-off debts on his e-QIP. He had an obligation to inquire about his debts and to report accurate information on his security clearance application. Both in his handling of his debt issues and in his lack of candor, Applicant raised considerable doubts about whether he can be counted on to comply with DOD security requirements. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990.). Based on the facts before me and the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the amended 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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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.

---

Elizabeth M. Matchinski  
Administrative Judge