



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07699

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

05/03/2017

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 4, 2016, 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 May 26, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received the FORM on July 5,

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. Applicant did not respond to the FORM. Therefore, the Government's evidence identified as Items 1 through 9 are admitted into evidence without objection. The case was assigned to me on May 3, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.k, 1.l, 1.n, 1.o, and 2.a through 2.d, with explanations. He denied SOR ¶¶ 1.a, 1.c, 1.j and 1.m. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 34 years old. He earned an associate's degree in 2012 and bachelor's degree in 2014. He married in 2004 and divorced in 2012. He has a four-year-old child from the marriage. He has been in a cohabitant relationship since 2010. Applicant was unemployed from approximately September 1999 until he enlisted in the military in 2003. He was honorably discharged in 2007. After his discharge he was unemployed for five months. He then worked for a government contractor until 2010 and then in private industry until 2014. He began his current employment with a government contractor in August 2014.<sup>1</sup>

Credit reports from October 2007, March 2015 and April 2016 substantiate the debts alleged. Applicant was interviewed by a government investigator in July 2015 and January 2008. He completed security clearance applications (SCA) in October 2007 and July 2015. Applicant did not disclose in his 2007 or 2015 SCA any financial delinquencies, repossessions, debts turned over to collection, or debts over 120 days past due.<sup>2</sup>

Applicant denied he owed the judgment in SOR ¶ 1.a (\$456) entered against him in May 2013. In his answer, he stated he did not recognize the debt. He did not provide evidence of actions he may have taken to dispute or resolve the debt. It is unresolved.<sup>3</sup>

In his answer, Applicant admitted he owed the debt in SOR ¶ 1.b (\$1,265) and said he was paying it off. He did not provide evidence to support his statement.<sup>4</sup>

The debts in SOR ¶¶ 1.c (\$236), 1.d (\$99), 1.e (\$406), 1.f (\$298) and 1.g (\$200) are accounts held by the same collection agency. Applicant admitted owing the debts, but stated that they should have been taken care of by "the VA, or my college medical

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<sup>1</sup> Item 2.

<sup>2</sup> Items 2, 3, 4, 5, 7, 8, 9.

<sup>3</sup> Item 1.

<sup>4</sup> Item 1.

insurance.” Applicant provided no information for what actions he has taken to resolve the debts or forward them to the appropriate agency for payment or resolution. They are unresolved.<sup>5</sup>

Applicant admitted the debt in SOR ¶ 1.h (\$1,612) and indicated to the government investigator that it was a medical debt from 2009 when he was sick and did not have insurance. He told the investigator that he did not disclose it on his SCA because he did not have the account number. He did not provide evidence of actions to resolve the debt.<sup>6</sup>

Applicant stated in his answer to the SOR that he paid the debt in SOR ¶ 1.i (\$51). He did not provide proof the debt is paid.<sup>7</sup>

The debt in SOR ¶ 1.j is for a vehicle loan that was charged off. Applicant stated the vehicle was sold, and he received a letter from the creditor six years ago that he did not owe a deficiency balance. He did not provide proof to substantiate his statement. During Applicant’s interview with a government investigator in July 2015, he stated that the vehicle was repossessed in 2010 due to nonpayment. He did not disclose it on his security clearance application because he did not have the account number.<sup>8</sup>

Applicant stated that he is paying the debts alleged in SOR ¶¶ 1.k (\$976) and 1.l (\$560), but did not provide documentary proof to substantiate his statement. During his background interview he acknowledged he owed the debt, but thought he owed \$300. The amount was for a returned check. He did not disclose it on his SCA because he did not have the account number.<sup>9</sup>

Applicant denied the debt in SOR ¶ 1.m (\$552) owed to a cell phone company. He stated: “I have no clue of debt.” During his July 2015 background interview, he was confronted with this debt and stated he did not have an account with the creditor and it was paid in full. He did not provide proof the debt is paid or actions he has taken to resolve or dispute the debt.<sup>10</sup>

Applicant admitted the debts in SOR ¶¶ 1.n (\$480) and 1.o (\$373) to a cable provider. He stated he was in the process of returning equipment to the creditor. He did not provide proof the debts are resolved. He acknowledged to the government

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<sup>5</sup> Item 1.

<sup>6</sup> Items 1, 5.

<sup>7</sup> Items 1.

<sup>8</sup> Items 1, 5.

<sup>9</sup> Items 1, 5.

<sup>10</sup> Items 1, 5.

investigator that he owed the debt, but did not disclose it on his SCA because he did not have the account number.<sup>11</sup>

Applicant admitted all of the allegations in SOR ¶ 2. He stated for each allegation: I admit, was not sure on how to answer.”<sup>12</sup>

In Applicant’s 2007 SCA he did not disclose he had any delinquent or past due debts. He was interviewed by a government investigator in January 2008 and was confronted with at least eight accounts that were past due or in collection. He admitted he could not afford to pay some accounts at the time, so he did not pay them. He was contacted by some creditors, but did not reply to them. Others debts he disputed and was waiting for the outcome, and if he was responsible he would pay. He told the investigator at the time that he was immature and did not realize delinquent debts would have such an effect on his life at the time. His intention at the time was to pay his delinquent debts and establish good credit.<sup>13</sup>

On Applicant’s February 2015 SCA, he failed to disclose he had a vehicle repossessed in the past, a judgment entered against him, debts turned over to collection or that he was currently more than 120 days past due on any account.<sup>14</sup>

When interviewed in July 2015, Applicant was aware he had delinquent debts that he was not making payments on, he was aware his vehicle was repossessed in 2010, he admitted owing debts, but for some he disputed the amount owed. He was aware he owed creditors for medical debts he did not pay because he did not have insurance at the time and that he owed a debt for dental services. His explanation for failing to disclose any of his past due debts was that he did not have the account numbers.<sup>15</sup>

In 2008 Applicant was interviewed by a government investigator about collection accounts and delinquent debts, and he acknowledged understanding the importance of paying his debts. At that point, he was on notice that financial matters of this nature were a security concern and were required to be disclosed. He failed to do so on his 2015 SCA. I find his failure to disclose any financial problems were deliberate.<sup>16</sup>

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<sup>11</sup> Items 1, 5.

<sup>12</sup> Item 1.

<sup>13</sup> Items 3, 4, 7. Applicant’s past failure to disclosure financial issues in his 2007 SCA and information from his 2008 background interview is not used for disqualifying purposes, but will be considered when analyzing Applicant’s credibility, in the application of mitigating conditions, and the whole-person analysis.

<sup>14</sup> Item 3.

<sup>15</sup> Items 1, 5.

<sup>16</sup> Item 4

## 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>17</sup>

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has 15 delinquent debts totaling approximately \$17,570. There is sufficient evidence to support the application of the above disqualifying conditions.

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

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<sup>17</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 evidence that he is paying or resolving his delinquent debts. He indicated he has paid or resolved some debts, but did not provide supporting documents. He disputed some debts, but provided no evidence of actions he has taken to resolve them. I cannot find his behavior is unlikely to recur. His conduct is recent and casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant has been employed steadily since 2010. He did not provide any evidence that his debts were beyond his control or that he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

There is no evidence Applicant participated in financial counseling. He did not provide any documents to show that he is paying or has resolved his delinquent debts. There is insufficient evidence to conclude his financial problems are under control or being resolved. AG ¶¶ 20(c) and AG ¶ 20(d) do not apply. Applicant disputes some debts, but failed to provide evidence of actions he may have taken to substantiate the basis of claim. AG ¶ 20(e) does not apply.

### **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.

Based on information provided during his background interview, I find that Applicant was aware he had delinquent debts when he completed his 2015 SCA, and he deliberately failed to disclose them. I do not have sufficient evidence that Applicant was aware that one of the debts was a judgment. Applicant admitted he owed debts that were in collection. There is sufficient evidence that he was aware he had a vehicle repossessed, and he had debts over 120 days past due. His explanation for failing to disclose delinquent debts was because he did not have account numbers. I did not find his explanations for failing to disclose the delinquent debts credible. I find the above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

(d) the individual 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.

Applicant did not provide evidence that he made a good-faith effort to correct the omissions before he was confronted with the facts. I find AG ¶ 17(a) does not apply. I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply. There is insufficient evidence to raise AG ¶ 17(d).

### **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 F and E 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 34 years old. He served in the military and has been steadily employed since 2010 and with his current employer since 2014. He has a long history of financial difficulties. He failed to provide sufficient evidence that he is paying or resolving any of his delinquent debts. He was aware he had financial problems and deliberately failed to disclose them on his 2015 SCA. Applicant failed to provide documentary evidence to substantiate any of his claims. Applicant does not have a reliable financial track record. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and 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-1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge