



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 16-01376

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

05/25/2018

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant failed to mitigate or rebut the financial considerations and personal conduct security concerns. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of Case**

On September 30, 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). 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

Applicant answered the SOR on December 7, 2016, and requested his case be decided by an administrative judge on the written record without a hearing (Answer). On March 8, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant and received by him on March 13, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's evidence. Items 1 through 8 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to another administrative judge on October 1, 2017, and re-assigned to me on May 11, 2018.

### **Findings of Fact**

Applicant is 52 years old and married. He has two children. He served in the Air Force Reserve from 1985 to 1988, when he received an honorable discharge. He has worked in private industry since about 2005. (Item 3)

On May 7, 2015, Applicant submitted a security clearance application (SCA). In it, he did not disclose any delinquent debts or criminal incidents as required. (Item 1) In December 2015, Applicant was interviewed by a government investigator about information in his SCA, in addition to other matters. When confronted about undisclosed delinquent debts and criminal conduct, Applicant stated that he answered the questions quickly and thought he answered them correctly. (Item 4)

In his Answer to the SOR, Applicant admitted all allegations raised under both guidelines. He admitted that he had unpaid consumer debts and was delinquent on child support payments. He admitted that he was arrested numerous times for financial crimes involving theft and drug and alcohol offenses. He discussed those crimes with the investigator. He admitted that he failed to disclose the crimes, including felonies. (Item 2) He did not submit evidence addressing any debts or the personal conduct allegations.

Based on Applicant's admissions and credit bureau reports (CBR) from July 2016 and June 2015, the SOR alleged five delinquent debts, including two for unpaid child support. The debts totaled over \$20,000. It also alleged financial crimes, mostly involving theft that occurred between 1994 and 2007. The SOR also alleged five additional arrests and crimes relating to drugs that he failed to disclose in his SCA.. (Item 1, Item 2)

There is no evidence that Applicant participated in financial or credit counseling. He did not provide a budget or other information related to his financial obligations from which to determine his current financial reliability. Other than his Answer that contained admissions, he provided no other information in response to the SOR.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

## **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant has a history of being unable or unwilling to meet financial obligations that occurred between 2010 and 2015. His history of engaging in financial crimes involving theft began in 1994 and continued into 2007. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems. The following four 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, clear

victimization by predatory lending practices, or identity theft), 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 a 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's delinquent debts are substantial and ongoing. His failure to provide evidence that he is addressing any of them in a meaningful way and his history of stealing property that does not that belong to him create ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not recur. Mitigation was not established under AG ¶ 20(a). Applicant neither claimed that his debts arose from circumstances beyond his control, nor showed that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b). He provided no evidence of financial counseling or budget information establishing solvency going forward or ability to repay his delinquencies. He failed to demonstrate that these problems are being resolved, are under control, or that a good-faith effort toward resolution has been initiated. Nor did he present evidence that he resolved all theft charges. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

#### **Guideline E: Personal Conduct**

AG ¶ 15 explains the security concerns relating to 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 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. Three may be potentially disqualifying:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The evidence established a disqualifying condition in AG ¶ 16(a). Applicant failed to disclose requested financial and criminal conduct information. He provided no persuasive information that would explain or justify this conduct. His assertion during an interview that he thought he answered the questions accurately is not credible.

The evidence also established disqualifying conditions in AG ¶¶ 16(c) and (e)(1). Applicant has a history of criminal conduct that is not sufficient for an adverse determination under another guideline, but is sufficient to raise serious questions about his judgment, reliability, and willingness to comply with rules and regulations. His concealment of that history creates a vulnerability to manipulation because if it were publicly known, it could affect his personal and professional standing in the community.

AG ¶ 17 provides conditions that could mitigate security concerns. Five are potentially applicable:

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not provide evidence that would support mitigation under any of the foregoing conditions.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a mature adult, who served in the military for three years. He continues to owe more than \$20,000 in unpaid child support and other small debts. He falsified his SCA by failing to disclose his delinquent debts and criminal history. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guidelines for financial considerations and personal conduct.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.f: Against Applicant

Paragraph 2, Guideline E: **AGAINST APPLICANT**

Subparagraphs 2.a through 2.p: 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 access to classified information. National security eligibility is denied.

SHARI DAM  
Administrative Judge