



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-00063
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

10/27/2016

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Security concerns under Guideline B (Foreign Influence) were alleged in the SOR, but Department Counsel withdrew the Guideline B allegations after Applicant answered the SOR. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 31, 2013. On September 21, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines B, F, and E. The DOD acted under Executive Order (Exec. Or.) 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) implemented by DOD on September 1, 2006. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on October 1, 2015; and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on January 11, 2016. On the same day, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The FORM consisted of the SOR (Item 1), Applicant's SCA (Item 2), a summary of an interview by a security investigator during the background investigation (Item 3), and two credit bureau reports (CBRs) from April 2013 and June 2015 (Items 4 and 5).<sup>1</sup> He received the FORM on February 3, 2016, and did not respond. The case was assigned to me on October 19, 2016.

### **Findings of Fact<sup>2</sup>**

Applicant's answer to the SOR is ambiguous. Regarding the Guideline F allegations, he stated,

I was not aware of these delinquencies. I plead guilty. . . . Two months ago I was interviewed by [a security officer]. I asked [the security officer] to check my credit report and he said it was fine with a score of 650. Recently I checked my credit report and it is as you say. I do not understand it and am looking into it. I paid them all off.

Regarding the Guideline E allegation, he stated, "Guilty, as stated above." I have interpreted his answer to say that he paid the debts and was not aware that they were listed in his CBRs as delinquent. I have treated his answers to the SOR as denials.

Applicant is a 60-year-old employee of a federal contractor supporting another government agency (AGA). He has worked for federal contractors supporting the AGA since August 2003 and has held a security clearance issued by the AGA since March 2008.

Applicant married in August 1979 and divorced in August 2003. He married his current spouse in June 2009. He has no children. He received an associate's degree from a community college in June 2005.

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<sup>1</sup> Item 3 was not authenticated as required by the Directive ¶ E3.1.20. Thus, it is not admissible absent a knowing waiver of the authentication requirement. A *pro se* Applicant's failure to object to an unauthenticated personal subject interview is not tantamount to waiver of the authentication requirement. Waiver means "[t]he voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner ed., 9th ed., West 2009). Applicant was not advised of the authentication requirement or his right to object to Item 3. I have not considered Item 3 for any purpose.

<sup>2</sup> Applicant's personal information is extracted from his security clearance application (Item 2) unless otherwise indicated by a parenthetical citation to the record.

SOR ¶ 1.a alleges a credit card account that was referred for collection of \$10,911 in June 2012, when payments were 150 days past due. It is reflected in Applicant's April 2013 and June 2015 CBRs. The June 2015 CBR reflects that the last payment on the account was in March 2014. The amount of the payment is not reflected. The debt is not resolved.

SOR ¶ 1.b alleges a credit card account that was referred for collection of \$8,806 in June 2012, when payments were 150 days past due. It is reflected in both of Applicant's CBRs. The June 2015 CBR reflects that the last payment on the account was in July 2014. The amount of the payment is not reflected. The debt is not resolved.

SOR ¶ 1.c alleges a credit card account that was referred for collection of \$7,444 in June 2012. Applicant is listed as an authorized user of the credit card in both of the CBRs.

When Applicant submitted his SCA, he answered "no" to questions whether, during the past seven years, he had defaulted on any type of loan or had bills or debts turned over to a collection agency, and whether he was currently 120 days delinquent on any debt. He did not disclose the debts alleged in the SOR and reflected in the CBRs. In his responses to the SOR and the FORM, he did not submit any documentation that the debts have been paid, compromised, forgiven, disputed, or otherwise resolved.

### **Policies**

"[N]o 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 applicants 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

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.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline 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.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and his CBRs establish the allegations in SOR ¶¶ 1.a and 1.b. His CBRs reflect that he was an authorized user on the credit card alleged in SOR ¶ 1.c and not legally liable for the debt. Thus, SOR ¶ 1.c is not established by the evidence. However, the evidence establishing SOR ¶¶ 1.a and 1.b is sufficient to establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline are potentially applicable:

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 are established. The debts are arguably "infrequent," but they are recent. Applicant has provided no information about the circumstances in which the debts were incurred. He has submitted no evidence of financial counseling and no evidence that the debts were paid or otherwise resolved. He has not disputed any of the alleged debts.

## **Guideline E, Personal Conduct**

The concern under this guideline is 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.

The relevant disqualifying condition in this case is AG ¶ 16(a): "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . ." When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant's CBRs reflect that he made a payment of an unknown amount on the debt alleged in SOR ¶ 1.a in March 2014, a year after he submitted his SCA, and he made a payment of an unknown amount on the debt alleged in SOR 1.b in July 2014. The amounts alleged in the SOR reflect the balance due on the accounts after the payments.

The fact that Applicant made payments on the debts after submitting his SCA contradicts his claim that he thought the debts were paid off when he submitted it. The amounts of the debts, the lengthy period during which the delinquent accounts were unresolved, and his implausible and unconvincing explanation for not disclosing the debts in his SCA indicate an intentional falsification. Accordingly, I conclude that AG ¶ 16(a) is established.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

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 unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Neither mitigating condition is established. There is no evidence that Applicant attempted to correct his SCA before receiving the SOR. His falsification was not minor, because falsification of a security clearance application “strikes at the heart of the security clearance process.” ISCR Case No. 09-01652 (App.Bd. Aug. 8, 2011.) It was recent and did not happen under unique circumstances.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis and I have considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts and falsification of his SCA. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a and 1.b:

Against Applicant

Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman  
Administrative Judge