



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



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 16-03407  
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 Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq.

07/09/2018

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond his control, but mitigated the concern by acting responsibly. His omissions on his security clearance application were unintentional. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on April 14, 2014. On February 10, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The DOD acted under Executive Order (Ex. Or.) 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 submitted his Answer to the SOR through his counsel on March 7, 2017, and requested a hearing before an administrative judge. Department Counsel was ready

to proceed on May 18, 2017, and the case was assigned to me on May 26, 2017. On November 13, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant's attorney that the hearing was scheduled for November 30, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted into evidence without objection. Applicant called three witnesses, testified, and Applicant's Exhibits (AX) A through UU were admitted without objection. DOHA received the transcript (Tr.) on December 12, 2017.

At the hearing, Department Counsel amended the SOR, without objection, by striking allegations 1.k, 1.m and 1.n.

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 effective June 8, 2017.

### **Findings of Fact**

Applicant is a 45-year-old telecommunications engineer currently employed by a defense contractor since September 2013. From 1991 until 1992, he served on active duty in the U.S. Coast Guard. He served honorably in the U.S. Army, with multiple deployments in combat zones, including two tours in Iraq and a tour in Afghanistan, from May 1992 until he retired as a staff sergeant in August 2013. He received numerous medals and commendations for his service. (AX U.) He and his wife married in June 1994 and have four adult children. Applicant has held a security clearance since 1992. (GX 1; AX DD; Tr. 60.)

Under Guideline F, the SOR alleges 11 past-due accounts totaling \$27,932, and a 2009 Chapter 7 bankruptcy. Applicant admits the bankruptcy and two debts, denies two debts, and admits owing the remaining eight accounts, but denies the alleged amounts due on these debts. The SOR also alleges under Guideline E that Applicant received a non-judicial punishment in 2010, and that he intentionally falsified his security clearance application by failing to disclose the non-judicial punishment, the 2009 bankruptcy, and his delinquent accounts. Applicant admits the non-judicial punishment, and denies the intentional falsification allegations. His admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from October 2016 and May 2015. (GX 3; GX 2.)

Throughout their marriage, Applicant's wife was responsible for handling the family finances. This division of labor was due primarily to the nature of Applicant's military duties, primarily his multiple, long-term deployments. Prior to the 2009 bankruptcy (SOR ¶ 1.a), Applicant and his wife were both employed and able to meet their financial obligations, including for their four children residing with them at that time. However, while Applicant was deployed in the 2008 to 2009 timeframe, Applicant's wife "overcompensated" for his absence by overspending, primarily on items and activities for her children. Additionally, Applicant's wife lost her job in 2009 and they began falling behind on their bills. (Tr. 51-53.) In an effort to regain control over their finances, they

decided to consolidate their debt. They met with an attorney who told him that debt consolidation would not work, and instead advised them to file bankruptcy, which they did. (Answer.)

After Applicant retired from the Army in 2013, he was unemployed for six months. He again fell behind on his financial obligations. No longer able to afford his car payments, Applicant contacted the creditor and the car was voluntarily repossessed. The \$15,592 debt alleged in SOR ¶ 1.b is the deficiency balance due on the repossessed car. Applicant entered a settlement agreement with the creditor in September 2015, and has been making monthly payments of \$100 since October 2015. (AX B; AX C.) When Applicant finally gained employment, he was earning approximately \$50,000 annually, which was significantly less than he had earned while on active duty. (Tr. 57.)

Applicant's wife continued to manage their finances after his retirement, first, because Applicant was seeking employment, and then, because he was very busy with his job. (Tr. 69; Tr. 75-76; Tr. 85.) While Applicant was generally aware that he and his wife were experiencing financial difficulties, his wife did not disclose to Applicant the full extent of their delinquent accounts. (Tr. 74.) During his October 2015 personal subject interview, Applicant was aware of the repayment plan for the deficiency balance owed for the repossessed car, but believed he and his wife were in repayment plans for all other previously delinquent accounts. (Tr. 76.)

Applicant periodically became aware of several debts, and took action to resolve them. He entered a repayment agreement of \$79 a month with the creditor of the \$977 credit-card debt alleged in SOR ¶ 1.d in April 2016, and the debt has been paid in full. (AX E; AX UU.) Applicant entered a repayment agreement of \$150 a month with the creditor of the \$855 credit-card debt alleged in SOR ¶ 1.f in November 2016, and the debt has been paid in full. (AX G, AX HH; AX TT.) He entered a repayment agreement of \$77 a month with the creditor of the \$561 debt alleged in SOR ¶ 1.g in November 2016, and the debt has been paid in full. (AX H; AX I; AX VV.)

However, Applicant's wife remained in charge of the household finances, and Applicant was not fully aware of his remaining delinquent accounts until he received the SOR. (Tr. 74.) After receiving the SOR, he immediately began contacting his creditors to pay off debts or arrange repayment plans. He disputed the \$76 debt owed to a cable company alleged in SOR ¶ 1.k. (AX Q.) Applicant entered the following repayment agreements:

SOR ¶ 1.e – \$966 – \$83 a month (AX F; AX KK; AX YY);

SOR ¶ 1.h – \$540 – \$55 a month (AX J; AX K; AX OO);

SOR ¶ 1.i – \$435 – \$50 a month (AX L; AX M; AX KK);

SOR ¶ 1.j – \$243 – \$50 a month, paid in full (AX O; AX QQ);

SOR ¶ 1.o – \$122 – \$68 a month, paid in full (AX R; AX RR; AX SS).

He has maintained his payments in compliance with his agreements, is current on each of the remaining accounts, and will pay each remaining account in full. (Answer.)

Applicant emphatically stated that he did not intentionally falsify his e-QIP. When applying for his current position, Applicant was given only about 30 minutes to one hour to complete the e-QIP. Applicant admits that in 2010, he received an Article 15, non-judicial punishment for violating Article 92, failure to obey a general order, sexual harassment, as alleged in SOR ¶ 2.a. As a result of this conduct, Applicant was given extra duty. However, he did not list it on his e-QIP because he was told by a military attorney that the record of this disciplinary action would be removed from his records after two years, and that Applicant would not be required to disclose it once it was removed. (Tr. 61-62.)

Applicant has been through several background investigations, understands that he is required to answer all questions truthfully, and has never intentionally failed to disclose any information. Applicant has had financial problems in the past, which have never had any impact on his security clearance. At the time he completed his e-QIP, he did not think that his financial circumstances could potentially create a security concern, and had no motivation to intentionally omit information from his e-QIP. He did not list his delinquent accounts because he was not aware of them, and his failure to list his 2009 bankruptcy was an oversight. (Tr. 62-66.)

Applicant's previous coworker, friend and landlord, who was aware of the SOR allegations, has known Applicant for over two years. He highly recommends Applicant for a clearance stating that he properly handles classified information, and obeys rules and regulations. (AX V; Tr. 20-23.) Applicant's former coworker and friend, who is aware of the SOR allegations, has held a clearance for over 11 years and had daily contact with Applicant when they worked together. She stated that while working together in a sensitive environment, Applicant never violated security procedures, and believes that Applicant is professionally and personally trustworthy. (Tr. 27-31.) Collectively, Applicant's former colleagues with whom he served, friends, and family members highly recommend Applicant for a security clearance, noting his unquestionable character, reliability, and trustworthiness. (AX V.)

Applicant now earns approximately \$61,000 annually in salary, and receives retirement pay, disability compensation, and veteran's educational benefits. (Tr. 49; Tr. 71.) He and his wife live within their means and have not incurred any recent delinquent debt. He recently purchased a car for approximately \$73,000 and Liz maintaining the \$1,100 to \$1,200 a month payments, as well as all other monthly obligations including the remaining repayment plans for the SOR debts. Applicant and his wife completed credit counseling in March 2017, and Applicant regularly checks his credit bureau report. He and his wife maintain a budget, and Applicant has taken on active role in managing the household finances. He does not have any open credit-card accounts, and does not write

personal checks to pay bills. (AX S; Tr. 90-91) Applicant was candid, sincere, and credible while testifying.

### **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).

## **Analysis**

### **Guideline F, Financial Considerations**

The concern under this guideline is set out in AG ¶ 18:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds....

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).

Applicant’s testimony, corroborated by 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”).

However, a person can mitigate concerns about his or her ability to handle and safeguard classified information raised by his or her financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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;

AG ¶ 20(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;

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

AG ¶ 20(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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial difficulties arose due to conditions largely beyond his control. Specifically, both Applicant and his wife had periods of unemployment, and Applicant earned significantly less after retiring from the military in 2013. Because of Applicant's deployments and work duties while on active duty, Applicant's wife was responsible for managing the household finances for many years. Applicant's wife's admitted overspending, combined with her loss of employment, led to the amassing of delinquent debts in 2009. Applicant acted responsibly by seeking and following the advice of an attorney, and discharging his debts through the legal remedy of Chapter 7 bankruptcy.

After Applicant retired in 2013, his wife continued to be responsible for the household finances. Applicant was aware that his unemployment and underemployment caused financial strain, however, his wife did not fully disclose to him the extent of their debts. Applicant acted responsibly under the circumstances by recognizing that he was unable to continue his car payments, contacting the creditor and arranging for voluntary repossession, and entering a repayment plan with the creditor in 2015. Applicant entered repayment plans with two other creditors in 2016. However, Applicant was unaware of the delinquent accounts not in repayment until he received the SOR. Upon learning of these debts, Applicant immediately took action. Since then, he has participated in financial counseling and he and his wife share the responsibility of managing their finances. They use a budget, spend only within their means, and do not have any active credit cards. Applicant has repaid or is repaying 10 of the 11 SOR debts. He disputed the remaining \$76 debt.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure.

ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's financial difficulties did not arise under circumstances that suggest reckless or irresponsible behavior. Overall, he has addressed his debts in a responsible manner, and will continue to do so. By participating in counseling, and sharing in the responsibilities of managing the household finances, Applicant has taken proactive steps to ensure ongoing financial stability. Although his financial record is not perfect, he has implemented a reasonable plan to resolve his financial issues within his means, and to avoid future financial difficulties. AG ¶¶ 20(b) through 20(e) apply.

### **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...

Applicant's 2010 non-judicial punishment could potentially raise questions about his judgment and willingness to comply with rules and regulations, which could raise concerns about his security worthiness.

The following mitigating condition is potentially applicable:

AG ¶ 17(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.

Applicant's conduct and subsequent punishment occurred in 2010, over seven years before his hearing. Given the record as a whole, including the multiple medals and commendations awarded to Applicant for his exceptional military service from 1992 until 2013, this conduct was a unique occurrence and is unlikely to recur. It does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.



Applicant's omissions from his 2015 e-QIP could raise the following disqualifying condition:

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 unwaveringly asserted that he did not intentionally falsify his e-QIP. His omissions were unintentional, and the result of rushing through his e-QIP. Further, he did not know about the majority of his delinquent accounts. He has held a security clearance since 1992, and is respectful of the background investigation process. Additionally, he was not concerned that his financial circumstances would have an impact on his security eligibility. I found his explanation to be credible and consistent with the record evidence, and his demeanor to be honest, forthcoming, and candid. Therefore, I conclude that AG ¶ 16(a) does not apply.

### **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(d) were addressed under that guideline, but I have also considered the following:

Applicant has held a security clearance since 1992. He served honorably in the military, including several combat deployments, for 21 years. His past financial difficulties do not raise current security concerns. He was honest and forthcoming during this testimony.

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 mitigated the security concerns raised by his delinquent debts, past conduct, and omissions on his e-QIP. Accordingly, I conclude he has 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): FOR APPLICANT

Subparagraphs 1.a – 1.j, 1.l, and 1.o: For Applicant

Subparagraphs 1.k, 1.m, and 1.n: Withdrawn

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

Subparagraphs 2.a – 2.d: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge