



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07273

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

10/16/2017

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. He did mitigate the security concerns under Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

On April 9, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM), Government's evidence in support of the allegations in the SOR, on January 26, 2017. Applicant received the FORM on February 3, 2017, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided a ten page response to the FORM (Response). The Government's evidence, identified as Items 1 through 4, is admitted into evidence without objection. The case was assigned to me on October 1, 2017.

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

Applicant is 34 years old. He graduated high school in 2002 and obtained his Associate's degree in 2003. Applicant has been employed as a fitness attendant by a federal contractor since March 2015, and he is supposed to deploy overseas contingent on obtaining a security clearance. Applicant reports no military service and he has never married. Applicant reports periods of unemployment from December 2006 to August 2009, and December 2010 to April 2012. Applicant reported being delinquent on paying his student loans since December 2010, (in section 26 of his 2015 Security Clearance Application SCA).<sup>2</sup> Also, he had his income-tax refund garnished one year to apply toward his student loan debt.

In his Answer to the SOR, Applicant admitted the seven delinquent debts alleged in SOR ¶¶ 1.a through 1.h. He also denied the allegation in SOR ¶ 2.a stating "I did not intend to falsify material facts on a Questionnaire for National Security Positions."<sup>3</sup> Applicant did disclose the delinquencies on his student loans in his SCA, attributing this to "insufficient employment".<sup>4</sup> Since all of the allegations contained in SOR ¶¶ 1.a to 1.h, pertain to his delinquent student loans, it is difficult to discern how he could have falsified his SCA at section 26 – financial record – delinquency involving routine accounts – as alleged in SOR ¶ 2.a. I find that he did not intend to falsify material facts on his SCA.

SOR ¶¶ 1.a, 1.b, and 1.c all concern charged-off debts totaling over \$99,000 owed to a debt collection agency for student loans. SOR ¶ 1.d and ¶ 1.e both relate to student loan debts placed for collection by the Department of Education totaling over \$22,000. SOR ¶¶ 1.f to 1.h are for past-due student loan debts totaling more than \$3,000. In his response to the FORM, Applicant takes full responsibility for all of his delinquent and defaulted student loans. He claims that he has been struggling with these debts since July 2008, but "no arrangements have been made at this time." While he was deployed overseas with his federal contractor employer, Applicant was informed that he lost his security clearance in 2015. He was told to resolve his student loan debts and his employment would continue. In early 2016, he was terminated and remains unemployed, and living with his mother since April 2016. Applicant provided no documents or evidence to show that he has reached out to his creditors, made payment arrangements, or actual payments on his student loans. SOR ¶¶ 1.a to 1.h are not resolved.

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's May 1, 2015 Security Clearance Application (SCA). (Item 2)

<sup>2</sup> Item 3.

<sup>3</sup> Item 1.

<sup>4</sup> Item 2.

## Policies

This action was taken under Executive Order (EO) 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 promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.<sup>5</sup>

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, 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(a), the adjudicative process is an examination of a sufficient period and a careful weighing 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 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 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. 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

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<sup>5</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective September 1, 2006, and my decision would be the same under either AG.

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 EO 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 financial considerations is set out in AG ¶18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and response to the FORM. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>6</sup> Applicant has not met that burden. None of the delinquent debts have been resolved.

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 ..., and the individual acted responsibly under the circumstances;

(c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Applicant endured periods of unemployment. Arguably, these conditions were beyond his control. His delinquent student loan debts totaling approximately \$125,000, are long-standing and continuing. Applicant has ignored them. He has produced no documentation showing efforts to address his delinquencies, either with his Answer to the SOR or in response to the FORM. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above do not apply.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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<sup>6</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes....

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Since Applicant denied any intent to provide false information as alleged at SOR ¶ 2.a, his intent is an issue. Under ¶ E3.1.14 of DOD Directive 5220.6, the Government is responsible for presenting witnesses and evidence on facts alleged in the SOR that have been controverted. Intent can be inferred or determined from the circumstances. Applicant specifically referred to his student loan delinquencies in section 26 of his SCA. I conclude that he did not have the specific intent to deceive when he provided a negative response to the other financial questions about delinquency involving routine accounts in section 26, and he did not deliberately falsify the SCA. AG ¶¶ 16(a) and (b) do not apply. SOR ¶ 2.a has been mitigated.

### **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(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.

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 Guideline E and Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations, but he has mitigated the concerns under Guideline E, personal conduct.

### **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 to 1.h:	Against 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 interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge