



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-04539
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

10/18/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated personal conduct security concerns raised by a number of relatively minor arrests that occurred when he was younger. Nearly six years have passed since he was last arrested or charged with any offense. During this period, he has demonstrated favorable and significant lifestyle changes. However, he did not mitigate security concerns raised by his financial situation. Specifically, he failed to provide sufficient evidence showing that he has taken reasonable and responsible steps to address his delinquent debts. Clearance is denied.

**Statement of the Case**

On December 8, 2015, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the personal conduct and financial considerations guidelines.<sup>1</sup> Applicant answered the SOR and requested a determination based on the administrative (written) record.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

On April 14, 2016, Department Counsel prepared a file of relevant material (FORM) and sent it to Applicant. The FORM contains, in pertinent part: Applicant's security clearance application (SCA), a summary of his security clearance interview (clearance interview), an F.B.I. criminal record report, a February 2014 credit report, and 2005 bankruptcy court records. These exhibits were pre-marked as Items 4 – 8 and are admitted into the administrative record without objection.<sup>2</sup>

Applicant submitted an April 2016 credit report in response to the FORM. This report was marked and admitted into the record as Item 9. On December 6, 2016, I was assigned Applicant's case. After confirming Applicant's sponsorship for a clearance by his employer, which provides the Defense Office of Hearings and Appeals continuing jurisdiction over the matter, the record closed.<sup>3</sup> See *generally* Directive ¶ 4.4.

### **Findings of Fact**

Applicant, who is in his early forties, is married with eight children (three of whom are stepchildren). He is employed by a defense contractor as a systems administrator and has been with his current employer since April 2013. He earned an associate's degree in 2013 and is pursuing a bachelor's degree. He submitted an SCA in December 2013 in connection with his job.

#### *Financial*

Applicant has been unable to pay his debts for over a decade. He filed for Chapter 7 bankruptcy in 2005, discharging approximately \$6,700 in debt. At the time, Applicant's debts primarily consisted of a repossessed vehicle and a few delinquent credit cards. He was unemployed and underemployed for long periods of time from 2009 to April 2013, when he was hired by his current employer.

From 2009 to the present, Applicant incurred approximately \$10,000 in delinquent debt, primarily consisting of past-due child support and overdue state taxes. Applicant revealed his past-due child support debt on his SCA and discussed it during his clearance interview. In February 2011, he was sentenced to 180 days of work release and probation for failing to pay court-ordered child support for two of his children. As of the March 2014 clearance interview, Applicant's wages were being garnished to satisfy back child support totaling about \$7,000 for these two children.

It is unclear from the record whether Applicant has court-ordered child support for his other children and the status of his child support accounts. He did not provide documentation from the state's child support enforcement agency (CSEU) reflecting his current account balance(s). Instead, Applicant is relying on Item 9, the April 2016 credit report, which reflects a CSEU collection account for \$198 that was closed in January 2010. No other delinquent child support account is reflected on Item 9. However, a \$5,081 collection account for delinquent child support is listed on Item 7. Based on the

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<sup>2</sup> Items 1 – 3 are the SOR, Answer, and the cover letter accompanying the SOR.

<sup>3</sup> See Appellate Exhibit I.

(unclear) state of the record evidence, I find that the past-due child support debt referenced in SOR 2.g remains unresolved.

Applicant also discussed during his clearance interview that he had unpaid state taxes from 2007, which were reduced to a lien in 2010. Applicant claimed to be on a payment plan to satisfy the debt. He submitted no documentation reflecting such payments and both credit reports (Items 7 and 9) reflect this tax debt. The state tax debt is referenced in SOR 2.b and remains unresolved.

As for the consumer-related debts listed at SOR 2.c – 2.f, Applicant claims he either successfully disputed the debt or they no longer appear on his current credit report. Applicant provided no corroborating documentation showing that he settled, paid, or otherwise resolved these SOR debts or reasonable basis upon which to dispute the alleged debts. Each of the debts are listed on Item 7.

Applicant did not submit evidence of having sought or received financial counseling. His current credit report, Item 9, reflects a credit score considered “fair.”

### *Personal Conduct*

From 2009 to 2011, Applicant was arrested and charged eight times with relatively minor offenses. Most of these arrests resulted in charges that were *nolle prossed* (not prosecuted).

The SOR alleges that Applicant deliberately falsified his SCA by failing to disclose a 2005 arrest for marijuana possession. Applicant denies he deliberately falsified the SCA. He disclosed other pertinent criminal history information, including the non-criminal charges for failing to pay his court-ordered child support. He discussed the drug-related arrest during his March 2014 clearance interview, which occurred a few months after submitting the SCA. He and several others were arrested after police stopped the car he was riding in and found marijuana in the car. The charge was *nolle prossed* after another person in the car confessed to the offense. Applicant denies he was involved with drugs on this occasion, and the record is devoid of any suggestion that he was involved with illegal drugs on any other occasion.

Applicant earned an associate’s degree and started working for his current employer in 2013. He is currently pursuing a bachelor’s degree. He has not been arrested or charged with any offense in over five years.

### **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 eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, 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 commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.<sup>4</sup>

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

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, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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.

## **Analysis**

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

The personal conduct security 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

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<sup>4</sup> See also ISCR Case No. 15-01208 at 4 (App. Bd. Aug. 26, 2016); ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011).

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleges that Applicant deliberately falsified his SCA by not listing his 2005 drug-related arrest. This alleged conduct raises the above concern and, specifically, the disqualifying condition listed at AG ¶ 16(a).

The security clearance process depends heavily upon the honesty of all applicants. An applicant must disclose relevant matters that are responsive to questions on the SCA. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified an SCA. 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 did not deliberately falsify his SCA. He listed several pieces of relevant, adverse information on the SCA, including the non-criminal matter for failing to pay his court-ordered child support. Moreover, he fully discussed the drug-related arrest and other pertinent background information during his clearance interview in March 2014. This interview took place shortly after he submitted the SCA. Such actions are inconsistent with a person trying to misrepresent his background. After considering all the evidence and drawing all reasonable inferences therefrom, I find for Applicant on SOR 1.i, the falsification allegation.

The SOR also alleges that Applicant's past arrests for relatively minor offenses raises a security concern under the personal conduct guideline. Applicant's past conduct tends to raise questions about his judgment, reliability, and other pertinent character traits required of a prospective clearance holder. See AG ¶¶ 16(c), 16(d). Applicant mitigated these concerns through demonstrated, positive lifestyle changes, as evidenced by his educational achievements and good employment record over the past four years. Furthermore, he has not been arrested or charged with any offense in over five years. Therefore, based on the record evidence, I find that the mitigating conditions listed at AG ¶¶ 17(c) through 17(e) apply in full or in part and, when considered together with the whole-person factors present in this case, mitigate the security concerns raised by the allegations in SOR 1.a – 1.h.

## **Guideline F, Financial Considerations**

The security concern under this guideline is explained 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

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

overextended is at risk of having to engage in illegal acts to generate funds.

The financial considerations security concern is not limited to a consideration of whether an applicant with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an applicant's delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.<sup>6</sup>

The record evidence reflects that Applicant has a history of not meeting his financial obligations and, at a minimum, has been unable to pay his debts. This record evidence raises the above security concern and establishes the disqualifying conditions at AG ¶¶ 19(a) and 19(c).

The adjudicative guidelines provide for a number of conditions that can mitigate the financial considerations security concern. I have considered all the relevant mitigating conditions, including the following:

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;

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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

None of the mitigating conditions fully apply. Applicant's recent financial problems appear to be attributable to a long stretch of unstable employment. Although it can take a person time to address and resolve financial problems stemming from matters beyond their control, Applicant has been gainfully employed with his current employer for nearly four years. He presented no documentation showing that in that time he has taken responsible steps to address the SOR debts. He also presented no

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<sup>6</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

evidence reflecting the receipt of financial counseling and limited information from which I could conclude that his current financial situation is under control.<sup>7</sup>

Applicant appears to rest his case on the fact that a majority of the SOR debts, including his delinquent child support account, no longer appear on a recent credit report. However, the fact that several SOR debts are no longer being reported by one the three credit reporting agencies is *on its own* of limited evidentiary value in assessing a person's suitability for access to classified information.<sup>8</sup> Moreover, the reliability of this recent credit report in assessing Applicant's suitability is questionable. Of note, the credit report's only entry regarding a delinquent child support account relates to one that was closed months before Applicant was sentenced for failing to pay his court-imposed child support obligation and had his wages garnished. Applicant was on notice that this derogatory information raised a security concern and elected not to provide clear evidence, such as, a printout from his child support account with CSEU, showing that he responsibly addressed his delinquent child support obligation and the other SOR debts.<sup>9</sup>

Individuals applying for a security clearance are not required to be debt free. They are also not required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to this nation's secrets.<sup>10</sup> Here, Applicant failed to meet his burden.

### **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, including the whole-person factors listed at AG ¶ 2(a). I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's honesty during the security clearance process and the relatively low amount of delinquent debt at issue. However, Applicant's failure to provide clear evidence showing that he has responsibly addressed his delinquent debts, especially two debts involving basic and fundamental financial obligations – one derived from citizenship, the other through parenthood – raises continuing doubts about his ability and willingness to

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<sup>7</sup> ISCR Case No. 15-02585 at 2 (App. Bd. Dec. 20, 2016) (reasonable to expect an applicant to present documentation regarding their efforts to address and resolve SOR debts).

<sup>8</sup> ISCR Case No. 14-04926 at 2 (App. Bd. Dec. 20, 2016) ("A person who fails repeatedly to fulfill legal obligations, such as paying taxes, providing child support, and addressing other debts in a reasonable manner, does not demonstrate the high degree of reliability required of those granted access to classified information.")

<sup>9</sup> See ISCR Case No. 15-03527 (App. Bd. Dec. 29, 2016) (affirming denial where applicant failed to present clear evidence regarding his/her efforts to address an SOR debt that no longer appeared on his credit report). At the same time, Department Counsel's reliance on a credit report that was already quite dated (*over two years old*) at the time the FORM was issued seems imprudent.

<sup>10</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

discharge his security obligations. Overall, the record evidence leaves me with doubts about his present eligibility for access to classified information.

### **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 E (Personal Conduct):	FOR APPLICANT
Subparagraphs 1.a – 1.i:	For Applicant
Paragraph 1, Guideline F (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 2.a – 2.g:	Against Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge