



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 12-01969

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

01/28/2016

**Decision**

HOWE, Philip S., Administrative Judge:

On April 9, 2011, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On November 3, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 December 8, 2014. Applicant requested his case be decided on the written record in lieu of a hearing.

On April 17, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 7, was

provided to the Applicant on August 5, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on September 14, 2015.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on October 14, 2015.

I received the case assignment on November 5, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted allegations in Subparagraphs 1.a to 1.g, then fails to admit or deny 1.h, and 1.i., then admits and disputes 1.j to 1.m, and fails to admit or deny 1.n to 1.q. in Paragraph 1 concerning financial debts. He admitted the 10 allegations under Paragraph 2 alleging 20 personal conduct security violations. He further stated in his Answer that Subparagraphs 1.d to 1.h were "investigated by management" without disclosing the results of those investigations. (Items 1-7)

Applicant is 35 years old, married having been previously divorced, and has three children and one stepchild. He works as a security guard for a defense contractor. Applicant served in the U.S. Marines from 1998 to 2002. (Items 2-4)

Applicant owes \$129,524 for these 17 delinquent debts. His Answer states he paid five debts (Subparagraphs 1.c, 1.e, 1.h, 1.i, 1.o), has installment agreements for six other debts (Subparagraphs 1.a, 1.b, 1.d, 1.g, 1.n, 1.p, and 1.q), and is disputing four other debts (Subparagraphs 1.j to 1.m). The debt to an insurance company in Subparagraph 1.f he simply admits with no other explanation. The earliest debt is dated in 2004. (Items 1-7)

Applicant's Personal Financial Statement submitted with his interrogatory answers states his 2004 divorce and physical injury in 2010 caused his financial difficulties, but they are "turning around" now. Applicant did not submit any documents to support his SOR answers that debts are paid or being paid on the installment basis. He did not submit any dispute letters on other debts. He did not respond to the FORM. (Items 1-7)

Applicant has numerous violations on his work record for his employer, for whom he has worked since 2004. Applicant had non-medical call-offs between 2004 and 2013, tardiness in the same time, and several counseling sessions. The counseling pertained to his possession of a personal cell phone at the work site, conducting personal business on a government telephone, having a beverage at the work site, failing to sign in after a meal break, failure to maintain his uniform, failure to execute his duties when he did not take a key inventory, failure to sign a schedule receipt for four hours of hold over work he performed, failure to park a work vehicle in the correct location for which a

parking ticket was issued to his employer, failure to sign into work, failure to hand carry a package to the addressee that resulted in a processing delay, and allowing an unauthorized vehicle to gain access to a facility without properly obtaining valid identification from the driver and vehicle inspection in December 2006. Applicant received a letter of suspension in May 2006. In October 2006 he received a two day suspension. In December 2006 termination was started, in September 2011 Applicant was suspended for two days after having a cell phone at the work site, and in February 2012 he received a one day suspension for being tardy for work four times. Applicant admitted all these violations with the notation on the disciplinary accusations that "management investigated" them. (Items 1-7)

Applicant's file contains several hundred pages of documents listing his violations as alleged in the SOR and the disciplinary action taken by his employer. These documents support each SOR allegation. (Item 4)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. 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**

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 useful 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, 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. Decisions include, by necessity, consideration of the possible risk 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. 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

From 2004 to the present, Applicant accumulated 17 delinquent debts, totaling \$129,524 that remain unpaid or unresolved. Applicant has not shown clearly what debts he paid or is paying beyond his mere statements in his Answer. Without supporting and well-organized documentation addressing each of the allegations specifically the true

status of his debts cannot be known. An in-depth review of the Items in the file shows no support for his alleged payments.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

(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.

AG ¶ 20 (b) would apply if his divorce 11 years ago adversely affected his ability to repay his debts. But he also has to act responsibly under the circumstances. It is his burden of proof to submit specific documents to demonstrate those actions. However, he failed to meet his burden of proof on that issue.

Lastly, Applicant contends his medical problem in 2010 caused some of his delinquent debt. Applicant failed to prove AG ¶ 20 (b) applied because he did not submit sufficient evidence of the conditions that he asserted were beyond his control and that he acted responsibly in resolving his delinquent debts during the time the debts were accumulating.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 conditions that could raise a security concern and may be disqualifying:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

Applicant committed numerous acts of inappropriate conduct in the work place, exhibited a pattern of dishonesty and rule violations, and misused his employer's time and resources to a significant degree, as shown by the continuing pattern of misconduct from 2004 to 2014. AG ¶ 16 (c) and (d) apply to the totality of Applicant's repeated violations and failure to conform his behavior to expected standards of conduct.

Applicant's personal conduct, which consists of a number repeated and significant violations of company policies, creates a vulnerability to exploitation, manipulation, or duress because of the frequency and nature of the incidents. Coupled with his financial debts, Applicant is especially vulnerable to coercion and duress in the hope of extricating himself from his predicament caused by his misconduct and financial delinquencies. AG ¶ 16 (e) is established.

AG ¶ 17 provides seven conditions that could mitigate security concerns. A review of each shows that none apply in this Applicant's case. His offenses are a series of transgressions that show an inattention to the requirements of his position, casting doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17 (c) is not established.

Applicant has not acknowledged the behavior and obtained counseling to change his actions or taken other positive steps to show his course of conduct will not recur. AG ¶ 17 (d) does not apply.

Applicant has not taken positive action to reduce or eliminate vulnerability to exploitation, manipulation, or duress. AG ¶ 17 (e) is not established.

The information is substantiated in many documents submitted in the Applicant's file. AG ¶ 17 (f) is not established.

Finally, there is no allegation that Applicant associated with persons involved with criminal activity, so AG ¶17 (g) is not applicable. Nor are the first two mitigating conditions of any applicability because they apply to false statements by any Applicant or failure to cooperate with the security clearance process.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action supported by objective evidence to

resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past seven years.

Applicant also has a pattern of violations of work standards set by his employer. He is an inattentive employee who finds it difficult to conform his behavior to the rules and regulations of his employer. His misconduct has been perpetrated over a decade of employment.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a to 1.q:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a to 2.j:	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.

---

PHILIP S. HOWE  
Administrative Judge