



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 15-03650
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2016

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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). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 24, 2013. On November 12, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted under Executive Order (Exec. Or.) 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 (AG) implemented by the DOD on September 1, 2006. The adjudicative 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 December 21, 2015, and requested a decision on the record without a hearing before an administrative judge. On August 9, 2016, he requested a hearing. (Hearing Exhibit I.) Department Counsel was ready to proceed on August 26, 2016, and the case was assigned to me on September 7, 2016. On September 9, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 29, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until October 21, 2016, to enable him to submit documentary evidence. He did not submit anything further. DOHA received the transcript (Tr.) on October 11, 2016.

### **Findings of Fact<sup>1</sup>**

In his answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.f, 1.h, 1.i, 2.a, and 2.b. He denied SOR ¶ 1.c-1.e and 1.g. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 33-year-old sheet metal mechanic employed by a defense contractor. He graduated from high school in June 2001, worked as a cook and telemarketer, and began his current job in January 2007. He has never married. He has a ten-year-old daughter, for whom he pays child support of \$450 per month. (Tr. 31.) He has never held a security clearance.

The debts alleged in the SOR are reflected in credit bureau reports (CBRs) from August 2013 (GX 3), April 2015 (GX 4), and October 2015 (GX 5.) The status of the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: automobile loan charged off for \$9,858 in February 2013.** This debt is reflected on all three CBRs. Applicant testified that he contacted the collection agency who bought the debt, and he intended to accept an offer to settle the debt for \$2,600. (Tr. 33-37.) As of the date the record closed, he had not presented any evidence that he accepted the settlement offer or made payments on the debt.

**SOR ¶ 1.b: telecommunication bill referred for collection of \$242 in July 2012.** This debt is reflected on all three CBRs. Applicant admitted that he had not taken any action to resolve this debt. (Tr. 38.)

**SOR ¶ 1.c: medical debt for \$61.** This debt is reflected only in the April 2015 CBR, with the date of last activity reflected as December 2013. Applicant testified that this debt was “about to be paid,” but he did not present evidence of payment. (Tr. 39.)

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<sup>1</sup> Applicant’s personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

**SOR 1.d: judgment for \$742 entered in November 2011 and satisfied in July 2012.** This judgment is reflected as satisfied on all three CBRs. This debt was paid by garnishment of Applicant's wages. (Tr. 39-40.)

**SOR ¶ 1.e: judgment for \$806 entered in May 2009.** This judgment is reflected as unsatisfied on all three CBRs. Although Applicant denied this debt in his answer to the SOR, he admitted it at the hearing. It is not resolved. (Tr. 41-42.)

**SOR 1.f: judgment for \$1,076 entered in October 2012 and satisfied in November 2013 after garnishments in February 2013.** This judgment is reflected on all three CBRs. It is reflected as satisfied on the April 2015 and October 2015 CBRs. Applicant admitted this debt at the hearing and testified that it was satisfied by garnishment of his wages. (Tr. 42-43.)

**SOR ¶ 1.g: delinquent utility bill for \$513, referred for collection in May 2010.** This debt is reflected on the August 2013 CBR but not on the April 2015 and October 2015 CBRs. Applicant admitted this debt at the hearing. He contacted the creditor to determine the amount of the debt, but he has not resolved it. (Tr. 43-44.)

**SOR ¶ 1.h: delinquent cellphone bill for \$333, referred for collection in April 2013.** This debt is reflected on the August 2013 and October 2015 CBRs. Applicant testified that this debt was incurred when he changed providers, the new provider promised to pay his last bill with the previous provider, and the new provider failed to keep its promise. Applicant has taken no action to resolve this debt. (Tr. 45.)

**SOR ¶ 1.i: delinquent utility bill for \$130, referred for collection in October 2007.** This debt is reflected on the August 2013 CBR but not on the April 2015 and October 2015 CBRs. Applicant has taken no action to resolve it. (Tr. 46.)

When Applicant submitted his SCA, he answered "No" to all questions whether, during the last seven years, he had a judgment entered against him, had defaulted on any type of loan, had debts turned over to a collection agency, had his wages garnished, or had been over 120 days delinquent on any debt. He also answered "No" to the question whether he was currently over 120 days delinquent on any debt. His August 2013 credit bureau report (CBR), obtained about three weeks after he submitted his SCA, reflected the judgments alleged in SOR ¶¶ 1.d, 1.e, 1.f; the charged-off debt alleged in SOR ¶ 1.a; and the debts referred for collection alleged in SOR ¶¶ 1.b and 1.g-1.i.

Applicant testified that he completed a handwritten version of his SCA, submitted it, and did not carefully read the printed version. He testified that, due to the passage of time, he could not clearly remember how he answered the financial questions in the handwritten version. He denied intentionally falsifying the SCA. (Tr. 46-50.) When he was interviewed by a security investigator in September 2013 and confronted with the evidence, he admitted all the debts reflected on his August 2013 CBR. The security

investigator did not ask him to explain why did not disclose his delinquent debts in his SCA. (GX 2.)

Applicant's annual salary is about \$45,000. (Tr. 30.) He has about \$8,000 in his 401(k) retirement account. After he pays all his bills, he has a net monthly remainder of about \$600. (Tr. 32.)

### **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 the documentary evidence submitted at the hearing 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 above mitigating conditions are established. Applicant's delinquent debts are numerous, recent, were not incurred under circumstances making them unlikely to recur, and were not caused by conditions largely beyond his control. He has not received counseling. He submitted no documentary evidence of voluntary payments or payment agreements. The judgments in SOR ¶¶ 1.d and 1.f were satisfied by garnishment, which "is not the same as, or similar to, a good-faith initiation of repayment by the debtor." ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011), citing ISCR Case No. 08-06058 (App. Bd. Sep. 21, 2009). He has not disputed any of the debts alleged in the SOR.

## **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 has limited formal education. His July 2013 SCA was his first experience with the security clearance process. His testimony at the hearing reflected that he has been generally unconcerned about his delinquent debts. His explanations for not disclosing his delinquent debts in his SCA were vague due to the passage of time and his inattention in completing it, but they were plausible. His testimony at the hearing was candid and credible. He readily admitted that his answers were “false,” but he adamantly denied intending to hide information. I conclude that AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

### **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). 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 refuted the allegation that he intentionally falsified his SCA, but he has not mitigated the security concerns raised by his delinquent debts. 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.i: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge