



# Applicant for Security Clearance

## Decision

July 11, 2016, Applicant answered the SOR and elected to have the matter decided without a hearing. On August 30, 2016, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained six attachments (Items). On September 9, 2016, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He had 30 days from his receipt of the FORM to submit any additional information in response to the FORM. The response was due on October 9, 2016. No response or other additional information was received from Applicant. On August 1, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>2</sup>

### **Findings of Fact**

In Applicant's answer to the SOR, he disputed six delinquent obligations: SOR 1.c, 1.e, 1.f, 1.g, 1.h, and 1.i. He indicated that in the near future he might seek bankruptcy protection. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is a 57-year-old senior property industrial security representative who has worked for a defense contractor since July 1989 and he seeks to retain<sup>3</sup> his security clearance.

Applicant experienced a December 2010 mortgage default with an \$84,000 charged-off mortgage and seven delinquent obligations totaling more than \$35,000. He asserted that following foreclosure on his home, the mortgage company made a \$24,000 profit on the property. (Item 1) He provided no documentation corroborating this assertion, nor did he explain or provide documentation concerning the \$84,000 charged-off mortgage debt.

The delinquent obligations are listed in Applicant's April 2013 and March 2015 credit reports. (Items 4 and 5) He asserted his financial problems resulted from separating

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(January 2, 1992), as amended (Directive); and the adjudicative guidelines (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006.

<sup>2</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

<sup>3</sup> Since June 2007, Applicant has held sensitive compartmented information (SCI) access. (Item 2)

from his wife four years earlier, which would have been 2012. He provided no corroboration as to the extent the separation had on his ability to meet his financial obligations.

Applicant had financial problems at least in 2007, well before his separation. In his June 2007 subject interview, he was questioned about his finances. He stated he had consolidated three debts totaling more than \$34,000, on which he was to make \$770 monthly payments. The debts were his mortgage (SOR 1.a), the account listed in SOR 1.c, and to the creditor listed in SOR 1.e. He provided no documentation to corroborate he ever made payments in accord with the consolidation agreement.

Applicant's credit report lists two accounts with the same creditor. (Item 4) He was paying one account as agreed. He was listed as an authorized user on the other account. (Item 4)

Applicant provided no documentation corroborating his assertions in his SOR response that he had paid or did not owe the listed delinquent accounts. (Item 1) He asserted the foreclosure on his home resulted in a profit of \$24,000 to the mortgage company (SOR 1.a). He asserted that he might claim bankruptcy protection "in the near future" to address the \$84,000 charged-off mortgage (SOR 1.b). He asserted he would soon make payments on the \$9,768 collection debt (SOR 1.d). He disputed the delinquent obligations in SOR 1.c (\$12,749), 1.e (\$5,673), and 1.f (\$2,190), but these are the same three debts he discussed in his June 2007 interview. (Item 3) He asserted the debt in SOR 1.f (\$2,190) was closed and that he had paid off the delinquent obligations in SOR 1.h (\$4,288) and SOR 1.i (\$225). He provided no corroboration to his assertions as to the payment of his delinquent obligations.

In the FORM, Applicant was informed of his need to document the assertions he made in his SOR response. The FORM stated in bold print, "Yet, we have seen NO CONCRETE DOCUMENTARY EVIDENCE, such as receipts, cancelled Checks, written payment plan etc. to prove these contentions."

Applicant was informed in the FORM that the delinquent obligation remains outstanding and that there was no evidence payments had been made. The FORM stated:

. . . you shall have 30 days from the receipt of this information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate . . . If you do not file any objections or submit any additional information within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination based solely on this file of relevant material. (FORM)

No response to the FORM was received from Applicant. He did not provide any documentation as to payment on or current status of his delinquent obligations.

When Applicant completed his March 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he was asked in Section 26 – Financial Record, Delinquency Involving Routine Accounts, if, during the past seven years, had he defaulted on any loans; had any bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; been more than 120 days delinquent on any debt; or was currently more than 120 days delinquent on any debt. He answered “no” to these inquiries. However, the foreclosure and the collection accounts listed in the SOR appear on his April 2013 credit report. (Item 4)

Applicant provided no information as to why he answered “no” to the e-QIP financial questions. In his SOR Answer he stated “I have reported this in all my background checks since 1989.” (Item 1) However, he provided no copies of those background checks to support this allegation. The file does contain his March 2007, Questionnaire for National Security Positions, Standard Form (SF) 86, in which he answered “no” to all the financial questions. (Item 6) It is not possible from the record to determine if he had any delinquent accounts in March 2007 when he completed his SF 86.

In addition to failing to reveal his financial problems on his e-QIP, Applicant failed to list his 1983 driving under the influence (DUI) arrest. (Item 2) He provided no explanation for his failure to reveal his financial problems or DUI on his e-QIP. Although not listed his 1983 DUI on his 2013 e-QIP, he did list it on his March 2007 Questionnaire for National Security Positions, Standard Form (SF) 86.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual’s life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure 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 or sensitive information . . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant's charged-off mortgage and seven other collection accounts total approximately \$120,000 in delinquent accounts. AG ¶ 19 includes three disqualifying conditions that could raise a security concern any may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" and "(c) a history of not meeting financial obligations."

The Government's evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a), 19(b), and 19(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. September 22, 2005)).

Five of the seven Financial Considerations 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, a death, divorce or separation, clear victimization by predatory lending practices or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to 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.

Other than stating Applicant's financial problems were contributed to by his separation from his wife, which occurred four years prior to his July 2016 SOR Answer, he provided no information as to the cause of his delinquent obligations. He provided no information on how the separation impacted his finances. He asserted, but failed to document, that the mortgage company made a \$24,000 profit on the property following the foreclosure. He did not explain or provide documentation concerning the mortgage company charging off more than \$84,000.

Applicant asserted that he had paid some of the delinquent obligations and others were no longer owed. However, he failed to provide any documentation corroborating his assertion of payment. He asserted, but failed to document, that he would soon start making payments on one SOR debt (SOR 1.d, \$9,768). Again, he has provided no documentation corroborating any of his assertions. He stated that in the near future he might seek bankruptcy protection. This statement is too speculative as to merit any mitigation.

An applicant is not required to be debt free or to develop a plan for paying off all debts immediately or simultaneously, but he is required to act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). Applicant must show that significant action to implement the plan has occurred, which has not been presented.

Applicant provided no evidence of what responsible steps he has taken to pay or resolve his delinquent obligations. There is no evidence the delinquent obligations occurred under unusual conditions. The failure to repay has gone on for numerous years. These delinquent obligations cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant indicated he separated from his wife in 2012, but failed to provide any information as to the impact of his separation on his finances. He failed to show he had experienced any periods of unemployment since July 1989. He has been employed with the same company for 28 years. AG ¶ 20(b) does not apply. There is no evidence of financial counseling or clear indications that the delinquent obligations are being resolved or that his finances are under control. AG ¶ 20(c) does not apply. There is no showing of Applicant having made good-faith payments towards his delinquent obligations or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve his debts. AG ¶ 20(d) does not apply.

Applicant disputed four of the SOR debts. AG ¶ 20(e) does not apply to the majority of his debts, because he failed to provide documented proof to substantiate the basis of his disputes. He was an authorized user on one account with a creditor and his credit report indicated he is “paying as agreed” on his account with this same creditor. I find for him as to SOR 1.g.

## **Guideline E: Personal Conduct**

The concerns for personal conduct are articulated 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 cooperate or

provide truthful and candid answers during national security investigative or adjudicative processes.

The undisputed evidence is that Appellant certified to the accuracy of his March 2013 e-QIP on which he did not list his August 1983 DUI or his delinquent financial obligations. Although he did not list his DUI on his March 2013 e-QIP and had listed it on his March 2007 SF 86. I find his failure to list the 30 year DUI was not a deliberate omission, concealment, or falsification. I find for him as to SOR 2.b.

The SOR also alleges that Applicant falsified his responses to inquiries concerning any debts turned over for collection in the past seven years and any accounts or credit cards charged off or suspended in the past seven years. He provided no information as to his false answers concerning his finances on his e-QIP. In his SOR Answered he stated, "I have reported this in all my background checks since 1989." However, he provided no copies of those background checks in which he acknowledged his financial problems that would support this allegation.

Of concern is Applicant's demonstrated lack of trustworthiness in failing to honestly answer the financial questions on his March 2013 e-QIP AG ¶ 16(a) applies to the falsification, as follows:

(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.

Without any explanation as to why the false answers occurred, the personal conduct security concerns remain unmitigated.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

Applicant's home went to foreclosure and more than \$84,000 was charged off. Additionally, he has more than \$34,000 in collection accounts, which were reflected on his April 2013 credit report. He did not report these derogatory accounts on his March 2013 e-QIP. He failed to provide adequate mitigating information as to his failure to report his financial problems on his 2013 e-QIP. He also failed to document he had reported his financial difficulties on "all of his background checks since 1989." His disclosure of his criminal offenses on his March 2007 SF 86 shows he was not attempting to conceal his criminal history from the Government.

Applicant has been aware of the Government's security concern about his delinquent obligation since his June 2007 interview when he was specifically confronted about his delinquent obligations. Additionally, the February 2016 SOR and August 2016 FORM put him on notice of the Government's concern about the delinquent obligations. The FORM specifically informed him there was no evidence that payment had been made on the collection accounts or the charged-off account. There is no evidence he has contacted his creditors or was able to negotiate a repayment agreement concerning the delinquent debts.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address the delinquent debt. By failing to provide such information, and in relying on only the limited response in his SOR Answer, financial considerations and personal conduct security concerns remain.

The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) He provided no explanation for his false answers on his March 2013 e-QIP. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the financial considerations and personal conduct security concerns.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h and 1.i:	Against Applicant

Paragraph 2, Personal Conduct:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 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 a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge