



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



In the matter of: )  
)  
) ISCR Case No. 15-01771  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

09/20/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the personal conduct security concerns under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On September 13, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. The action was taken 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 4, 2015, and elected to have his case decided on the written record. On February 11, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant,

and it was received on February 19, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government evidence and provided documents within the time period. The Government's documents identified as Items 2 through 7 are admitted into evidence. Applicant's documents were marked as Items 8 through 13 and are admitted into evidence.<sup>1</sup> The case was assigned to me on August 26, 2016.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.c, and 1.f. He denied the remaining allegation in SOR ¶¶ 1.d, 1.e, and 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 62 years old. He served in the military from 1979 until he retired with an honorable discharge in 2000. He married in 1988 and has two grown stepchildren. Applicant has worked for different federal contractors since his retirement from the military. He has experienced periods of unemployment since his retirement.<sup>2</sup>

The SOR alleges six delinquent debts, totaling approximately \$49,589, which includes a judgment. Applicant completed a security clearance application (SCA) in May 2012. He did not disclose in the SCA that he had failed to pay his 2011 city income taxes, or that he had accounts that were charged off for failing to pay as agreed, or that he had debts turned over to a collection agency, or accounts that were delinquent over 120 days, or that he was currently over 120 days delinquent on an account. Applicant indicated during his background interview with a government investigator that due to periods of unemployment and underemployment, he secured loans or used credit cards to help supplement his income. He indicated he would have trouble making the monthly payments, and the accounts would become delinquent. He then made agreements with the creditors to make monthly payments to bring the accounts current. He indicated he did not disclose the delinquencies because he did not believe he was ever over 120 days delinquent on any of the accounts.<sup>3</sup>

Applicant indicated that he had reached an agreement with the creditor holding the judgment (SOR ¶ 1.a, \$2,335) and was making monthly payments, so he did not list the debt on his SCA. I find this explanation credible. He also indicated he was aware he failed to pay his 2011 city taxes. It is unknown when the city taxes for 2011 were due. Federal and state tax returns are due for filing in April following the tax year. If the city

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<sup>1</sup> The documents consisted of 10 pages.

<sup>2</sup> Item 3.

<sup>3</sup> Items 3, 5.

taxes were due at the same time, his taxes were not delinquent when he completed his SCA in May 2012.<sup>4</sup>

The debts alleged in the SOR are reflected in either Applicant's October 2012 or February 2015 credit reports. Both credit reports reflect the judgment alleged had not been released or satisfied.

In Applicant's answer to the SOR, he stated:

When I completed my security clearance application for a secret clearance, I did not try to defraud the Government. I was behind on some of my debts and was attempting to work out payments for some of these debts. At this time, I am current on all of my outstanding debts, other than the ones that were written off by certain companies.<sup>5</sup>

In Applicant's response to the FORM he stated that he is satisfying or has satisfied the debts in SOR ¶¶ 1.a, 1.b, 1.c, and 1.f. He provided a document showing SOR ¶ 1.f is resolved.<sup>6</sup> He provided a document showing he is making payments on the debt in SOR ¶ 1.b.<sup>7</sup> He provided one page of his 2016 credit report that shows he has no open collection accounts. It does not reflect that the judgment in SOR ¶ 1.a is satisfied. Applicant did not provide evidence that he paid, settled or resolved the accounts in SOR ¶¶ 1.c (charged-off account of unspecified amount), 1.d (\$9,947-charged off), and 1.e (\$17,512-charged off). In his answer to the SOR, he indicated he was not paying the charged-off accounts.

Based on Applicant's statement to the investigator, his answer to the SOR, the dates of the credit reports, and his response to the FORM, there is insufficient evidence to conclude Applicant was aware he had delinquent debts that were more than 120 days overdue when he completed his SCA. The allegations that he deliberately failed to disclose the information is not established.<sup>8</sup>

## **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

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<sup>4</sup> Items 3, 4.

<sup>5</sup> Item 2.

<sup>6</sup> Item 12.

<sup>7</sup> Items 10 and 11.

<sup>8</sup> The Government did not allege that Applicant failed to disclose on his May 2012 SCA that he had a judgment entered against.

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, these guidelines are applied 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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.

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.<sup>9</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent debts that are unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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;
- (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;

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<sup>9</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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

(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.

Applicant did not provide evidence he paid the judgment in SOR ¶ 1.a. His February 2015 credit report reflects that the judgment has not been released or satisfied. He provided evidence he is making payments on the debt in SOR ¶ 1.b and paid the debt in ¶ 1.f. He provided one page from his 2016 credit report showing he has no collection accounts, but did not provide evidence that he paid or settled the charged-off accounts in SOR ¶¶ 1.c, 1.d, and 1.e or that the judgment is satisfied and released. He stated in his answer to the SOR: "At this time, I am current on all of my outstanding debts, other than the ones that were written off by certain companies." These debts are unresolved. Applicant did not provide evidence of his current financial situation. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address his delinquent debts casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to periods of unemployment and underemployment. This was a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant provided some evidence that he attempted to pay some of his creditors when he got behind in making the monthly payments. He provided evidence that he has been making some monthly payments on one debt. Applicant failed to provide evidence of actions he has taken regarding the large charged-off debts or the status of the judgment. In his answer to the SOR, he indicated he was not addressing the charged-off debts. There is some evidence to conclude Applicant acted responsibly under the circumstances regarding some of his debts, but others he has not addressed. He provided evidence that he has no collection accounts noted on his 2016 credit report, but did not provide evidence that the accounts alleged were deleted because he paid them, or because of their age they are no longer enforceable. AG ¶ 20(b) partially applies.

Applicant did not provide evidence that he has received financial counseling. He did show he paid his tax debt and is making payments on one credit card debt. He did not provide information about his current finances. Because some of his delinquent debts may no longer be legally enforceable due to their age, his financial problems may be more manageable, but there is minimal evidence in that regard. AG ¶¶ 20(c) has minimal application. Applicant is making monthly payments on the debt in SOR ¶ 1.b and has paid the debt in SOR ¶ 1.f. AG ¶ 20(d) applies to these debts. He did not provide evidence of his actions to resolve the remaining debts alleged. AG ¶ 20(d) does not apply to these debts. Applicant did not provide evidence of actions he has taken to

dispute the legitimacy of any of the debts or efforts to resolve them AG ¶ 20(e) does not apply.

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

AG ¶ 15 expresses the security concern for 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. I find the following potentially applicable:

(a) 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 indicated to the government investigator that he was unaware he had debts that were over 120 days delinquent when he completed his 2012 SCA. He was making payments on some debts when he was interviewed. Based on the October 2012 credit report and Applicant's interview during the same month, there is insufficient evidence proving he knew he had debts that were more than 120 days delinquent. It is reasonable that Applicant may have believed that because he made some payments on certain debts that they no longer were in a delinquent status. There is insufficient evidence to conclude he deliberately failed to disclose his financial delinquencies. Therefore, the above disqualifying condition is not established.

### **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 the 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. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 62 years old. He honorably retired from the military. He has not provided evidence of action to resolve some of his delinquent debts. He failed to provide evidence he satisfied a 2010 judgment. Applicant does not have a reliable financial track record. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant refuted the Guideline E, personal conduct security concerns, and failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge