



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



In the matter of: )  
)  
) ISCR Case No. 16-02205  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

12/07/2017

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 11, 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. DOD acted under Executive Order (EO) 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).<sup>1</sup>

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on November 7, 2016, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 27, 2017, and the hearing was convened as scheduled on June 21, 2017. The Government offered exhibits (GE) 1 through 10, which were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 29, 2017.

### **Findings of Fact**

Applicant admitted all the SOR allegations and those admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 42-year-old employee of a defense contractor. He began working at his present job in early 2015. He served in either the Army or National Guard for 16 years and was honorably discharged in 2015. He has a high school diploma and is working towards a bachelor's degree. He was married in 1998 and divorced in 2000. He remarried in 2002, but has been separated from his spouse since early 2015. He has two children, who live with their mother, and for whom he pays an unspecified amount of child support (Applicant stated he paid half his pay).<sup>2</sup>

The SOR alleges six delinquent debts totaling approximately \$22,654. The debts were listed in credit reports from May 2008, January 2015, June 2016, December 2016, and June 2017 (SOR ¶¶ 1.a – 1.f). It also alleged Applicant engaged in misconduct while in the Army in 2005 and 2013, and that he deliberately failed to list any defaulted loans, defaulted credit card accounts, debts turned over to a collection agency, and debts over 120 days delinquent within the past seven years on his security clearance application (SCA) (SOR ¶¶ 2.a – 2.b).<sup>3</sup>

Applicant's separation from the Army in 2015, his separation from his wife, and his gambling habit contributed to his financial problems. During his hearing, he admitted having a significant gambling habit for over 10 years. Some of his delinquent accounts are directly linked to his gambling. He estimated his losses in the thousands of dollars. He admitted gambling as recently as two weeks before his hearing where he lost \$200. He has participated in Gambler's Anonymous (GA), periodically, for two years.<sup>4</sup>

Applicant provided documentation showing that he established payment plans for two of the SOR debts. For SOR ¶ 1.b (unsecured loan for \$3,641), Applicant is making \$295 monthly payments. This debt is being resolved. For SOR ¶ 1.e (bank debt \$1,100), Applicant presented documentation showing that he reached a settlement with

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<sup>2</sup> Tr. at 6, 24, 26-28; GE 1.

<sup>3</sup> GE 2-6, 10.

<sup>4</sup> Tr. at 27-30, 42-43.

the creditor where he would make six monthly payments of approximately \$166 to pay the debt. The first payment was scheduled for July 2017, after his hearing date. This debt is being resolved. Applicant asserted that SOR ¶¶ 1.c and 1.f represented the same debt. I find that the two SOR debts derive from the same underlying obligation and I will only consider SOR ¶ 1.c in my formal findings. I find for Applicant concerning SOR ¶ 1.f because of duplication.<sup>5</sup>

Applicant admitted that he has done nothing to resolve the remaining SOR debts (SOR ¶¶ 1.a, 1.c, and 1.d). He also admitted incurring new delinquent debt of over \$12,000 since the issuance of the SOR.<sup>6</sup> He is using an online financial assistance program to help him with his finances, however, he did not present any budget information about his current financial status.<sup>7</sup>

Applicant admitted that he falsified his SCA in January 2015, by failing to list his delinquent financial accounts as he was required to do. He knew about the delinquencies at the time, but chose to omit them from his SCA. He was afraid that if he admitted his financial problems, he would not be hired for the position. Applicant admitted the three separate disciplinary incidents listed in the SOR, which occurred when he was in the Army. He is no longer in the Army, so there is no chance of recurrence.<sup>8</sup>

Applicant presented the testimony and a statement from his company's vice president. The witness described Applicant as an excellent employee who is a major contributor to the company's overall success regarding their DOD contracts. The witness admitted he was concerned about Applicant's gambling, and he was unaware Applicant had lied on his SCA. He recommended Applicant for a security clearance.<sup>9</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

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<sup>5</sup> Tr. at 31-35, 47; AE A (pp. 3 (reverse page), 39 (reverse page), 51).

<sup>6</sup> Since this recent debt was not alleged in the SOR, I will not consider it for disqualifying purposes, but I will consider it in the application of mitigating conditions and the whole-person factors. Tr. 48-49; GE 10.

<sup>7</sup> Tr. at 35-36, 48-49.

<sup>8</sup> Tr. at 38, 51-52; Answer.

<sup>9</sup> Tr. at 55-57, 59; AE D.

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(a), 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 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.

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 to obtain 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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**

AG ¶ 18 expresses the security concern for financial considerations:

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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Applicant has delinquent debts that remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, 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 debts are recent and multiple and, although he set up two payment plans, he has also incurred new delinquent debt, which shows that recurrence of his financial problems is likely. AG ¶ 20(a) is not applicable.

Applicant's discharge from the military and separation from his wife are circumstances beyond his control. However, his uncontrolled gambling is not beyond his control. While he acted responsibly by setting up two payment plans, he failed to address his remaining debts in any manner. He also has incurred new delinquent debt. Overall, the record evidence does not support that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling through an online program. Given the unpaid status of three of the debts, Applicant's financial problems are not under control. Other than setting up payment plans for SOR debts ¶¶ 1.b and 1.e, evidence of good-faith efforts to pay or resolve the remaining debts is lacking. AG ¶¶ 20(c) and 20(d) partially apply.

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

AG ¶ 15 expresses the personal conduct security concern:

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 in this case. The following disqualifying conditions are 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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Applicant admitted the he intentionally omitted information about his delinquent debts when he completed his SCA. He did so because he was afraid he would not be hired if he revealed the information. I conclude that he intentionally withheld this information when he completed his SCA. AG ¶ 16(a) applies to SOR ¶ 2.a.

Applicant admitted engaging in conducted resulting in three disciplinary actions while in the Army in 2005 and 2013. AG ¶ 16(c) applies to SOR ¶ 2.b.

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

(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.

Honestly completing an SCA is the initial crucial step in gaining access to classified information. The Government expects, and must rely on, the honesty of applicants during this process. Therefore, providing false information at this stage is not a minor offense. Such deliberate action casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply to SOR ¶ 2.a. Because sufficient time has passed, and because Applicant is no longer in the Army, his disciplinary actions from the Army are unlikely to recur and do not cast doubt on his reliability, trustworthiness, or good judgment. AG ¶ 17(c) applies to SOR ¶ 2.b.

### **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(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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's federal contractor service, his military service, and the circumstances surrounding his indebtedness. However, I also considered that he has made insufficient efforts to resolve his debts. He also deliberately failed to list his debts on his SCA. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or the personal conduct security concerns.

### **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:

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|-------------------------------|-------------------|
| Paragraph 1, Guideline F:     | AGAINST APPLICANT |
| Subparagraphs: 1.a, 1.c, 1.d: | Against Applicant |
| Subparagraphs: 1.b, 1.e, 1.f: | For Applicant     |
| Paragraph 2, Guideline E:     | AGAINST APPLICANT |
| Subparagraph: 2.a:            | Against Applicant |
| Subparagraph: 2.b:            | 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge