



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



In the matter of: )  
)  
) ISCR Case No. 17-01046  
)  
Applicant for Security Clearance )

**Appearances**

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

05/29/2018

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant had 20 charged-off and collection accounts, which totaled approximately \$22,000. Additionally, he provided false answers to financial questions on his February 2016 Electronic Questionnaires for Investigations Processing (e-QIP). He failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on May 9, 2017, the DoD issued a Statement of Reasons (SOR) detailing financial considerations and

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<sup>1</sup> Executive Order 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 (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006.

personal conduct security concerns. On May 26, 2017, Applicant answered the SOR and elected to have the matter decided without a hearing. On June 22, 2017, Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained five attachments (Items). On June 26, 2017, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On July 17, 2017, Applicant's 18-page response to the FORM was received and admitted, without objection, as Items A through H. On October 1, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>2</sup>

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the delinquent obligations and denied falsifying his e-QIP. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 27 years old and has worked for a defense contractor since March 2016. He seeks to obtain a security clearance. He served on active duty in the U.S. Navy from February 2009 until he was medically discharged<sup>3</sup> in December 2010 due to a knee problem. (Item 3) He is married and has three children. (FORM response)

The SOR lists 20 delinquent obligations totaling approximately \$22,000. In his FORM Response, he documented paying \$648 on these delinquent obligations. In Applicant's SOR response (Item 1) he stated that the majority of the SOR delinquent obligations remained unsatisfied, but it was his intention to pay his debts. His wife had been out of work due to a high-risk pregnancy and health complications. On March 24, 2017, their daughter was born, and in May 2017, his wife returned to work.

In June 2014, Applicant purchased a car for \$13,154. (Item 4) The credit report lists the last payment on the loan was in October 2014. In March 2016, the car was repossessed (SOR 1.a, \$11,391). He asserts he did not list the repossession on his February 2016 e-QIP because the repossession occurred the month after he completed the e-QIP. (Item 1) He asserts did not list the debt as 120-days past due, because at the

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<sup>2</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

<sup>3</sup> In Applicant's e-QIP he lists his discharge as "General" and the reason for the discharge was medical. (Item 2)

time he completed the e-QIP it was not 120 days delinquent. In his November 2016 sworn statement, he said he had contacted the creditor and agreed to start making monthly payments on the debt within a couple of months. (Item 3) There is no documentation showing payment was made to this creditor.

The SOR lists three delinquent credit union accounts: SOR 1.d, \$1,677; SOR 1.l, \$938; and SOR 1.m, \$417. He asserts he settled one of the credit union accounts for \$273. (Item 1) He provided proof of his payment of \$273 in January 2017 and payment of \$261 in January 2016. (Item 1, Item C) He provided documentation showing he had entered into a repayment agreement with the credit union whereby he would make \$18 per month payments starting on June 22, 2017, to pay the remaining delinquent credit union obligation (SOR 1d, \$1,677). (Item H) He provided documentation showing he made one payment of \$18.10 in June 2017. (Item H)

Concerning the two credit union accounts Applicant claimed he settled, the account numbers indicated in the documentation that he had provided do not correspond to the credit union account numbers listed in the SOR. (FORM response) His February 2016 credit report lists five credit union accounts with zero balances and the two collection accounts listed in SOR 1.l and SOR 1.m. (Item 4) His March 2017 credit report lists the five accounts with zero balance and two additional accounts on which "less than the full balance" was paid. (Item 5) It also lists the charge off of the debt listed in SOR 1.d. (Item 5) No credit union accounts are listed in this credit report. The two letters he presented in response to the FORM concerning the credit union delinquent obligations are similar to the documents he presented in his May 2017 SOR response. There is no documentation that payment was made on these two accounts after he received the FORM.

Six of the SOR debts (SOR 1.o through 1.t, each for \$85), are all owed to the state turnpike and bridge authority. Applicant asserts these were the result of cancellation of a debit card linked to an easy-pass transponder. (Item 1) In his sworn statement, he asserted he was unaware the debit card had been cancelled and he only used the bridge a few times. However, court records show he owed the turnpike authority \$9,520, which raises some doubt about his explanation for the debts. (Item 1) After a court appearance in traffic court, Applicant agreed to repay \$1,120 by making \$94 monthly payments beginning in September 2016. (Item 1) He asserted he was current on his monthly payments until March 15, 2017, when his wife's high-risk pregnancy caused financial difficulties. He provided no documentation showing payment on this court-ordered settlement. In his SOR response, he asserted he had a June 2017 court appearance and planned to "get back on track with the remaining balance." (Item 1) He also asserted in his sworn statement that he did not know about the debt until after completing his e-QIP. (Item 3)

Eighteen months after Applicant received a letter from a law firm attempting to collect an insurance company debt (SOR 1.n, \$110) he attempted to call the law firm, but the telephone number had been disconnected. (Item 3) He asserts he then contacted the insurance company and was told the insurance company showed no debt owed. (Item 3)

Applicant provided documentation that he established repayment agreements with two creditors. He authorized a \$10 monthly debit to pay the \$478 debt listed in SOR 1.f and authorized a \$25 monthly debit to pay the \$250 debt listed in SOR 1.h. He asserted without any corroborating documentation that he had arranged repayment agreements whereby he would pay \$10 monthly on the \$582 debt listed in SOR 1.e, \$10 monthly on the \$462 debt listed in SOR 1.g, and \$18.10 monthly on the \$1,677 credit union debt listed in SOR 1.d. He provided documentation that he had paid \$535 on the two credit union accounts, which may or may not be SOR 1.l and 1.m, and he made 11 payments totaling \$164 toward the debts in SOR 1.e, 1.f, 1.g, and 1.h.

When Applicant completed his February 2016 e-QIP, he was asked in Section 26 – Financial Record, Delinquency Involving Routine Accounts, if, during the past seven years, had he defaulted on any loans; had any bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; been more than 120 days delinquent on any debt; or was currently more than 120 days delinquent on any debt. He answered “no” to these inquiries.

Applicant asserts he never intentionally lied about his delinquent debts on his February 2016 e-QIP. He asserted he must have scrolled down too quickly when completing his e-QIP and did not realize his mistake until questioned about his debts during his December 2016 personal interview. During that interview, all of his delinquent obligations were discussed. (Item 3).

Applicant was informed in the FORM that the delinquent obligations remains outstanding and that there was no evidence payments had been made. The FORM stated:

. . . you shall have 30 days from the receipt of this information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate . . . If you do not file any objections or submit any additional information within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination based solely on this file of relevant material. (FORM)

## **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 must be considered 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a

number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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.” 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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of the loyalty of the 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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 . . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding

classified information. Behaving responsibly or 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 repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant had 20 delinquent obligations totaling approximately \$22,000. AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(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." The Government's evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a), 19(b), and 19(c). 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. September 22, 2005)).

Five of the seven Financial Considerations Mitigating Conditions under AG ¶¶ 20 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 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 provided little evidence of what responsible steps he has taken to pay or resolve his delinquent obligations. There is no evidence the delinquent obligations occurred under unusual conditions other than Applicant stating his financial problems were contributed to by his wife's loss of income due to a high-risk pregnancy. His wife returned to work in March 2017. The failure to repay has persisted for a number of years as evidenced by his 2016 and 2017 credit reports. These delinquent obligations cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) and ¶ 20(e) do not apply.

Applicant asserted that he had started making payments on some of the delinquent obligations. He provided documents showing he made 13 payments totaling \$684.60. He paid \$535.65 to settle two credit union accounts. The March 2017 credit report lists two credit union accounts for which less than the full balance was paid. From the record it is unclear if these two accounts are the same credit union accounts listed in SOR 1.l and SOR 1.m.

Applicant asserted the turnpike and bridge authority delinquent obligations (SOR 1.o through SOR 1.t) resulted from him failing to notice a credit card was no longer being debited for his use of the turnpike and bridge. He asserts he only used the bridge a few times after the credit card had been canceled. However, the evidence of record shows a very different story. When he appeared in court, he owed \$9,520, which would indicate more than a few unpaid uses of the bridge. His debt was reduced to \$1,120, and he agreed to pay \$94 monthly starting in September 2016. He failed to honor the repayment agreement.

Applicant provided documentation that he entered into an automatic withdrawal repayment agreement with the creditor in SOR 1.f, whereby he would pay \$10 monthly on the \$478 debt. He also provided documentation of a second automatic withdrawal repayment agreement with the creditor in SOR 1.h, whereby he would pay \$25 monthly on the \$250 debt. He asserted, but failed to document, he had entered into repayment plans whereby he would pay \$18.10 monthly to the credit union (SOR 1.d, \$1,677) and make \$10 monthly payments to the creditor in SOR 1.e (\$582) and SOR 1.g (\$462). Applicant provided no additional documentation showing payment on any other delinquent account or any correspondence with his creditors.

There is no evidence of financial counseling or clear indications that the majority of Applicant's delinquent obligations are being resolved or that his finances are under control. AG ¶ 20(c) does not apply. Applicant has paid two credit union debts and entered into repayment agreements with five other creditors. Despite his repayment agreements, I cannot fully apply AG ¶ 20(d) because he failed to honor the court-ordered repayment agreement with the turnpike and bridge authority. I have no additional information leading me to believe he would honor the additional repayment agreements he has made. Applicant admits the delinquent obligations. AG ¶ 20(e) does not apply.

An applicant is not required to be debt free or to develop a plan for paying off all debts immediately or simultaneously, but he is required to act responsibly given his

circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). Applicant must show that significant action to implement the plan has occurred, which has not been presented.

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

The concerns for personal conduct are articulated 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 undisputed evidence is that Applicant certified to the accuracy of his February 2016 e-QIP on which he did not list his repossessed automobile or his delinquent financial obligations. He had a number of past-due, delinquent, and charged-off accounts. He provided no information as to his false answers concerning his finances on his e-QIP other than he must have scrolled down too fast when he was completing the form.

Of concern is Applicant’s demonstrated lack of trustworthiness in failing to honestly answer the financial questions on his February 2016 e-QIP AG ¶ 16(a) applies to the falsification, as follows:

(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.

The explanation that Applicant scrolled down too fast is not credible. Applicant had several delinquent accounts and his vehicle was repossessed shortly after he completed his e-QIP. He failed to make a prompt, good-faith efforts to correct the falsification, the falsification was recent, the information was not unsubstantiated, and the concealment was not caused by improper advice from an authorized personnel. Mitigating Conditions ¶¶ 17(a) – 17(g), do not apply. The personal conduct security concerns remain unmitigated.

### **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(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.

Applicant had more than \$22,000 in charged-off and collection accounts, which were reflected on his credit reports. He paid two credit unions for less than the full balance owed on them and documented less than \$150 in additional payments on his delinquent accounts. He did not report these derogatory accounts on his February 2016 e-QIP. He failed to provide adequate mitigating information as to his failure to report his financial problems on his e-QIP.

Applicant has been aware of the Government's security concern about his delinquent obligations since his November 2016 interview when he was specifically confronted about his delinquent obligations. Additionally, the May 2017 SOR and June 2017 FORM put him on notice of the Government's concern about the delinquent obligations. The FORM specifically informed him there was little evidence that payment had been made on the collection accounts or the charged-off account. There is documented evidence he has contacted two of his creditors to negotiate a repayment agreement concerning the delinquent debts. He asserted, but failed to document, he had arranged repayment agreements with three other creditors whereby he would monthly pay those three creditors less than \$30 collectively. Since his November 2016 interview, he provided documentation of paying less than \$700 on his delinquent obligations.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address the delinquent debt. By failing to provide such information, and in relying on only the limited response in his SOR Answer, financial considerations and personal conduct security concerns remain.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the

factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, if Applicant has paid his delinquent obligations, established compliance with a repayment plan, or otherwise substantially addressed his past-due obligations, he may well demonstrate persuasive evidence of his security worthiness.

The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) He documented minimal payment on his delinquent obligations and provided an explanation that did not mitigate his false answers on his February 2017 e-QIP. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the financial considerations and personal conduct security concerns.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.k:	Against Applicant
Subparagraphs 1.l and 1.m:	For Applicant
Subparagraphs 1.n and 1.t:	Against Applicant

Paragraph 2, Personal Conduct: AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
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### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge