



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. 16-03869

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

01/02/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding his financial problems. Eligibility for access to classified information is denied.

**Statement of Case**

On January 19, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. 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 (AGs) implemented by DOD on September 1, 2006.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect for the issuance of the SOR would not affect my decision in this case.

Applicant responded to the SOR on February 6, 2017, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 3, 2017, and did not object to any of the exhibit items in the FORM or provide additional information. The case was assigned to me on October 1, 2017.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) incurred a state tax lien in 2014 for \$607; (b) accrued five delinquent private student loans exceeding \$5,000; (c) incurred a medically-related judgment in 2011 for \$10,028; (d) accumulated delinquent consumer debts exceeding \$10,000; and (e) petitioned for Chapter 7 bankruptcy relief in 2004 (discharged in 2005). Allegedly, the listed debts and state tax lien remain unresolved.

Under Guideline E, Applicant allegedly falsified his electronic questionnaires for electronic processing (e-QIP) of September 2015 by omitting his delinquent debts covered by SOR ¶¶ 1.a-1.c. Allegedly, these cited omissions cover issues of trustworthiness and candor.

In his response to the SOR, Applicant admitted most of the SOR allegations with explanations. He claimed some of the listed debts have been deleted from his credit report; others are duplicates; and others have not been specifically addressed. Applicant claimed that some of the listed debts became delinquent while he was laid off from his job. Applicant further claimed that some of the listed debts could not be verified by credit information. And he claimed to have put together an aggressive payment plan designed to address all of his listed SOR debts that he can validate and resolve.

### **Findings of Fact**

Applicant is a 47-year-old tooling planner for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in November 1992 and has two children from this marriage. (Items 2-3) He earned a high school diploma in June 1989 and reported no post-high school education credits or military service. (Items 2-3)

Since April 2015, Applicant has worked for his current employer. (Items 3-4) Between October 2014 and April 2015, he held various jobs. (Item 3) He reported periods of unemployment between January 2014 and January 2015. (Item 3)

### **Applicant's finances**

Applicant comes to these proceedings with a lengthy history of financial problems. In 2004, he petitioned for Chapter 7 bankruptcy relief, citing industry decline and the lack of available design opportunities and insufficient income to support his family of four. (Item 1) He received his bankruptcy discharge in 2005. The record does not contain any schedules of secured and unsecured claims (both priority and non-priority), and, as a result, the numbers of creditors filing claims and the amounts of their claims cannot be accessed and verified. (Items 4-5)

Records show that Applicant incurred a state tax lien in the amount of \$607 in 2014. (Items 3-5) Records also document his accumulating five delinquent private student loan debts between March 2013 and September 2015 that exceed \$5,500. (Item 4) From his credit reports, a judgment is documented to have been incurred in 2011 in the amount of \$10,028. (Items 4-5) Applicant's credit reports also document seven delinquent consumer debts accumulated by Applicant over a five-year period (2011-2015) that exceed \$10,000. (Items 3-5) Applicant attributed his debt delinquencies in part to an employment layoff and his inability to verify delinquent debts in his credit report. Applicant's most recent credit reports list his state tax, student loan, medical, and consumer debts (SOR debts ¶¶ 1.a-1.l) as accounts in collection. (Items 4-5)

While Applicant expressed his intent to pay most of the SOR-listed delinquent debts, he provided no documentation of his having addressed any of the listed SOR debts. To what extent he followed through with payments or payment plans with any of these listed state tax, student loan, medical, and consumer accounts is unclear. (Items 4-5) Without more furnished information, no favorable inferences can be drawn of Applicant's personal progress in addressing his delinquent SOR-listed debts

Applicant provided no evidence of financial counseling, budgeting, or character references. Nor did he provide any evidence of performance evaluations and community contributions to support whole-person assessments.

### **E-QIP omissions**

Asked to complete an e-QIP in September 2015, Applicant omitted information covering SOR debts ¶¶ 1.a-1.l Applicant denied any intention to be dishonest or unwillingness to comply with rules and regulations. (Item 1) Acknowledging his awareness of outstanding debts when he completed his e-QIP. He claimed he was not fully aware of the extent to which some of the debts had reached past-due status. (Item 1) Further, he claimed he did not have the means to access the required information for the application. Anticipating that he would later have a more accurate view of what creditors were owed and what they were owed, he opted to answer "no" to the questions asked in

the e-QIP about his finances. As explained, his answers reflect some knowledge of his debts and a desire to omit any questionable ones that he could not fully identify. The degree of candor expected of applicants responding to e-QIP inquiries is lacking in Applicant's case.

In his interview with an OPM agent in November 2015, the agent inquired about his finances. When asked about his 2014 state tax lien, he voluntarily corrected his e-QIP omission with an affirmative response. Asked if he had any additional past-due accounts, he volunteered that he did without providing specifics. (Item 3) Confronted by the interviewing OPM agent with questions about specific delinquent accounts, he disputed some of the accounts and acknowledged most of those listed in the SOR. (Item 3) Applicant's answers while, not entirely voluntary, were sufficiently responsive, given his lack of specific recall of the accounts he was confronted with to merit credit for providing voluntary, good-faith corrections of his omitted delinquent debts in the e-QIP he completed in September 2015.

### **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations

should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant’s history of financial problems marked by his Chapter 7 bankruptcy petition and discharge and post-bankruptcy accumulation of delinquent state taxes, student loan, medical, and consumer debts. Applicant’s accumulation of debt delinquencies warrant the application of four of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19 (b), “unwillingness to satisfy debts regardless of the ability to do so”; 19(c), “a history of not meeting financial obligations”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Additional security concerns are raised over Applicant’s omissions of his 2014 state tax lien, and his accumulation of delinquent student loan, medical (including a judgment covering a medical debt), and consumer debts. Most of these omissions were acknowledged voluntarily in general form and confirmed when confronted by the OPM agent on the specifics of the debts.

### **Financial Concerns**

Applicant’s pleading admissions with respect to his accumulation of delinquent consumer debts negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s delinquent consumer debts are fully documented in his credit reports and create some judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in persons cleared to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of paying or otherwise resolving owed federal and state taxes in DOHA proceedings is critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)

Whether Applicant has reduced the amounts owing on his state tax lien and his delinquent education, medical, and consumer debts remains unclear. He provided no documentary evidence of his paying or otherwise resolving the reported state tax delinquency and other debts listed in the SOR. Without substantiating evidence of his

paying or otherwise resolving his owed state tax, student loans, medical, and consumer debts covered in the SOR, drawn conclusions are warranted that he has not completed his payment obligations pertaining to the listed debts in the SOR.

Applicant provided no documented evidence of extenuating circumstances, good-faith payments or payment plans, financial counseling, or reasonable disputes with any of the listed SOR debts. Based on the evidence provided, none of the mitigating conditions pertaining to evidenced good-faith payment initiatives, extenuating circumstances, financial counseling, reasonable basis to dispute a past-due debt, or payment arrangements made with the cognizable tax authority to file or pay the amount owed apply to Applicant's situation.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). In Applicant's case, his lack of demonstrated responsible efforts in addressing his SOR-listed tax and consumer obligations preclude favorable findings and conclusions with respect to his security clearance application. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

Taking into account all of the documented facts and circumstances surrounding Applicant's state tax, student loans, medical, and consumer debt accruals that he has failed to pay or resolve to date, Applicant has failed to demonstrate enough probative efforts to mitigate financial concerns. Conclusions are warranted that his finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance.

Unfavorable conclusions are entered with respect to the allegations covered by subparagraphs 1.a through 1.m of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is not consistent with the national interest.

### **Personal Conduct Concerns**

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E as the result of his omissions of his delinquent debts in the e-QIP he completed in February 2016. By omitting his delinquent debts (state taxes, student loans, medical (inclusive of the judgment covered by SOR ¶ 1.f), and consumer debts, Applicant failed to furnish materially important background information about his financial history that was needed for the Government to properly process and evaluate his security clearance application. DC ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts to 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," fully applies to Applicant's situation.

Applicant's explanations of his omissions are not fully reconcilable with his acknowledged awareness of accrued delinquent debts when he completed his e-QIP. Aware generally of his having delinquent debts covered by Section 26 of his e-QIP, he could reasonably have been expected to have answered in the affirmative. His "no" answers under these circumstances reflect knowing and wilful omissions.

To his credit, Applicant voluntarily corrected his omissions in his OPM interview that followed in November 2015 with general acknowledgments of delinquent debts. Based on his prompt and voluntary acknowledgments, Applicant may be credited with prompt, good-faith corrections of his financial omissions. Applicant's voluntary acknowledgments of his delinquent debts came before he was confronted with his specific SOR accounts by the OPM investigator and meet the criteria of MC ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

Applicant's corrections, under all of the circumstances considered, meet the prompt, good-faith prong of MC ¶ 17(a), as this term is generally understood in the Appeal Board's jurisprudence. See ISCR Case No. 09-05655 (App. Bd. Aug. 24, 2010) (affirming grant of security clearance); ISCR Case No. 93-1390 (App. Bd. Jan. 27, 1995); ISCR Case No. 98-0422 (Jan. 22, 1999). Personal conduct concerns are mitigated under the prompt, good-faith criterion.

### **Whole Person Assessment**

Whole-person assessment is unfavorable to Applicant. He has not shown sufficient progress to date in addressing his delinquent state tax, student loan, medical, and consumer debts covered in the SOR. His actions to date reflect a lack of financial responsibility and judgment and raise unresolved questions about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. More documented information about his inability to pay or otherwise resolve his delinquent state taxes, student loans, medical, and consumer debts and demonstrate financial progress is necessary to mitigate financial concerns under the financial guideline and consideration of the whole person to mitigate security concerns.

Taking into account all of the documented facts and circumstances surrounding Applicant's state tax, student loan, medical, and consumer debt accruals, there is insufficient probative evidence of financial progress on Applicant's part to mitigate financial concerns. Favorable conclusions are entered with respect to the personal conduct allegations covered by subparagraphs 2.a-2.b of the SOR. Overall, eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.m: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subparagraphs 2.a-2.b: For Applicant

**Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge



