



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 16-03471
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gatha Manns, Esquire, Department Counsel  
For Applicant: *Pro se*

12/08/2017

---

**Decision**

---

HOGAN, Erin C., Administrative Judge:

On January 30, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline 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 after September 1, 2006. On June 8, 2017, the AGs were updated and the AGs effective September 1, 2006 were cancelled. This decision will be decided based on the new AGs effective on June 8, 2017. If I were to consider this case under the AGs effective September 1, 2006, it would result in the same outcome.

On March 16, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 26, 2017. The case was assigned to me on September 27, 2017. On that same date, a Notice of Hearing was issued, scheduling the hearing for October 4, 2017. The hearing was held as scheduled. During the hearing, the Government offered eight exhibits which were admitted as Government Exhibits (Gov) 1 – 8. Applicant testified and offered 11

exhibits which were admitted as Applicant Exhibits (AE) A – K. The transcript (Tr.) was received on October 12, 2017. The record was held open until October 18, 2017, to allow Applicant to submit additional documents. Applicant timely submitted documents which were admitted without objection as AE L – Q. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 47-year-old employee of a Department of Defense contractor seeking a security clearance. He was born in Jamaica. He served six years on active duty with the Jamaican Army. He move to the United States in April 2000. He became a U.S. citizen in December 2014. He has an associate's degree from a technical institute. He married in 2001, but is separated from his wife. He has four children, ages 28, 27, 19 and 15, and two stepchildren, ages 22 and 24. He was hired by his current employer in February 2015. He was laid off on April 26, 2017, pending the outcome of this security clearance investigation. (Tr. 21, 24, 27, 29-30. 52-59; Gov 1)

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

Applicant's security clearance background investigation revealed that he filed for Chapter 7 bankruptcy in May 2012, and his debts were discharged in August 2012. (SOR ¶ 1.x: Gov 4 at 2; Gov 5 at 6; AE J at 138) After the bankruptcy, he incurred 25 delinquent debts, an approximate total of \$40,715. The delinquent debts include: a \$6,999 charged-off student loan account (SOR ¶ 1.a: Gov 4 at 13; Gov 5 at 6; Gov 6 at 7); a \$5,068 delinquent medical account (SOR ¶ 1.b: Gov 5 at 2; Gov 6 at 2); a \$4,331 charged-off account owed to a credit union (SOR ¶ 1.c: Gov 4 at 4; Gov 5 at 2; Gov 6 at 8); a \$3,182 delinquent cell phone account placed for collection (SOR ¶ 1.d: Gov 5 at 2); and a \$2,817 credit union account that was charged off (SOR ¶ 1.e: Gov 4 at 4; Gov 5 at 2; Gov 6 at 9).

Additional delinquent accounts include: a \$2,633 delinquent cell phone account placed for collection; (SOR ¶ 1.f: Gov 4 at 15; Gov 5 at 2; Gov 6 at 9); a \$2,324 charged-off jewelry store account (SOR ¶ 1.g: Gov 5 at 2; Gov 6 at 4); a \$2,170 cell phone account placed for collection (SOR ¶ 1.h: Gov 5 at 2); a \$1,729 past-due credit card account (SOR ¶ 1.i: Gov 5 at 2; Gov 6 at 5); a \$1,568 past-due credit card account (SOR ¶ 1.j: Gov 5 at 2; Gov 6 at 4); a \$1,132 collection account (SOR ¶ 1.k: Gov 5 at 2); a \$912 charged-off account (SOR ¶ 1.l: Gov 5 at 3; Gov 6 at 8); a \$795 cell phone account placed for collection (SOR ¶ 1.m: Gov 5 at 3); a \$771 cable television account placed for collection (SOR ¶ 1.n: Gov 5 at 3; Gov 6 at 2); and a \$766 charged-off credit card account. (SOR ¶ 1.o: Gov 5 at 3; Gov 6 at 5).

Additional delinquent accounts include: a \$588 charged-off credit card account; (SOR ¶ 1.p: Gov 5 at 3; Gov 6 at 4); a \$536 charged-off medical account (SOR ¶ 1.q: Gov 5 at 3); a \$534 charged-off department store credit card account (SOR ¶ 1.r: Gov 5 at 3; Gov 6 at 8); a \$477 past-due medical account (SOR ¶ 1.s: Gov 5 at 3); a \$285

charged-off big box store credit card account (SOR ¶ 1.t: Gov 5 at 3; Gov 6 at 7); a \$276 catalog company collection account (SOR ¶ 1.u: Gov 5 at 3; Gov 6 at 3); a \$225 delinquent medical account (SOR ¶ 1.v: Gov 5 at 3); a \$150 delinquent medical account (SOR ¶ 1.w: Gov 5 at 3); a \$242 utility account placed for collection (SOR ¶ 1.y: Gov 4 at 6); and a \$205 account owed to a municipality placed for collection. (SOR ¶ 1.z: Gov 4 at 16).

Also alleged under Guideline F is a charge and conviction of issuing worthless checks in December 2003 (SOR ¶ 1.aa: Gov 3 at 2) and a September 1996 charge and conviction for shoplifting. (SOR ¶ 1.bb: Gov 4 at 16). During the hearing, Applicant also admitted to filing for bankruptcy under Chapter 7 in 2004. (Tr. 71; Gov 8) The 2004 bankruptcy was not alleged in the SOR as disqualifying conduct, though it may be considered to evaluate evidence of extenuation, mitigation, or changed circumstances, to consider whether an applicant has demonstrated successful rehabilitation, or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2016). Therefore, I will consider it accordingly.

Applicant admits most of the debts. He indicates that he attempted to enter into payment plans, but would no longer be able to afford the payments after being laid off in April 2017. In February 2017, he retained a law firm that assists with disputing debts alleged on credit reports, but is unable to make payments to the law firm because of his recent unemployment. (Tr. 59, 70, 83; AE D) Applicant has had several periods of unemployment. In September 2014, he was fired because his supervisor claimed that he did not complete a work assignment. His periods of unemployment include: February 2005 to December 2006; November 2010 to June 2011; July 2011 to May 2012; and September 2014 to February 2015. (Gov 1, section 13A)

At the close of the record, Applicant provided proof that he paid the \$205 municipal debt alleged in SOR ¶ 1.z. (AE N) He provided documentation that he made a payment of \$25 towards one of his debts. It is not clear that this debt is alleged in the SOR. (AE H) In July 2017, he made a \$25 payment towards the debt alleged in SOR ¶ 1.q. (AE I). Applicant has been unable to make payments towards his debts because of his unemployment. Most of the debts remain unresolved. (Tr. 59-77, 83-84; AE J; AE K)

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

Under Personal Conduct, Applicant's 2003 bad check conviction and his 1996 shoplifting conviction were cross alleged by the Government. (SOR ¶ 2a: Gov 3 at 2; SOR ¶ 2b: Gov 3 at 2). The Government also alleged a June 2010 assault charge and conviction (SOR ¶ 2.c: AE F); an April 2009 charge and conviction of assault on a family member SOR ¶ 2.d: Gov 3 at 3; AE E); and a May 2003 charged of felonious assault and felony abuse and neglect of children. For this offense, Applicant pled guilty to a misdemeanor assault charge. The neglect charge was nolle prossed. (SOR ¶ 2.e: Gov 3 at 2)

Applicant is alleged to have falsified his answers to several questions on his e-QIP application which was signed by him on March 9, 2015. In response to “Section 15 – Military History. Foreign Military Service. Have you ever served as a civilian or military member in a foreign country’s military, intelligence, diplomatic, security forces, militia, other defense force, or government agency?” Applicant answered, “No”. He did not list his military service in the Jamaican Army from 1989 to 1995. (Gov 1, section 15; Gov 2 at 5; Tr. 21, 53) Applicant states that he did not list his service in the Jamaican Army due to oversight. It was the first time he completed an e-QIP form. He received no guidance on how to fill out the form and he felt pressure to complete the form as soon as possible. He did not intend to hide his foreign military service. (Tr. 80-82)

Applicant answered, “No” in response to the “Section 22 – Police Record (EVER) Other than those offenses already listed, have you EVER had the following happen to you . . . been charged with a felony offense?” He did not list his May 2003 felony charge which was alleged in SOR ¶ 2.e. (Gov 1, section 22) Applicant claims he did not list this charge because he believed he did not have to list offenses that were more than seven years old. (Response to SOR)

Applicant answered, “Yes” in response to the “Section 22 – Police Record. In the past seven (7) years have you been arrested by any police officer, sheriff, marshall or any type of law enforcement official? ... In the past seven (7) years, have you been charged, convicted or sentenced of a crime in any court?” Applicant listed his June 2010 assault conviction (SOR ¶ 2.c), but did not list his April 2009 charge for assault on a family member (SOR ¶ 2.d: Gov 1, section 22) Applicant stated in his response to the SOR that he did not list this charge because he believed the charges were dismissed and it would not be on his record. (Response to SOR).

### **Whole-Person Factors:**

Applicant submitted five reference letters from his co-workers. He is described by his team lead as “a consummate professional in all aspects, and a highly valuable member of my team.” He has been “instrumental in several high-priority projects.” (AE A at 1) The Cyber Security Manager states that Applicant is a trusted and valued team member and it would be a loss to lose his services on the contract. (AE A at 2) Other co-workers have said similar favorable things about Applicant. (AE A at 3-4) Applicant’s pastor states it is a joy having Applicant as a member of his congregation. Applicant joined the church in May 2017. (AE A at 5).

Applicant has earned several computer certifications. (AE B) In September 2017, he received an offer from another contractor contingent on the successful adjudication of his security clearance. (AE A at 5)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, 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 eligibility for access to classified information.

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 over arching 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 access 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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.

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).

## **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 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (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 a long history of financial problems. He incurred over \$40,000 in debt after having his debts discharged in a Chapter 7 bankruptcy in 2012. AG ¶¶ 19(a), 19(b), and 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions 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; and

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

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. He has had a history of not meeting his financial obligations since at least 2004, when he first filed for bankruptcy under Chapter 7. He continues to incur a large amount of delinquent debt even after having his debts discharged in a second bankruptcy in 2012. Applicant's financial irresponsibility continues to raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies, because Applicant encountered several periods of unemployment. However, I cannot conclude Applicant acted responsibly under the circumstances because of his lack of attention towards his delinquent debts while he was employed. Applicant did not attempt to resolve any of his debts until after the SOR was issued. Despite two bankruptcies, Applicant has not implemented any standards such as following a budget to prevent or minimize his financial problems. For this reason, AG ¶ 20(b) is given less weight.

AG ¶ 20(d) does not apply. I cannot conclude that Applicant made a good-faith effort to resolve his delinquent debts. He made attempts to enter in to payment plans with some of his creditors after the SOR was issued. Granted, his current unemployment prevents him from resolving his debts. However, he was employed full-time between February 2015 and April 2017 and did not attempt to resolve his delinquent accounts.

### **Guideline E – Personal Conduct**

The security concern relating to the guideline for Personal Conduct 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 the national security or adjudicative processes.

The following disqualifying conditions potentially apply to Applicant's case:

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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(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.

AG ¶ 16(a) applies with regard to Applicant's omission of his six years of service in the Jamaican Army from 1989 to 1995 in response to Section 15 – Military History. Foreign Military Service. I find Applicant's omission was material and intentional with regard to his foreign military service. The question was clear and does not really create any ambiguities for individual's completing the security clearance application. SOR ¶ 1.f is found against Applicant.

I find for Applicant regarding the falsification allegations in SOR ¶¶ 1.g and 1.h. With regards to SOR ¶ 1.g, Applicant does not have a legal background. He did not understand that he should have listed the May 2003 felony charge because he pled to a misdemeanor. In addition, he did not think he needed to list it because the other questions advise to list any offenses within the past seven years. The May 2003 arrest was more than seven years old. With regards to SOR ¶ 1.h, Applicant believed that he did not have to list his 2009 arrest for assault on a family member because the charge was dismissed. He misunderstood the question. The omission of the 2009 charge of assault on a family member was not intentional.

AG ¶ 16(c) applies with regard to Applicant's December 2003 worthless checks charge, his September 1996 shoplifting charge, his June 2010 assault charge, his April 2009 assault on a family member charge, and his May 2003 charge of felonious assault and felony abuse and neglect of children charge. (SOR ¶¶ 1.a – 1.e) Applicant's misconduct and arrest history raises questions about his judgment, trustworthiness, reliability, and willingness to comply with rules and regulations. This raises questions about Applicant's ability to handle classified information.



Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

With regard to Applicant's deliberate omission of his foreign military service, I cannot conclude he made a prompt good-faith effort to correct the omission. AG ¶ 17(a) does not apply. SOR ¶ 1.f is found against Applicant.

AG ¶ 17(c) applies pertaining to SOR ¶¶ 1.a – 1.e. While Applicant has numerous arrests and convictions in his background, it has been seven years since his last arrest. His conduct has improved since that time.

### **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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's favorable reference letters from his superiors and co-workers. I considered Applicant's periods of unemployment. I also considered Applicant's past bankruptcies in 2004 and 2012, and his current delinquent debts totaling over \$40,000. I considered that Applicant took no action towards resolving these delinquent debts until after the SOR was issued, even

though he was employed full-time from February 2015 to April 2017. I considered Applicant's deliberate omission of his foreign military service on his March 2015 e-QIP application. Applicant's financial situation is unstable and it is unlikely to improve in the near future. Questions remain about Applicant's trustworthiness and reliability. Security concerns under financial considerations and personal conduct are not mitigated.

### **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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a -1.y, 1.aa – 1.bb:	Against Applicant
Subparagraph 1.z:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.e, 2.g – 2.h:	For Applicant
Subparagraph 2.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

ERIN C. HOGAN  
Administrative Judge