



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08349

**Appearances**

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

08/04/2017

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to establish that he is financially responsible and that his financial problems have been resolved or are under control. Moreover, he deliberately falsified his 2015 security clearance application (SCA) to cover up his financial problems. The financial considerations and personal conduct security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted a SCA on May 7, 2015. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) on June 13, 2016, issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on June 27, 2016, submitted comments in extenuation and mitigation, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence prompting the security concerns, was provided to Applicant by letter dated July 28, 2016. Applicant received the FORM on August 9, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate,

and mitigate the concerns. Applicant did not respond to the FORM. The case was assigned to me on June 1, 2017.

### **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from October 1, 2015. (FORM, Item 4) Applicant was informed he could object to the summary of his interview and it would not be admitted or considered by me, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered by me. Applicant did not respond to the FORM. I admitted the FORM with its proffered evidence, and considered it.

### **Findings of Fact**

Applicant admitted the seven financial factual allegations (SOR ¶¶ 1.a through 1.g). He denied that he deliberately falsified his 2015 SCA (SOR ¶ 2.a, the personal conduct allegation). His admissions to the SOR allegations are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 45-year-old employee of a federal contractor. He has never been married, but has an 11-year-old son. He graduated from high school in 1992. His employment history indicates that he has been fully employed since 2002. Between 2013 and 2015, he held two full-time jobs. A federal contractor hired Applicant in May 2015, and he submitted his first security clearance application. He has been working for his current employer since.

In his response to Section 26 (Financial Record) of his May 2015 SCA, Applicant disclosed no delinquent accounts or financial problems. A government background investigator interviewed Applicant in October 2015. During the interview, Applicant again denied having any delinquent accounts. The investigator confronted Applicant several times with the delinquent accounts alleged in the SOR.

Applicant admitted to the investigator that SOR ¶ 1.a was his delinquent account resulting from a defaulted car loan. He was involved in a car accident without insurance, became delinquent on the car note, and the lender repossessed the vehicle. Applicant claimed he was waiting for the creditor to tell him what he owed after the vehicle was sold. He averred he did not disclose this delinquent debt in his 2015 SCA because he believed it was over seven years old. In his SOR answer, Applicant claimed he had recently contacted the creditor and established an agreement to pay \$350 monthly.

Concerning the debts alleged in SOR ¶¶ 1.b, and 1.d through 1.g, Applicant told the investigator that he did not recognize any of the creditors. These accounts are

Applicant's delinquent debts as established by the credit report, and Applicant's later SOR admissions. Concerning SOR ¶ 1.b, Applicant claimed in his SOR answer that he was in the process of paying the debt and "will be sending them" payment of \$100 a month.

Applicant explained that he broke a telephone contract and acquired the debt alleged in SOR ¶ 1.c that became delinquent. He claimed he contacted the creditors of the debts alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.g, and established payment agreements starting in July 2016. Applicant also claimed he paid the debt alleged in SOR ¶ 1.f.

Applicant claimed he failed to disclose his delinquent debts in his 2015 SCA for several reasons: (1) because he didn't realized he owed the money, (2) he believed the debts were over seven years old and outside of the scope of the SCA questions, and (3) he believed he had paid some accounts. Applicant submitted no documentary evidence to establish his claims of entering into payment agreements, making any payments, or having paid any debt.

Applicant noted that he should have been more responsible in his efforts to pay the debts. He explained that he was now in the process of taking care of these debts and took responsibility for his mistakes. As of his May 2015 interview, Applicant had not participated in financial counseling. He claimed he was living within his financial means, and believed he was capable of meeting his financial obligations. Applicant presented no evidence of any efforts to contact his creditors or to otherwise resolve his delinquent accounts since he acquired the debts.

Applicant presented no evidence about his current financial situation, including his income, outstanding debts, whether his income is sufficient to pay for his living expenses, and whether his financial problems are resolved or under control.

### **Policies**

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006. The case will be decided under Security Executive Agent Directive (SEAD) 4, National Security Adjudicative Guidelines (AG), effective 8 June 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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 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 misuse, 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 . . . .

Applicant's history of financial problems is documented in the record. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and 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 record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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, 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;<sup>1</sup> 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

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<sup>1</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

None of the financial considerations mitigating conditions are fully raised by the facts in this case and they do not mitigate the security concerns. Applicant's financial problems are ongoing, recent, and he acquired the debts under normal circumstances that are likely to recur. Applicant submitted no evidence to show that his financial problems resulted from circumstances beyond his control. He presented no evidence of a good-faith effort to pay his debts or a reasonable basis to dispute them. There is no evidence he participated in financial counseling or that he is following a budget. There is no evidence of Applicant's current financial situation, including his income, and whether his income is sufficient to pay for his living expenses and debts.

#### **Guideline E, Personal Conduct**

AG ¶ 15 articulates 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.

Applicant omitted relevant and material information from his 2015 SCA when he failed to disclose that he had financial problems that included at least seven delinquent accounts. Applicant's omissions, if deliberate, would trigger the applicability the following disqualifying condition under AG ¶ 16:

(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.

Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. (ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006)). Considering the evidence as a whole, including Applicant's age, education, work experience, his 2015 statement to a government investigator, and his SOR answer, I find that Applicant's omissions were deliberate or made with the intent to mislead the Government. AG ¶ 16(a) is applicable. Additional inquiry about the possible applicability of mitigating conditions is required.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

(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 advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. 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 contributed to 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; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Considering the evidence as a whole, I find that Applicant's evidence is insufficient to mitigate the Guideline E security concerns. Applicant's claims of lack of knowledge or honest mistake (by believing that the debts were over seven years old and not required to be disclosed), are not supported by the record. The 2015 credit report in evidence (FORM, Item 5) shows most of the alleged delinquent debts were delinquent within the preceding seven years. Furthermore, when Applicant completed his 2015 SCA, he was over 120 days delinquent on those debts and was required to disclose them.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a), 2(d) and 2(f). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 45, has been employed with a federal contractor since May 2015. He failed to demonstrate that his financial problems have been resolved or are under control. The financial considerations security concerns are not mitigated. Moreover, he deliberately falsified his 2015 SCA to cover his financial problems.

### **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.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge