



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 16-01596
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

06/14/2018

**Decision**

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations), and Guideline E (Personal Conduct). Applicant has mitigated the security concerns raised by his failure to disclose derogatory information during his background investigation, but has not mitigated the security concerns raised by his delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on September 25, 2015. On July 30, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F and E. The DOD acted under Executive Order (E.O.) 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR August 16, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 7, 2016. On September 8, 2016, a complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 4, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on September 12, 2016, and his Response was received by the Defense Office of Hearings and Appeals (DOHA) within the allotted 30 days. The case was assigned to me on July 3, 2017.

On January 24, 2018, I reopened the record until February 7, 2018, to permit Applicant and Department Counsel to submit any additional documentary evidence. I received an automated email response from Applicant that stated he was on medical leave. After several communications with Department Counsel and Applicant<sup>1</sup>, I reopened the record until June 1, 2018. Applicant made a brief statement by email, which I have admitted as Applicant's Exhibit (AX) A. Neither party submitted any additional documentary evidence.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG.

### **Findings of Fact**

Under Guideline F, the SOR alleges two charged-off credit-card accounts totaling \$17,142. Applicant admits these debts. Under Guideline E, the SOR alleges that Applicant materially falsified his e-QIP by failing to disclose these two delinquent accounts. Applicant denies this allegation. Applicant's admissions are incorporated in my findings of fact.

Applicant is a 62-year-old facility specialist employed by a defense contractor since March 2005. He and his wife married in 2002, and they have two adult sons. In 2016, Applicant and his wife obtained custody of their then one-year-old granddaughter. Applicant has held a security clearance since November 2005. (GX 4; Response.)

Applicant and his wife hired an attorney in June 2012 to help them resolve their debts. At that time, the attorney told Applicant that the debts should be resolved in approximately three years, however, they were not. In May 2015, Applicant's wife, due to health issues, changed jobs, taking a \$10,000 a year pay cut. At that point, Applicant discontinued the services of the attorney. Applicant's wife regularly handled the finances for their household, and she did not disclose the ongoing financial issues that they were having. In March 2016, Applicant and his wife gained custody of their granddaughter, which added to their regular financial obligations.

Applicant attributes the credit-card debts to his wife's overspending. While he asserts that he continues to try to resolve his debts, he did not provide any evidence in

---

<sup>1</sup> I have appended the email correspondence to the record as Administrative Exhibit 1.

support of this statement. The \$13,610 charged-off credit-card account (SOR ¶ 1.a) and the \$3,532 charged-off credit-card account (SOR ¶ 1.b) remain unresolved.

Applicant asserted in a notarized statement that he did not realize the extent of the debt when completing his 2015 e-QIP, and asserted that he did not intentionally falsify his response to the financial question as alleged in SOR ¶ 2.a. Applicant's wife stated, also in a notarized statement, that she did not disclose the extent of their debts to Applicant prior to his completion of his e-QIP. Applicant was asked about his delinquent accounts during his personal subject interview with a DOD investigator. Following the interview, Applicant confronted his wife about the financial issues raised by the investigator. Applicant's wife then disclosed the nature and extent of their delinquent accounts.

Applicant has held a security clearance for over 12 years and has had no other issues that raised a security concern. Applicant and his wife are considering seeking financial counseling, and he will continue to work on resolving his debts.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "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.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or.

10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Guideline F, Financial Considerations**

The concern under this guideline 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....

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions are potentially applicable:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(d): individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The conditions that gave rise to Applicant's financial problems were largely beyond his control. Applicant's wife overspent on their credit cards, and the accounts became delinquent. Applicant initially acted responsibly by initiating a good-faith effort to repay his creditors by hiring an attorney in 2012 to assist with resolving the delinquent debts. Applicant believed that the debt-resolution process would take approximately three years. In 2015, Applicant's wife suffered from a health condition that required her to change jobs and take a significant pay cut. As a result of the reduced household income, Applicant discontinued working with the attorney and his accounts remained delinquent. Applicant's wife handled the finances in their household, and Applicant was unaware of the amount of debt. Additionally, in 2016, Applicant and his wife added their granddaughter to their household, and began incurring greater expenses. While Applicant asserts that he will resolve his delinquent accounts, he failed to provide any evidence that the SOR debts are being paid or otherwise resolved. Applicant's financial difficulties are recent and ongoing. Applicant has not mitigated the security concerns raised by his delinquent debts.

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

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

The following disqualifying condition is potentially applicable:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant denies that he intentionally falsified his 2015 e-QIP, claiming he was unaware of the nature and extent of his financial status. Applicant's wife handled the family finances, and did not disclose the debts to Applicant. Applicant learned of the debts during his personal subject interview with a DOD investigator. Given the record evidence as a whole, I find that Applicant did not intentionally falsify his e-QIP and the Guideline E security concerns are mitigated.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

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 I have also considered the following:

Applicant has held a security clearance with his current employer since 2005. He did not intentionally falsify his e-QIP. Applicant initiated an effort to repay his overdue creditors, however, he was unable to demonstrate a sufficient track record of repayment to mitigate the ongoing security concerns raised by his indebtedness.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a and 1.b:	Against Applicant
----------------------------	-------------------

Paragraph 2, Guideline E (Personal Conduct)	FOR APPLICANT
---	---------------

Subparagraph 2.a:	For Applicant
-------------------	---------------

### **Conclusion**

I conclude that 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.

Stephanie C. Hess  
Administrative Judge