



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-00212  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

11/02/2017

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the security concerns raised by his delinquent debts. While he unintentionally failed to list his delinquent debts, he intentionally failed to report his foreign contact on his November 2012 security clearance application. Clearance is denied.

**Statement of the Case**

On March 7, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.<sup>1</sup>

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

Applicant responded to the SOR on March 20, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 27, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 13, 2017. He did not respond to the Government's FORM. The Government's documents identified as Items 1 through 8 are admitted in evidence without objection. The case was assigned to me on October 1, 2017.

### **Findings of Fact**

Applicant is a 54-year-old supervisor employed by a defense contractor stationed overseas since December 2003. He obtained a high-school diploma in 1982, and he subsequently attended college until 1983, but he did not earn a degree. He served honorably in the U.S. military from October 1983 until he retired in November 2003. He was previously married from 1984 to 2011, and he has two adult children.<sup>2</sup>

The SOR alleges a judgment for \$1,861 entered against Applicant in 2014, a 2015 mortgage foreclosure, and six delinquent consumer debts totaling \$26,296. It also alleges in ¶ 2.a that Applicant falsified his November 2012 security clearance application when he failed to disclose a foreign contact in response to section 19, and in ¶ 2.b that he falsified his application when he failed to disclose his delinquent debts in response to section 26. In his response to the SOR, Applicant admitted ¶ 2.a and denied the remaining SOR allegations.<sup>3</sup>

Applicant attributed his delinquent debts to his ex-wife incurring debts in his name, without his knowledge, while he worked overseas. He stated that after their divorce, she continued to incur debts in his name, without his knowledge, through a power of attorney. He stated that he was unaware his home was foreclosed, as he never asked questions about it after it was granted to his ex-wife in the divorce decree. He first learned of his delinquent debts through the security clearance process, as he was asked about them during his September 2016 subject interview. Thus, he unintentionally failed to report his delinquent debts in response to section 26 of his November 2012 security clearance application.<sup>4</sup>

Credit reports from November 2012 and June 2016 verify Applicant's delinquent debts. The June 2016 credit report lists SOR ¶ 1.b as having a zero balance.<sup>5</sup>

Applicant stated in his response to the SOR that he asked his ex-wife about SOR ¶ 1.a, then he resolved it through a wage garnishment. An April 2017 Joint Personnel

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<sup>2</sup> Items 4, 8.

<sup>3</sup> Items 1, 2.

<sup>4</sup> Items 2, 8.

<sup>5</sup> Items 5-6.

Adjudication System (JPAS) incident history report, reflecting a January 2017 wage garnishment processed by his employer for SOR ¶ 1.a, corroborates Applicant's statement.<sup>6</sup>

Applicant indicated during his September 2016 interview that he requested information for SOR ¶¶ 1.c to 1.f, and he planned to follow-up on them as soon as possible. He acknowledged in his response to the SOR that he has to take responsibility for his debts since they are in his name. He stated that he was working with a credit union to rebuild his credit history. Applicant has not provided evidence of any efforts he may have taken to repay or otherwise resolve SOR ¶¶ 1.c to 1.h.<sup>7</sup>

Applicant indicated during his September 2016 interview that he thought his finances were stable as he tried to avoid using credit when possible, timely paid his bills, and budgeted his money. He was surprised to learn that his ex-wife incurred debts in his name, without his knowledge, then failed to pay them. He acknowledged that his divorce occurred as a result of his separation from his now ex-wife, as he put his job before his family and only visited home once a year between 2004 and 2011. Applicant previously experienced a similar situation in August 2000. He learned then, for the first time, that his now ex-wife had not properly managed their finances during a period when he was the family's primary breadwinner. He took action in 2001 to resolve their delinquent debts.<sup>8</sup>

Applicant intentionally failed to disclose a foreign contact in response to section 19 of his November 2012 security clearance application. Above his signature, he certified:

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. . . . I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both (18 U.S.C 1001). I understand that intentionally withholding, misrepresenting, or falsifying information may have a negative effect on my security clearance, employment prospects, or job status, up to and including denial or revocation of my security clearance, or my removal and debarment from Federal service.<sup>9</sup>

Applicant initially indicated during his September 2016 subject interview that he did not disclose his foreign contact on his application because he did not think of her when he completed it. He then admitted that he completed the application with his then-wife's help, and he did not want her to ask him questions about his infidelity with his

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<sup>6</sup> Items 2, 3, 8.

<sup>7</sup> Items 2, 8.

<sup>8</sup> Items 7, 8.

<sup>9</sup> Items 2, 4, 8.

foreign contact. He stated that he wished to change his answer to section 19 to “Yes.” He regretted not disclosing his foreign contact, stated that he did not think about the consequences, and stated that he would not engage in such behavior in the future. In his response to the SOR, however, he stated that since he had worked overseas for so long, he did not think of his friend as a foreign contact.<sup>10</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the

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<sup>10</sup> Items 2, 4, 8.

applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(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 attributed his delinquent debts to his ex-wife incurring debts in his name, without his knowledge, while he worked overseas. He stated that after their divorce, she continued to incur debts in his name, without his knowledge, through a power of attorney. He stated that he was unaware his home was foreclosed, as he never asked questions about it after it was granted to his ex-wife in the divorce decree. He first learned of his delinquent debts through the security clearance process, as he was asked about them during his September 2016 subject interview.

Applicant previously experienced a similar situation in 2000, in which he learned that his now ex-wife had incurred delinquent debts without his knowledge. He then took action in 2001 to resolve their delinquent debts. In 2016, he was surprised to learn that she again incurred delinquent debts without his knowledge. But, he acknowledged that their divorce occurred due to their separation, as he only visited home once yearly when he worked overseas between 2004 and 2011, and he put his job before his family. Given his now ex-wife's history of incurring delinquent debts, and Applicant's knowing lack of involvement in their affairs, conditions beyond Applicant's control only partially contributed to his current financial problems. In addition, Applicant has not shown that he acted responsibly under his circumstances. AG ¶ 20(b) only partially applies.

Applicant resolved SOR ¶ 1.a through a wage garnishment, and the June 2016 credit report lists a zero balance for SOR ¶ 1.b. I find SOR ¶¶ 1.a and 1.b for Applicant. Applicant indicated that he intended to look into SOR debts ¶¶ 1.c to 1.f, and he planned to follow-up on them as soon as possible. He acknowledged that he has to take responsibility for his debts since they are in his name. He stated that he was working with a credit union to rebuild his credit history. He has not provided evidence of any efforts he may have taken to repay or otherwise resolve SOR ¶¶ 1.c to 1.h. There is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. His financial problems are not under control. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply to the unmitigated debts in SOR ¶¶ 1.c to 1.h.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant unintentionally failed to list his delinquent debts in response to section 26 of his security clearance application. His ex-wife incurred the debts in his name, without his knowledge, while he worked overseas. After their divorce, she continued to incur debts in his name, without his knowledge, through a power of attorney. He was unaware his home was foreclosed, as he never asked questions about it after it was granted to his ex-wife in the divorce decree. He first learned of his delinquent debts through the security clearance process, as he was asked about them during his September 2016 subject interview. AG ¶¶ 16(a) does not apply to SOR ¶ 2.b, and I find SOR ¶ 2.b for Applicant.

Applicant intentionally failed to disclose his foreign contact in response to section 19 of his November 2012 security clearance application. AG ¶¶ 16(a) is applicable to SOR ¶ 2.a.

AG ¶ 17 provides conditions that could mitigate security concerns. The following is potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

Applicant only corrected his response to section 19 of his November 2012 security clearance application after he was confronted about his false response during his September 2016 interview. He admitted that he did not disclose his foreign contact because he completed the application with his then-wife's help, and he did not want her to ask him questions about his infidelity with his foreign contact. He regretted not disclosing his foreign contact, stated that he did not think about the consequences, and stated that he would not engage in such behavior in the future. But in his response to

the SOR, he stated that since he had worked overseas for so long, he did not think of his friend as a foreign contact. His corrections were not prompt and did not occur before being confronted with the facts. He continued to minimize his intentional falsification in his response to the SOR. AG ¶ 17(a) is not applicable to SOR ¶ 2.a.

Applicant certified that he was aware that he was committing a criminal offense punishable by fine, imprisonment, or both, and that falsifying information could cause him to be denied a security clearance and lose his job. Despite those certifications, he decided to falsify his security clearance application. I am unable to determine that the conduct is unlikely to recur. It continues to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. I find that personal conduct security concerns remain.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 have incorporated my comments under Guideline F and Guideline E in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant served honorably in the U.S. military from October 1983 until he retired in November 2003. He has worked for a defense contractor stationed overseas since December 2003.

However, Applicant's financial delinquencies remain unresolved and he intentionally falsified his security clearance application. He failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude



Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

### **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.b:	For Applicant
Subparagraphs 1.c-1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances, 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.

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Candace Le'i Garcia  
Administrative Judge