



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 16-02203

**Appearances**

For Government: Adrienne Driskill, Esquire, Department Counsel  
For Applicant: *Pro se*

November 29, 2017

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

On December 2, 2015, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Government Exhibit 1.) On October 6, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued 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 (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (Answer) on December 12, and December 30, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 17, 2017. The case was assigned to me on January 24, 2017. The Defense Office of Hearings and Appeals

(DOHA) issued a Notice of Hearing on February 23, 2017. I convened the hearing as scheduled on April 11, 2017. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on April 19, 2017. The record was left open for the receipt of additional evidence. On May 12, 2017, Applicant Exhibit A was submitted, and received without objection. The record closed at that time.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

### **Findings of Fact**

Applicant is 34, and has two children with his girlfriend. He has been employed by a defense contractor since February 2015 and seeks to retain a security clearance in connection with his employment. He served on active duty with the Navy from 2004 through 2012, receiving an Honorable Discharge. He was underemployed from the time he left the Navy until he started work with his current employer. (Government Exhibit 1 at Section 13A; Tr. 20-21.)

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

Applicant admitted all the allegations in the SOR under this Paragraph, with some explanations. The total amount of money Applicant allegedly owes on those debts is approximately \$31,146. The existence and amount of the debts is supported by credit reports dated January 8, 2016; and January 17, 2017. (Government Exhibits 3 and 4.) The status of the debts is as follows:

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

1.a. Applicant admitted owing a credit union \$17,277 for a past-due automobile loan. According to Applicant, this loan concerned a car of his that was a total loss after being stolen in 2014. Applicant stated that his insurance company was supposed to pay off the automobile. When asked what he had done to resolve this debt, Applicant stated that he had recently been in touch with the credit union, but not with the insurance company. After the hearing Applicant submitted a document from the insurance company showing that the claim was still in process as of May 12, 2017. This debt is not resolved. (Applicant Exhibit A at 2; Tr. 21-24.)

1.b. Applicant admitted owing the same credit union \$9,485 for a past-due credit card account. Applicant had not made any payments on this debt for some years. After the hearing Applicant submitted a copy of a check for \$125 that he submitted to this credit union concerning this debt, as well as 1.c, and 1.d, below. The check shows that the credit union applied \$75 to this debt. This single payment is not sufficient to show that Applicant is resolving this debt. This debt is not resolved. (Applicant Exhibit A at 3; Tr. 24-26.)

1.c. Applicant admitted owing the same credit union \$2,007 for a past-due signature loan. Applicant had not made any payments on this debt for some years. After the hearing Applicant submitted a copy of a check for \$125 that he submitted to this credit union concerning this debt, as well as 1.a, above and 1.d, below. The check shows that the credit union applied \$25 to this debt. This single payment is not sufficient to show that Applicant is resolving this debt. This debt is not resolved. (Applicant Exhibit A at 3; Tr. 26-29.)

1.d. Applicant admitted owing the same credit union \$1,968 for a past-due credit card account. Applicant had not made any payments on this debt for some years. After the hearing Applicant submitted a copy of a check for \$125 that he submitted to this credit union concerning this debt, as well as 1.b, and 1.c, above. The check shows that the credit union applied \$25 to this debt. This single payment is not sufficient to show that Applicant is resolving this debt. This debt is not resolved. (Applicant Exhibit A at 3; Tr. 29-30.)

1.e. Applicant admitted owing a creditor \$236 for a past-due telephone account. Applicant stated at the hearing that he had paid this debt off. However, Applicant Exhibit A at 4 shows that Applicant actually made a payment settling the account on May 4, 2017, after the hearing. Applicant has paid this debt, albeit late. This allegation is found for Applicant. (Tr. 30-32.)

1.f. Applicant admitted owing a creditor \$114 for a past-due electric bill. Applicant stated in his Answer and at the hearing that he had paid this debt off. Applicant was given an opportunity to support his averment with a bank statement or other documentation. He did not submit any supporting documentation. Based on the available information I find this debt is not resolved. (Tr. 32-34.)

1.g. Applicant admitted owing a creditor \$59 for a past-due medical bill. Applicant stated in his Answer and at the hearing that he had paid this debt off. Applicant was given an opportunity to support his averment with a bank statement or other documentation. He did not submit any supporting documentation. Based on the available information I find this debt is not resolved. (Tr. 34-36.)

## **Paragraph 2 (Guideline E, Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations. Applicant denied both allegations under this paragraph.

2.a. Applicant filled out his e-QIP on December 2, 2015. (Government Exhibit 1.) Section 26 of the e-QIP concerns Applicant's financial record. One of the subsections under that section is entitled, "Delinquency Involving Routine Accounts." Applicant was asked whether, in the seven years preceding that date, he had defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off or cancelled; and whether he had been 120 days delinquent on a debt, or whether he was currently 120 days delinquent on a debt. Applicant responded, "No," to this question. This was a false response. Applicant had delinquent debts that were in collection, as set forth under Paragraph 1, above, which fit the question.

Applicant admitted this allegation in his Answer without elaboration. At the hearing Applicant stated, "I do not know why I answered no to these questions, because I should have answered yes." He further denied intentionally falsifying his questionnaire concerning his debts. (Tr. 36-42.)

Government Exhibit 2 is a Report of Investigation of an interview of Applicant by an investigator with the Office of Personnel Management (OPM) on March 17, 2016. At page 4 of that exhibit the investigator noted the following, "Subject [Applicant] reported no to questions both on the case papers and during the interview regarding accounts in collections/charged-off." He was then confronted with the existence of the debts set forth in the SOR. After a discussion of the debts the investigator also noted, "Subject reports that he has no reason why he did not list all of the above-noted debts." Applicant stated at the hearing that he did not remember telling the investigator that he did not have any debts. (Tr. 38-42.)

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. He did not submit a budget, or other documentation concerning his ability to pay his debts, and his ability to avoid financial problems in the future.

## Policies

When evaluating an applicant's national security eligibility, 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 useful in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines 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. 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, "Any doubt concerning personnel being considered for national security eligibility 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The 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 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 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 information.

Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concern relating to the guideline for 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 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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant, based on the available evidence, had six delinquent accounts that he could not resolve. Allegation 1.e was found for Applicant. The total amount of his indebtedness remains over \$30,000. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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.

The evidence does not establish that any of the above mitigating conditions apply to Applicant. Applicant remains indebted to six creditors for upwards of \$30,000. These debts have existed for several years. It appears that Applicant did little or nothing to resolve any of these debts until shortly before the hearing, or immediately after it. Applicant had about three years of underemployment after he left the Navy, but did not submit any information showing how that period of underemployment affected his finances, or what he has done since being employed in 2015 to rectify the situation. As stated, he submitted proof that he made one payment of \$125 on three debts to the same credit union, which only reduced his debt to the credit union from \$13,460 to \$13,335. There is no basis for me to find that Applicant has mitigated the security concerns of his financial situation. Paragraph 1 is found against Applicant.

## **Paragraph 2 (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 will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his e-QIP, the following disqualifying condition could apply 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally falsifying his e-QIP. When a falsification allegation is controverted, 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.<sup>2</sup>

In this case, there is insufficient evidence in the record to prove Applicant had a specific intent to falsify his questionnaire. While Applicant has admitted his answers on the questionnaire about his past-due debts were false, he has consistently denied intentionally falsifying them. At the hearing, Applicant seemed genuinely puzzled by his false answer, freely admitting he should have said yes. Based on the available evidence, I cannot find that Applicant made an intentional false statement on his e-QIP. Paragraph 2 is found for Applicant.

### **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 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.

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

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<sup>2</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).



I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant's financial irresponsibility was recent, voluntary, and occurred when he was a mature adult. Rehabilitation was not demonstrated, nor was unlikelihood of recurrence. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for national security eligibility. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	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 national interest to grant Applicant national security eligibility and access to classified information. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge