



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-01582
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

03/29/2017

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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). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 7, 2014. On September 25, 2015, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines 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 replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on October 16, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written

case on May 27, 2016, and sent a complete copy of the file of relevant material (FORM) to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on June 3, 2016, and did not respond.<sup>1</sup> The case was assigned to me on February 24, 2016.

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

Applicant did not expressly admit or deny any of the allegations in the SOR, but he provided explanations. I have treated his responses as denials.

Applicant is a 35-year-old welder employed by a defense contractor since May 2014. He completed a technical school and received a welding certification in April 2015. He has never married and has no children. He has never held a security clearance.

When Applicant submitted his SCA, he answered "No" to all questions about financial delinquencies. His credit bureau report (CBR) dated May 16, 2014, nine days after he submitted the SCA, listed the six delinquent debts alleged in the SOR. (Item 3.) The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: auto loan charged off and placed for collection of \$14,174.** In Applicant's answer to the SOR, he stated that the auto was involved in an accident, and the creditor took back the car and was working with the insurance company to resolve it. In the June 2014 PSI, he told the investigator that he voluntarily surrendered the vehicle because he could not afford the payments. (Item 5 at 4.) The debt is not resolved.

**SOR ¶ 1.b: delinquent auto lease payment charged off for \$489.** The May 2014 CBR reflects that Applicant disputed this debt and it was resolved against him. In Applicant's answer to the SOR, he stated that he contacted the creditor and was trying to settle this debt. He provided no documentary evidence of negotiations, payments, or a payment agreement.

**SOR ¶ 1.c: department store account charged off for \$356.** The May 2014 CBR reflects that Applicant disputed this debt, but the dispute is not resolved. In Applicant's answer to the SOR, he stated that he contacted the creditor and was trying to settle this debt. He submitted no documentary evidence of negotiations, payments, or a payment agreement.

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<sup>1</sup> The FORM included Item 5, a summary of a personal subject interview (PSI) conducted on June 24, 2014. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant did not respond to the FORM. I conclude that his failure to respond to the FORM waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

<sup>2</sup> Applicant's personal information is extracted from his security clearance application (Item 1) unless otherwise indicated by a parenthetical citation to other documents in the record.

**SOR ¶ 1.d: delinquent medical bill for \$177.** In Applicant's answer to the SOR, he stated that he was unaware of this debt. He submitted no documentary evidence of efforts to identify, dispute, or otherwise resolve this debt.

**SOR ¶¶ 1.e and 1.f: telecommunication bills placed for collection of \$159 and \$125.** In Applicant's answer to the SOR, he stated that both debts were paid in full. He provided no documentation of payment.

The SOR ¶ 2.a alleges that Applicant falsified his SCA by answering "No" to all the financial questions and failing to disclose the debts alleged in SOR ¶¶ 1.a-1.f. In Applicant's response to the SOR, he stated that he did not disclose the debts alleged in the SOR because he was unaware of them when he submitted his SCA.

The SOR ¶ 2.b alleges that on May 18, 2014, Applicant was arrested and charged with a felony drug offense and driving while in possession of a controlled substance, a misdemeanor. In his answer to the SOR, he stated that he was driving a car rented by his girlfriend, he was pulled over in a random traffic stop, and his girlfriend had left a plastic bag in the car containing her prescription pain medications and some marijuana. He stated that, after he was arrested, his girlfriend came to the police station, told the police that the prescription drugs and the medical marijuana were hers, and he was released. There are no police or court records in the record supporting this allegation. The allegation was based on the PSI, which reflected that Applicant was questioned about this offense. The PSI summary reflects that Applicant told the investigator that he was stopped for a seatbelt violation, the prescription drugs and marijuana were found in the car, his girlfriend told the police that the prescription drugs and marijuana were hers, and he paid a fine for the seatbelt violation and possession of marijuana. (Item 5 at 5.)

### **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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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.” See 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 an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 the CBRs 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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. If the delinquent auto loan alleged in SOR ¶ 2.a was due in part to an automobile accident, it would constitute a condition largely beyond his control. However, Applicant has given inconsistent answers regarding his inability to pay the auto loan. In his answer to the SOR, he claimed it was due to an accident, but in the PSI he claimed he voluntarily surrendered the car due to his inability to make the payments. His inconsistent explanations need not be resolved, however, because he has

not acted responsibly. He submitted no evidence that he contacted the creditor or took any affirmative steps to resolve the debt.

AG ¶¶ 20(c) and 20(d) are not established. Applicant has not sought or received financial counseling, and he has taken no substantial steps to resolve any of his delinquent debts.

AG ¶ 20(e) is not established. Applicant's CBRs reflect that he disputed the debts alleged in SOR ¶¶ 1.b and 1.c, but he produced no evidence establishing the basis for the disputes.

### **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 for the allegation that Applicant falsified his SCA 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 level of education and experience 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 claims that he did not disclose any of the debts alleged in the SOR because he was unaware of them. His explanation is plausible with respect to the debts alleged in SOR ¶¶ 1.b-1.f in light of his overall inattention to his financial obligations, but it is not plausible or persuasive regarding the delinquent auto loan in SOR ¶ 1.a. Applicant gave two conflicting explanations for the delinquent loan. Regardless of which explanation is true, it is clear that Applicant knew he had not made the required payments on the car loan and the debt was not resolved. He has provided no reasonable or plausible explanation for not disclosing the delinquent auto loan alleged in SOR ¶ 1.a. I conclude that the disqualifying condition in AG ¶ 16(a) is established.

The relevant disqualifying conditions for the incident involving a seat-belt violation and possession of drugs are:

AG ¶ 16(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; and

AG ¶ 16(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 . . . a pattern of dishonesty or rule violations; and

The evidence supporting SOR ¶ 2.b is inconsistent and incomplete. There are no police records or court records to support the description of the event in the PSI. It is implausible that Applicant's girlfriend would have claimed responsibility for the drugs and the marijuana but that Applicant would be charged with possession of marijuana but not the other drugs. The single seat-belt violation admitted by Applicant is a minor incident that is insufficient to raise security concerns. I conclude that AG ¶ 16(c) and 16(d) are not supported by substantial evidence.

The following mitigating conditions are relevant to Applicant's falsification of his SCA:

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.

AG ¶ 17(a) is not established. Applicant made no effort to correct the omission from his SCA until he was confronted with the evidence.

AG ¶ 17(c) is not established. Applicant's 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 arguably "infrequent," because there is no evidence of other falsifications, but it was recent and did not occur 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 his personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him 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-1.f:	Against Applicant
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Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a:	Against Applicant
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Subparagraph 2.b:	For Applicant
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### **Conclusion**

I conclude that 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.

LeRoy F. Foreman  
Administrative Judge