



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



In the matter of: )  
)  
) ISCR Case No. 15-03527  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

09/29/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant refuted 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 November 20, 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 8, 2015, and elected to have his case decided on the written record. On February 19, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant,

and it was received on March 7, 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. The Government's documents are identified as Items 1 through 4. Applicant provided documents within the time period. Applicant's documents were marked as AE A through P. Applicant did not object to the Government's evidence, but did provide corrections in AE A, regarding biographical information that was incorrect in his personal subject interview (Item 3).<sup>1</sup> The case was assigned to me on August 26, 2016.

### **Findings of Fact**

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

Applicant is 63 years old. He served in the military from 1972 until 1978 and received an honorable discharge. He earned an associate's degree in 1977. Applicant had two prior marriages before marrying again in 1981. He and his wife divorced in 2004 and remarried in 2007. He has one adult child. He has been employed by a federal contractor since 2003.<sup>2</sup>

The SOR alleges in ¶ 1.a (\$125,122), a debt in collection. A credit bureau report from March 2015 lists this debt as a second mortgage that has been charged off.<sup>3</sup> Applicant admitted this debt in his answer to the SOR.<sup>4</sup> He provided a credit report from March 2016 that does not reflect this debt. He also provided an email from his wife that appears to be a credit report also from March 2016 that does not list the debt. He did not provide any other evidence to document what actions he may have taken to dispute or resolve this debt.<sup>5</sup>

The SOR alleges a debt in ¶ 1.b (\$109,000) on an account placed for collection. No documents were provided by the Government to substantiate this debt.<sup>6</sup>

Applicant provided a confusing answer to the SOR and response to the FORM. I was able to decipher some of the facts that I believe Applicant is attempting to provide.

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<sup>1</sup> AE K consists of multiple documents that Applicant received from the Government. He sent them back with his response to the FORM. AE M is the same credit report the Government submitted as Item 4. AE P is a copy of the Directive and Applicant's security clearance application (SCA).

<sup>2</sup> Item 2; AE A.

<sup>3</sup> Items 1, 4.

<sup>4</sup> Item 1.

<sup>5</sup> I am unable to determine if this is a copy of a complete credit report.

<sup>6</sup> Item 4; AE L, N.

It appears in 2006, Applicant's brother deeded Property A to him for \$20,000. There is no receipt or document showing the monetary transaction. The title of Property A was quit claimed to Applicant. A statement from his brother indicates that he sold the house to Applicant, transferred the deed of title, but did not transfer the lien, so the loan on the property remained in the brother's name.<sup>7</sup> Applicant's answer to the SOR includes a statement from his realtor at the time. The realtor indicated that Applicant and his wife purchased Property B and needed the equity in Property A to secure the loan to make the purchase. Apparently, Applicant obtained some type of "bridge loan" from the mortgage lender in SOR ¶ 1.b, which allowed him to borrow on the equity of Property A. It is unclear how Applicant obtained this loan if he was not the owner of the original loan, which is his brother. The value of Property A declined due to the housing market at the time. Applicant was advised to stop making the mortgage payments on Property A.<sup>8</sup> At some point, Property A was foreclosed. Applicant indicated this was an illegal foreclosure.

Applicant stated in his response to the FORM that his brother's original mortgage loan on Property A is no longer enforceable because it was a second mortgage and is barred from collection under state law. Applicant also notes that the statute of limitations has expired on these debts.

A review of the documents provided by Applicant shows he signed a deed of trust on Property A for \$109,000 with the creditor in SOR ¶ 1.b in May 2007, agreeing to make monthly payments on this note. It is unknown if this debt was transferred to a different lender and its status. Credit reports provided by the Government and by Applicant do not reflect this debt, despite Applicant admitting it.<sup>9</sup>

Applicant completed a SCA in March 2014. Under Section 26 he was asked: "Delinquency Involving Routine Accounts-Other than previously listed, have any of the following happened? In the last seven years, you had bills or debts turned over to a collection agency?" Applicant responded "no."<sup>10</sup> The Government alleged Applicant deliberately failed to disclose the collection accounts alleged in SOR ¶¶ 1.a and 1.b. There is insufficient evidence to conclude the debts in SOR ¶¶ 1.a and 1.b were in collection. There is insufficient evidence to conclude, even if those debts were collection accounts that Applicant was aware of that status.<sup>11</sup>

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<sup>7</sup> AE B, C, D, E, G, H.

<sup>8</sup> It is unknown who provided Applicant the advice to stop making payments on the loan. There is also information provided that Applicant was selling Property A to his realtor's sister before the property was foreclosed.

<sup>99</sup> Item 4; AE J, N.

<sup>10</sup> Item 2.

<sup>11</sup> The Government specifically alleged Applicant deliberately did not disclose the accounts were turned over to a collection agency.

Applicant was interviewed by a government investigator on April 3, 2014. During his interview he confirmed his “no” responses to financial questions under Section 26. The Government alleged Applicant provided false statements to the government investigator when he deliberately failed to disclose the information in SOR ¶¶ 1.a and 1.b. In his interview, Applicant discussed the real estate transaction that occurred, but he indicated to the investigator that he was unaware that he had any delinquent accounts on his credit report. There was no evidence that he was aware at that time that there were delinquent debts associated with this transaction. Presumably these are the debts alleged in SOR ¶¶ 1.a and 1.b. There is a great deal of confusion regarding these accounts. Applicant indicated to the investigator that his realtor at the time advised him that everything would be taken care of. He indicated there were never any loan documents in his name and he was unaware of any delinquent accounts. Although the March 2015 credit report shows the debt in SOR ¶ 1.a was charged off, there is insufficient evidence to conclude Applicant falsified information provided to the government investigator at that time. He was, however, put on notice during the interview and after receiving the SOR that he had a charged off account that needed to be resolved.

### **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 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>12</sup>

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

(a) inability or unwillingness to satisfy debts; and

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<sup>12</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(c) a history of not meeting financial obligations.

There is insufficient evidence to conclude the debt in SOR ¶ 1.b is in a collection account status. I do not have enough evidence from the Government or the Applicant to make a definitive finding. Therefore, I must find in favor of Applicant on this allegation. There is evidence that the debt in SOR ¶ 1.a was charged off and is unresolved. The above disqualifying conditions apply to that debt.

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;

(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 failed to provide mitigating evidence regarding the debt in SOR ¶ 1.a. This debt may be unenforceable because it is a second mortgage and part of a foreclosure, but there is insufficient evidence to make that finding. Applicant provided some information about the transfer of title on Property A and his brother's failure to resolve the mortgage loan on the debt. There are unresolved questions regarding how Applicant used the equity in Property A to obtain a loan to purchase Property B, when there was a lien in his brother's name on Property A. I was not provided sufficient evidence to conclude the debt in SOR ¶ 1.a was appropriately disputed and resolved. Moreover, Applicant was made aware that this debt was a security concern during his background interview, when the SOR issued, and after he reviewed his 2015 credit report. I am unable to untangle a convoluted real estate transaction, based on the

minimal evidence in the record. None of the above mitigating conditions apply to SOR ¶ 1.a.

### **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; and

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other government representative.

There is insufficient evidence to conclude Applicant deliberately failed to disclose on his SCA that he had debts that were turned over to a collection agency. There is insufficient evidence to conclude that Applicant deliberately falsified material facts when he was interviewed by a government investigator, by not disclosing the debts alleged in SOR ¶¶ 1.a and 1.b. Therefore, the above disqualifying conditions are 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 63 years old. He honorably served in the military. Applicant was involved in a real estate transaction with his brother. It is unclear if this transaction involves the debt alleged in SOR ¶ 1.a. It is clear from the record that this transaction was not completed appropriately. Furthermore, Applicant became aware there was at least one large debt in SOR ¶ 1.a that needed to be addressed. Although Applicant provided credit reports to show the debt is no longer being reported, he admitted the debt, but has not provided evidence regarding its resolution. A debt barred from enforcement by state law or the statute of limitations does not equate to acting responsibly and exercising good judgment for purposes of determining a security clearance. He 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, but 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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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