



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-05978

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

03/29/2017

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On March 2, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).<sup>1</sup> In a March 18, 2016, response to the SOR, Applicant admitted 14 of the 16 allegations raised under Guideline F and the two allegations raised under Guideline E. He also requested a determination based on the written record. On April 25, 2016, the Government issued a File of Relevant Material (FORM) with nine attachments ("Items"). Applicant did not respond to the FORM within the time allotted. I was assigned the case on March 23, 2017. Based on my review of the case file, I find Applicant failed to mitigate financial considerations security concerns.

**Findings of Fact**

Applicant is a 42-year-old welder since 2015. Applicant has a high school diploma. He is single, has no children, and has lived at the same address for most of his life. Since

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<sup>1</sup> 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 (AG) effective within the DOD on September 1, 2006.

2004, Applicant has had one period of unemployment, from January 2015 through February 2015. It occurred after he left his previous employer because he found its work standards poor.

At issue are 16 delinquent debts, amounting to approximately \$28,600. They are reflected in the SOR at allegations 1.a through 1.p. Applicant admitted responsibility for all the cited debts except those noted at 1.b and 1.c, for account balances of \$87 and \$116, respectively. Applicant cannot identify these debts. (SOR Response) As for each of the other cited delinquent accounts, Applicant wrote: "I admit. Was working with a company to help me with my debt. Had to stop for lack of money coming in." (SOR Response) No other information about the cited accounts or his finances was offered.

On March 2, 2015, Applicant completed a security clearance application (SCA). In response to Section 22 – Police Record, Applicant wrote "no" in response to an inquiry as to whether he had been charged, convicted, or sentenced of a crime in any court in the preceding seven years. In fact, he had been arrested in about February 2015 and charged with driving under the influence. In admitting the allegation at 2.a, which states he materially falsified facts on the SCA in making his denial, Applicant wrote: "I was going to court to try to get all charges dropped. The driving under the influence was dropped to a reckless driving and one year probation and a fine."

In response to Section 26 – Financial Record, Applicant wrote "no" in response to a question asking whether he had bills or debts turned over to a collection agency or had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed in the preceding seven years. He also denied having any current obligations that were over 120 days delinquent. These denials were made despite the delinquent debts noted at SOR allegations 1.a through 1.p. Applicant admitted the related allegation at 2.b which alleged he had falsified material facts in denying his delinquent debts. Applicant wrote: "Was working with a company to help me with my debt. Had to stop for lack of money coming in. Working with [contact information redacted]." No other information about this answer or the SCA, overall, was offered in response to the SOR or FORM.

## **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 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 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.

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 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. Decisions include consideration of the possible risk the applicant may fail to safeguard 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**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has considerable outstanding delinquent debts. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

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.

Applicant admitted responsibility for all the cited debts except those noted at 1.b and 1.c, for account balances of \$87 and \$116, respectively. Applicant cannot identify those debts. He referenced an effort to address his debts through a debt consolidation or repayment entity, but provided no documentary evidence reflecting an implemented plan. There is no documentary evidence showing he has received financial counseling. Or that he has formally disputed any delinquent debts with either the creditor or a credit reporting bureau. Consequently, none of the mitigating conditions apply.

## **Guideline E - Personal Conduct**

The security concern for personal conduct 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 admitted deliberately falsifying facts in two sections of his March 2015 SCA concerning his police record and finances. Consequently, AG ¶ 16(a) applies. Because Applicant only admitted these falsifications without

The guideline also provides several possible mitigating conditions, AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

With regard to a falsification involving a past arrest, Applicant only wrote that he had been in the process of contesting the matter, and noted that it was ultimately dropped in favor of a reckless driving charge. No documentary evidence supporting these assertions was provided. The same is true of his failure to support his assertion he falsified his SCA answer concerning his debts because he had retained assistance to

help him with his debt. Lacking documentation regarding these assertions, none of the available mitigating conditions apply.

### **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 adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c) sets forth the need to utilize a whole-person evaluation. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guidelines, as well as available facts regarding Applicant's person, in my whole-person analysis.

Applicant provided scant information regarding his financial issues and his admitted falsification of a 2015 SCA. The little information provided is not substantiated with documentary evidence. Without more, a determination cannot be found in his favor under either guideline Applicant failed to mitigate 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.p:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against 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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Arthur E. Marshall, Jr.  
Administrative Judge