



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-01995
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

03/11/2014

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**Decision**

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ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant mitigated security concerns under Guideline E, Personal Conduct, but he failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 8, 2011. On October 24, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 for SORs issued after September 1, 2006.

On December 13, 2013, Applicant provided a written, notarized response to the SOR and elected to have a hearing before an administrative judge from the Defense

Office of Hearings and Appeals (DOHA). The case was assigned to me on January 17, 2014. I convened a hearing on February 10, 2014, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced three exhibits, which were marked Ex. 1 through 3 and entered in the record without objection. Applicant testified and called two witnesses. He introduced nine exhibits, which were identified and marked as Applicant's Ex. A through Ex. I and entered in the record without objection. At the conclusion of the hearing, I left the record open until close of business February 18, 2014, so that Applicant could, if he wished, provide additional information for the record.

Applicant timely submitted four post-hearing documents.<sup>1</sup> I marked the documents as Ex. J through Ex. M. Department Counsel did not object to the admission of Applicant's post-hearing submissions.<sup>2</sup> DOHA received the hearing transcript (Tr.) on February 19, 2014.

### **Findings of Fact**

The SOR contains seven allegations that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.), and five allegations that raise security concerns under Guideline E, Personal Conduct (SOR ¶¶ 2.a. through 2.e.). In his Answer to the SOR, Applicant admitted the seven Guideline F allegations, with explanation. He denied the five Guideline E allegations. Applicant's admissions are entered as findings of fact.

The seven financial delinquencies alleged on the SOR total approximately \$65,886. One alleged delinquency is a judgment for \$8,632, brought against Applicant in December 2010 (SOR ¶ 1.a.). Two of the alleged debts are in collection status: SOR ¶ 1.b. (\$404) and SOR ¶ 1.c. (\$2,562). Three of the delinquencies alleged on the SOR are in charged-off status: SOR ¶¶ 1.d. (\$13,381), 1.e. (\$4,409), and 1.f. (\$4,102). Additionally, SOR ¶ 1.g. alleges that Applicant owes a mortgage creditor approximately \$27,396 on an account that is over 120 days past due.

Applicant is 51 years old, married, and the father of two adult children. One of his children, a daughter, is unmarried and the mother of two young children. She and her children reside in Applicant's household. (Ex. 1; Tr. 86-87, 94-95.)

Applicant immigrated to the United States from an Asian country, where he received a high school diploma and a post-secondary degree in marine transportation. He became a naturalized U.S. citizen in 1993. Since 2003, Applicant has been

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<sup>1</sup> Applicant's future daughter-in-law filed the documents on Applicant's behalf. Her transmittal fax contained information of an evidentiary nature, and, accordingly, is identified as a separate document. (Ex. J.)

<sup>2</sup> Department Counsel's memorandum stating that she had no objection to the admission of Applicant's post-hearing submission is marked as Hearing Exhibit (HE) 1.

employed as a technician by a government contractor. He was first awarded a security clearance in 2009. He now seeks renewal of his eligibility for access to classified information. (Ex. 1; Tr. 92-93, 101-102.)

Applicant's wife is employed outside the home and has two jobs. Applicant delegated to her the management of his and the family's finances. He authorized the direct deposit of his biweekly paychecks to a bank account held by his wife and their daughter. He assumed that his wife was making monthly payments to satisfy their debts and their home mortgage obligation. (Ex. 3; Tr. 20-21, 43-44.)

Applicant completed and certified an e-QIP in August 2011. Section 26 on the e-QIP requests information about an applicant's financial record. Section 26e asks if an applicant has had a judgment entered against him in the past seven years. Applicant answered "No" to Section 26e and did not disclose the judgment alleged in ¶ 1.a. of the SOR. SOR ¶ 2.a. alleges that Applicant's failure to disclose this information was deliberate. (Ex. 1; SOR.)

Section 26g asks if, in the past seven years, an applicant has had bills or debts turned over to a collection agency. Applicant answered "No" to Section 26g and did not disclose the information alleged in ¶¶ 1.b. and 1.c. of the SOR. SOR ¶ 2.b. alleges that Applicant's failure to disclose this information was deliberate. (Ex. 1; SOR.)

Section 26h asks if, in the past seven years, an applicant had any account or credit card suspended, charged-off, or cancelled for failing to pay as agreed. Applicant answered "No" to Section 26h and did not disclose the information alleged in ¶¶ 1.d., 1.e., and 1.f. of the SOR. SOR ¶ 2.c. alleges that Applicant's failure to disclose this information was deliberate. (Ex. 1; SOR.)

Section 26m asks if, in the past seven years, an applicant has been over 180 days delinquent on any debts. Applicant answered "No" to Section 26m and did not disclose the information alleged at SOR ¶¶ 1.a. through 1.f. SOR ¶ 2.d. alleges that Applicant's failure to disclose this information was deliberate. (Ex. 1; SOR.)

Section 26n asks if an applicant is currently over 90 days delinquent on any debt. Applicant answered "No" to Section 26n and did not disclose the information alleged in SOR ¶ 1.g. SOR ¶ 2.e. alleges that Applicant's failure to disclose this information was deliberate. (Ex. 1; SOR.)

Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) in November 2011. He told the investigator that he had no financial delinquencies that he was aware of. When the investigator raised questions about specific creditors and debts, Applicant recognized some of them, but he stated that his wife was responsible for paying their debts. He acknowledged that he was likely responsible for the debts if his wife was not paying them. He stated that he had not received consumer credit counseling. (Ex. 3.)

In his December 2013 answer to the SOR, Applicant admitted the seven debts, stated that he was making payments or had payment arrangements with the creditors, and provided documentation to corroborate the payment arrangements. He also provided documentation to corroborate payment of the debt alleged at SOR ¶ 1.b. (Answer to SOR; Ex. A through Ex. F.)

The fiancée of Applicant's son testified that in November 2013, she and Applicant's son became aware of Applicant's financial difficulties.<sup>3</sup> They obtained his credit report. They confirmed that Applicant's paychecks were sent by direct deposit to an account belonging to Applicant's wife and daughter.<sup>4</sup> They also confirmed that Applicant's wife had not been making consistent payments on debts that belonged to her and to Applicant. (Tr. 43-56.)

Applicant's son and his fiancée assumed control of Applicant's finances. In December, 2013, they opened a new account to receive his biweekly paychecks. They made payments and negotiated payment plans with the creditors identified in the SOR and in Applicant's Ex. A through Ex. F. They also assumed control of Applicant's wife's finances and arranged to have the paychecks from one of her two jobs deposited into the account which receives Applicant's paychecks. From this account, the son and his fiancée pay all of Applicant's and his wife's debts, their household mortgage, and their living expenses. (Tr. 49-60.)

The witness testified that she believed that Applicant was comfortable with the control that his son and she exercised over his finances. She observed that Applicant's wife had opened most the accounts that the couple had, and she had been in charge of all of their finances. Applicant was content to receive an allowance every other week to pay for his expenses and gasoline. (Tr. 70-71.)

The witness stated that Applicant's wife has been supporting her daughter, who is unmarried and unemployed. The daughter resides in Applicant's household with her two children. The witness stated that she and her fiancé believe "that a lot of the debt was really acquired because . . . my [future] mother-in-law was supporting her daughter and the two children and I believe he had no idea what was going on because he just works and comes home." (Tr. 70-72.)

A second witness testified on Applicant's behalf. She explained that she has known Applicant for 20 years, and she helped him and his family when they immigrated to the United States. She explained that it was customary in their home country for men to turn over their paychecks to their wives and to entrust the wives with managing the

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<sup>3</sup> The witness stated that she has known Applicant since 2007. (Tr. 42.)

<sup>4</sup> The witness explained that the daughter was the primary holder of the account which received Applicant's paychecks. She stated that Applicant's wife's wages were being garnished, and the wife and daughter designated the daughter as the primary account holder because they did not want to have an account that was subject to attachment or garnishment because of the wife's debts. (Tr. 47-48.)

family finances and paying all the family's debts. She also observed that Applicant's wife held two jobs and was under stress. (Tr. 82-87.)

The witness testified that she had spoken to Applicant's wife and had asked her if Applicant knew that she was providing so much support to their daughter and her children. The witness said Applicant's wife told her that he was not aware of the degree of financial support she was giving to their daughter. (Tr. 86-87.)

Applicant testified that after he learned about the delinquent accounts, he asked his wife about them. He stated that she was not truthful and told him that some of the accounts he inquired about had been paid off. When he asked his wife to provide him with proof that the accounts had been paid, she was unable to do so. He then turned to his son and his future daughter-in-law for help. (Tr. 96-97.)

Applicant stated that after his delinquent debts were satisfied under the plans set up by his son and future daughter-in-law, he and his wife would assume responsibility for their finances. He also stated that, in the future, he would consult with and seek the supervision of his son and future daughter-in-law in managing his finances. He stated that he has not yet learned how they organize his money and manage his debt payments. (Tr. 97-99, 107, 113.)

Applicant testified that all of his debts are currently being paid on his behalf by his son and future daughter-in-law. He receives from them an allowance of \$20 a day. Applicant also testified that he has a 401(k) account with a balance of \$100,000. (Tr. 99-102.)

At the conclusion of the evidence, the Government conceded that Applicant was not aware of his financial obligations and his failure to disclose information about his financial obligations was not deliberate. (Tr. 119.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG).

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 these guidelines in conjunction with the factors listed in 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.

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 in seeking 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 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.

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 E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern: 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's personal conduct raised security concerns under AG ¶ 16(a), which reads: "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 denied the allegations at SOR ¶¶ 2.a. through 2.e., which raised personal conduct concerns under AG ¶ 16(a).

When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

At his hearing, Applicant and two witnesses testified credibly that he was unaware of his financial delinquencies because his wife controlled the family's financial resources. His failure to identify a judgment, two accounts in collection status, three accounts that had been charged off, and a delinquent mortgage on his e-QIP was not a deliberate attempt to conceal this information from the Government. At the conclusion of Applicant's hearing, the Government conceded that the evidence adduced at the hearing established that Applicant did not intentionally falsify the e-QIP he executed on August 8, 2011. Accordingly, I conclude the five Guideline E allegations in the SOR for Applicant.

## **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. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This 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. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d))

Applicant admitted a history of delinquent debt. Applicant elected to delegate payment of his debts to his wife, but he did not follow up to ensure that the debts were paid. When he learned that his wife had not paid their debts, he turned to his son and future daughter-in-law, who then took control of Applicant's finances and began to pay his debts and to negotiate payment plans with his debtors on his behalf.

With his wife, and with his son and future daughter-in-law, Applicant relinquished his legal responsibility to identify and pay his debts, and he delegated that responsibility to others. Fortunately for Applicant, in December 2013, his son and future daughter-in-law began to carry out his financial responsibilities and duties, and it appears possible



that the delinquent debts alleged in the SOR will be satisfied. At his hearing, Applicant stated that he would again rely on himself and his spouse in the future when he paid his financial obligations. He did not explain why he believed his future endeavors would be more successful than those in the past. As of the date of his hearing, he had not taken action to learn how to manage his finances.

But the story does not end there. Applicant requests renewal of a security clearance. It is Applicant who requests that the Government entrust him with classified information. This is a responsibility which, if given, cannot be delegated to others.

The evidence adduced at Applicant's hearing established that Applicant's financial delinquencies occurred under circumstances that are likely to recur. The record did not establish that circumstances beyond Applicant's control prevented him from meeting his financial obligations. Applicant has not sought financial credit counseling, and he himself has not made good faith efforts to resolve his debts. I conclude that none of the relevant Guideline F mitigating factors apply to the Guideline F allegations in Applicant's case.

### **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 the facts and circumstances surrounding this case. Applicant is a mature adult who seeks access to classified information. As an adult, he is responsible for meeting his legal obligations, which include paying his debts and marital debts he has incurred with his wife. Applicant elected to delegate those responsibilities to other family members. His relinquishment of this fundamental adult responsibility raises concerns about Applicant's judgment, reliability, and capacity to protect classified information.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate security concerns arising from his financial delinquencies.

### **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
Subparagraphs 1.a. - 1.g.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a. - 2.e.:	For 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.

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Joan Caton Anthony  
Administrative Judge