



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



In the matter of: )  
 )  
 [REDACTED] ) ISCR Case No. 16-03408  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2018

---

**Decision**

---

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). Applicant has not mitigated the security concerns raised by his delinquent debts, criminal activity, and his failure to appropriately disclose derogatory information as required on his security clearance application. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on March 22, 2016. On December 16, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines E, F, and J. 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 January 20, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on August 17, 2016. On August 19, 2016, a complete copy of the file of relevant material

(FORM,) which included Government Exhibits (GX) 1 through 9, 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 April 22, 2017. He requested and was granted an extension to file a response to the FORM by May 31, 2017. He did not file a response.<sup>1</sup> The case was assigned to me on October 1, 2017.

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**

Under Guideline F, the SOR alleges 13 debts totaling \$19,915. Applicant admits the \$182 cable debt alleged in SOR ¶ 1.g, and denies the remaining 12 debts. Under Guideline J, the SOR alleges that was charged with open container in June 2011 and operating a motor vehicle under the influence or impaired, and several other charges. Applicant admits these two allegations with explanations. The SOR further alleges that Applicant was charged with domestic violence in June 2010, assault in 2000, and rape and attempted rape in September 1998. Applicant denies these charges, stating that each was dismissed. The SOR also alleges that Applicant was charged in November 2009 with cheating at gambling. Applicant neither admits nor denies this allegation, however he states that the charge was "settled." Under Guideline E, the SOR alleges that Applicant materially falsified his e-QIP by failing to disclose his two alcohol-related arrests, and the rape and attempted rape charges. Applicant denies this allegation. Applicant's admissions are incorporated in my findings of fact.

Applicant is a 43-year-old linguist employed by a defense contractor since February 2016. He has been married and divorced three times, and has one adult and two minor children. (GX 3.)

The 13 debts alleged in the SOR consist of 11 delinquent medical accounts totaling \$19,663, a \$70 collection account owed to a hotel/casino, and a \$182 cable account. Applicant denies each of the medical debts, stating that he had medical insurance at the time the debts were incurred. Applicant denies owing the \$70 hotel/casino debt alleged in SOR ¶ 1.i, stating that he stayed at the hotel, but paid his entire bill. The hotel/casino debt and the medical accounts appear on Applicant's credit bureau reports from 2016. (GX 7; GX 8.) Applicant has not provided any documentation to support his denial of financial responsibility for the delinquent accounts. These debts remain unresolved.

---

<sup>1</sup>The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated March 17, 2017, and Applicant's receipt is dated April 22, 2017. However, Department Counsel received an email from Applicant's employer indicating that while Applicant had received the FORM, and signed the receipt, Applicant was out of the country until May 15, 2017 and requested an extension of time to file a response. Department Counsel agreed to an extension until May 31, 2017. Both the DOHA transmittal letter and Department Counsel's emails informed Applicant that he had the opportunity to submit information, and that any such information must be submitted by the specified deadlines. The DOHA transmittal letter, receipt, and emails are marked as Administrative Exhibit 1.

Applicant admits owing the \$182 cable account debt alleged in SOR ¶ 1.g. He stated on both his e-QIP and in his Answer that he intended to resolve this debt. However, Applicant has not provided any documentation showing that this debt has been paid. This debt remains unresolved.

In 1998, Applicant was arrested and charged with rape and attempted rape, both felony charges, against his then girlfriend. He spent two weeks in jail, and ultimately, the charges against him were dismissed because his then girlfriend failed to appear in court. In June 2010, Applicant was arrested and charged with domestic violence and assault against his then girlfriend. He spent one day in jail, appeared in court, and the charges were dismissed because his then girlfriend failed to appear. (GX 4; GX 5; GX 9.) There is no record evidence that supports that Applicant was charged with assault in 2000 (SOR ¶ 2.e), accordingly, this allegation is resolved in Applicant's favor.

In 2010, Applicant was charged with cheating at gambling. A security camera at the casino showed applicant moving a losing chip onto a winning spot after the game had ended. He was placed in a deferral/diversion program, the conditions of which were: 24 months' probation; 24 months no contact with the casino; and 17 hours community service. The charge was dismissed with prejudice in June 2012. (GX 4; GX 6.)

In July 2010, Applicant was arrested and charged with operating a vehicle under the influence of alcohol; open container in a moving vehicle; hit skip - public street; failure to control; and, seatbelt violation. He was found guilty and sentenced to 731 days' probation, his license was suspended for 92 days, and he was fined. (GX 4; GX 6.) Applicant was charged with open container in June 2011, and was fined approximately \$300. (GX 4; GX 6.)

When Applicant completed his e-QIP in March 2016, in response to questions concerning his police record, Applicant listed a February 2012 domestic violence charge that was dismissed. He failed to disclose as required, the 1998 felony charges, the 2010 conviction for operating under the influence of alcohol and other charges, and the 2011 open container charge. (GX 3.) In his Answer, Applicant states that his failure to disclose his police record was "simply a type-o-error." However, when questioned about any contact with police during a counterintelligence-focused security screening, Applicant stated that he had a few moving violations in his entire life, and omitted all other criminal conduct and police contact. (GX 4.)

## **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").

Of the \$19,915 in delinquent debts alleged in the SOR, Applicant admits owing one debt for \$182. While \$19,663 of the total SOR debt is for delinquent medical bills, which could have arisen from an unexpected medical emergency, Applicant has failed to pay or otherwise resolve these debts. Applicant states that he is not responsible for the medical debts because he had health insurance when the debts were incurred. However, he has taken no action to responsibly dispute or address these delinquent accounts. None of the mitigating conditions apply.

## **Guideline J, Criminal Conduct**

The concern under this guideline is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The following disqualifying conditions apply under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence . . . of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted.

The following mitigating conditions are potentially applicable:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's most recent charges were for open container in 2011, and operating a motor vehicle under the influence of alcohol and related charges in July 2010. His most serious charges, two felonies, were in 1998. While significant time has passed since Applicant has been charged with any criminal conduct, he continues to minimize his culpability, including specifically denying the 2010 domestic violence charge because it was dismissed. His failure to accurately disclose his police record on his e-QIP in 2016 further illustrates his failure to accept responsibility for his actions. This ongoing minimization and denial of responsibility casts doubt about Applicant's reliability, trustworthiness, and good judgment. It further negates evidence of successful rehabilitation. None of the mitigating conditions 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 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 2016 e-QIP, claiming he erroneously omitted the requisite information about his police record. However, given the record evidence as a whole, and specifically Applicant's previous omission of his criminal conduct and police contact, as well his denial and minimizing of his criminal conduct in his Answer, I find that Applicant lacks credibility. None of the mitigating conditions 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(a).

I have considered the factors in AG ¶ 2(a) and incorporated my comments under Guidelines F, J, and E in my whole-person analysis. After weighing the disqualifying and mitigating conditions under Guidelines F, J, 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 conduct. 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 – 1.m: Against Applicant

Paragraph 2, Guideline J (Criminal Conduct) AGAINST APPLICANT

Subparagraphs 2.a - 2.d and 2.f: Against Applicant

Subparagraph 2.e: For Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 3.a: Against 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