



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



In the matter of: ) ) REDACTED ) ) Applicant for Security Clearance )	ISCR Case No. 11-12406
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**Appearances**

For Government: Ray T. Blank, Esq., Department Counsel  
For Applicant: *Pro se*

09/18/2013

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his history of financial irresponsibility and deliberate falsification of his recent security clearance application (SCA). Despite holding a clearance for 10 years, Applicant’s financial situation and deliberate falsification of his SCA raises doubts about his continued eligibility for access to classified information. Clearance is denied.

**Statement of the Case**

On February 8, 2013, 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 March 20, 2013, Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record.

On June 28, 2013, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the Government’s proposed findings of fact, argument, and twelve documentary exhibits. Applicant was informed he had thirty (30) days within which to file any objections and his response. Applicant did not submit

any objections or a response. Accordingly, Government Exhibits (Gx.) 1 through 12 are admitted into evidence. On August 27, 2013, I was assigned Applicant's case.

### **Findings of Fact**

Applicant, 36, is an engineer for a defense contractor. He earned his bachelor's degree in 2000, and shortly thereafter began working as a defense contractor. He was first granted a security clearance in 2003. (Gx. 4)

Applicant's financial trouble dates back to 2001, when he moved in with his former girlfriend. They began overspending and relying on credit cards to pay for their purchases. In 2005, Applicant submitted a SCA (2005 SCA) to work on a Special Access Program (SAP). He was subsequently interviewed by a Government agent (SAP background interview). The agent asked Applicant about a number of delinquent accounts appearing on his credit report. Applicant informed the agent that he was not currently paying on his past-due debts, but had in the past consolidated his debts and paid them for a year. He promised to make arrangements to contact his overdue creditors and pay his debts. (Gx. 5 – 6)

During the SAP background interview, Applicant discussed with the agent the five debts for over \$8,000 alleged at SOR ¶¶ 1.l – 1.p. Applicant claimed that he had failed to list these five debts and other negative accounts on his 2005 SCA because he did not thoroughly read the financial history questions. He was subsequently granted access to Sensitive Compartmented Information. Applicant admits in his Answer that he has still not addressed the five debt listed at SOR ¶¶ 1.l – 1.p. (Gx. 2, 5 – 6)

In January 2008, Applicant's former girlfriend gave birth to his older child. Three months later, Applicant's fiancée gave birth to his younger child. Applicant claims that his financial situation worsened as a result of the increased cost for his older child's medical bills, court-ordered child support, and legal fees. Applicant now has custody of both his children, lives with his fiancée, has moved into a less expensive apartment, and is receiving child support from his older child's mother. (Gx. 7 – 8)

In November 2010, Applicant's wages were garnished to satisfy his student loan debt, which he defaulted on in 2007. His employer questioned him about the debt and submitted an incident report to the Government through the Joint Personnel Adjudication System (JPAS). (Gx. 12)

In May 2011, Applicant submitted his recent SCA (2011 SCA). In response to questions regarding his financial history, Applicant disclosed his student loan debt but no other delinquent debts. He did not list the five delinquent debts totaling over \$8,000 that he discussed during his SAP background interview. He also did not list a judgment and numerous collection accounts reflected on his credit report, Gx. 10.<sup>1</sup> He was

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<sup>1</sup> Applicant was required to disclose any debts that resulted in a judgment, were in collection or charged off, and any other accounts seriously past due (over 180 days delinquent in the past 7 years or currently 90 days delinquent). (Gx. 4)

subsequently interviewed and confronted with the negative accounts reflected on his credit report. Applicant claimed that he was unaware of the negative accounts beyond the student loan debt that he listed on his SCA. (Gx. 4, 7)

In December 2012, in response to a financial interrogatory, Applicant submitted a personal financial statement (PFS) to DoD adjudicators. The PFS reflects that Applicant had over \$650 per month in disposable income. Applicant claimed in his interrogatory response that he was going to address his past-due debts with the assistance of a debt resolution program. (Gx. 8)

Applicant submitted proof that he satisfied his student loan through wage garnishment and recently settled the outstanding balance. (Gx. 2, 12) In his Answer, Applicant states that by satisfying his student loans, he has “an additional \$800 a month income.” He further states that “I am in the process of contacting and reaching settlements with all admitted debts.” (Gx. 2) He did not submit evidence of any further debt repayment or financial counseling. He admits 15 of the 16 SOR debts totaling over \$25,000. The only SOR debt that he denies owing is the student loan debt.<sup>2</sup> (Gx. 2)

### **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).

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<sup>2</sup> Applicant disputes the judgment for \$2,134 alleged in ¶ 1.a, but presented no documentation to substantiate his dispute.

Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.<sup>3</sup>

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.<sup>4</sup>

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 long 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 at AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

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<sup>3</sup> See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

<sup>4</sup> See generally *Kaplan v. Conyers, et al.*, 2013 U.S. App. LEXIS 17278 at \*\* 23-24, 40-51 (Fed. Cir. Aug. 20, 2013) (federal courts will generally defer to the predictive judgments made by responsible officials charged with determining the eligibility of an applicant for a security clearance).

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.

Applicant has satisfied one of the SOR debts, namely his student loan debt. He receives some credit under AG ¶ 20(d) for settling and paying this debt. However, the mitigating value of such debt resolution is undercut by the fact that Applicant defaulted on the debt in 2007 and only started to repay it after his pay was garnished. Furthermore, despite promising seven years ago, during the SAP background interview, to address his delinquent accounts, five delinquent debts for over \$8,000 that were discussed at that interview remain unresolved. Applicant then accumulated an additional \$16,000 in delinquent debt, and his delinquent debts now total over \$25,000. Applicant presented no evidence that, despite \$650 in monthly disposable income, he has attempted to address these debts. He also provided no evidence of having received financial counseling. He blames his current financial situation on purported matters beyond his control. Yet, the record evidence reflects that Applicant's financial situation is a direct result of his voluntary assumption of financial obligations that were apparently beyond his financial means. Therefore, the favorable evidence of student loan repayment does not mitigate the concerns raised by Applicant's long history of financial irresponsibility.

## 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 and continues throughout the security clearance process. 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. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.<sup>5</sup>

Applicant intentionally falsified his responses to the relevant questions on his 2011 SCA regarding his adverse financial history. Applicant's claim that he was unaware of his delinquent accounts, other than his student loan debt, is not credible. He had been made aware of five delinquent debts during his SAP background interview and, as of the close of the record, the same five debts remained unresolved. Yet, Applicant did not list these five delinquent debts on his 2011 SCA.

Furthermore, a credit report accessed just two weeks after Applicant submitted his SCA reflects numerous delinquent accounts, many in collection status or seriously past due. It is unreasonable that Applicant was genuinely unaware of these delinquent accounts when he filled out his 2011 SCA. He had previously been questioned about his omission of delinquent debts on a previous SCA and had been under financial distress since 2001. Under such circumstances, Applicant's claim that, at the time he

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<sup>5</sup> See generally ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

filled out his 2011 SCA, he was unaware that he had several reportable delinquent debts, other than his student loan debt, is simply not credible.<sup>6</sup>

As for Applicant's disclosure of the student loan debt, such disclosure does not mitigate his deliberate falsification. Applicant knew when he submitted his 2011 SCA that the Government was already aware of his delinquent student loan. Also, in disclosing the student loan debt, Applicant attempted to place the adverse information in the light most favorable to maintain his clearance.

Accordingly, I find that AG ¶ 16(a) applies. After carefully reviewing all the mitigating conditions at AG ¶ 17 and taking into account Applicant's continued denial of responsibility, I find that none of the mitigating conditions 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>7</sup> I specifically considered Applicant's work as a defense contractor for the past 12 years and that he has held a security clearance since 2003. I also took into account the maturity he exhibited in voluntarily seeking and being awarded custody of his older child. However, he has a long track record of financial irresponsibility and falsified his recent SCA. Both of these matters raise significant doubts about his continued 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.p:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant

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<sup>6</sup> The SOR alleges at ¶ 2.b that Applicant deliberately falsified his 2005 SCA by failing to disclose his delinquent student loan and the five debts listed at SOR ¶¶ 1.l – 1.p. I find that Applicant's explanation for said omission credible and reasonable. Accordingly, SOR ¶ 2.b is decided in Applicant's favor.

<sup>7</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.

## **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