



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



In the matter of: )  
)  
) ISCR Case No. 17-02854  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

02/06/2018

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant did not provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F, personal conduct under Guideline E, and handling protected information under Guideline K. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 15, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for his employment with a defense contractor. (Item 3) The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On August 30, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F, personal conduct under Guideline E, and handling protected information under Guideline K. (Item 1) The action was taken under Executive Order (E.O.) 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 in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.<sup>1</sup>

Applicant answered the SOR on September 26, 2017. He admitted the eight allegations of delinquent debt under Guideline F, the one allegation of not providing complete and accurate information on his e-QIP under Guideline E, and the one allegation of deliberate or negligent failure to comply with rules and regulations for handling protected information under Guideline K. He provided an explanation for his debts, his response on the e-QIP, and his handling of protected information. Applicant elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on October 24, 2017. (Item 9) Applicant received a complete file of relevant material (FORM) on December 10, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant responded to the FORM on December 10 (Item 10) and December 14 (Item 11), 2017. Department counsel had no objection to consideration of Applicant's responses to the FORM. (Item 12) I was assigned the case on January 25, 2018.

### **Findings of Fact**

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 51 years old, and a high school graduate. He has been a project manager for a defense contractor since March 2014. He was unemployed from March 2013 until March 2014. Prior to that, he was a project manager for a defense contractor from April 2011 to March 2013, a technician at an air base in Afghanistan from July 2007 until April 2011, and a deputy director for another defense contractor from May 2004 until July 2007. He served on active duty in the Air Force from June 1983 until May 1988, and in the Air Force Reserves from July 1999 until April 2011. He married in December 1988 and divorced in November 2008. He has one adult child. (Item 3, e-QIP, dated July 15, 2014)

The SOR alleges, and credit reports (Item 4, dated September 1, 2015; Item 5, dated February 7, 2017, and Item 6, dated August 16, 2017) confirm the following delinquent debts for Applicant: a medical debt in collection for \$127 (SOR 1.a); a retail store credit card debt in collection for \$690 (SOR 1.b); a credit card debt charged off for \$35,906 (SOR 1.c); two telephone service debts in collection for \$4,146 (SOR 1.d), and \$2,498 (SOR 1.e), a charged-off credit card debt for \$16,437 (SOR 1.f); a mortgage foreclosed for inability to pay monthly mortgage payments (SOR 1.g); and a television service debt in collection for \$130 (SOR 1.h). The total amount of delinquent debt is approximately \$60,000.

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<sup>1</sup> I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case were considered under the previous AGs.

The SOR also lists as a personal conduct security concern Applicant's failure to list his delinquent debts on his security clearance application (SOR 2.a). The SOR lists a handling protected information security concern based on Applicant's action in bringing his personal cell phone into a secure area in April 2016 and May 2017 (SOR 3.a).

In his response to the SOR, Applicant admits the delinquent debts. He attributes his debts to his one year unemployment from March 2013 to March 2014. He thought he had various possibilities for employment during the time but the leads did not result in Applicant being offered employment. He kept up payments on his debts as best he could, primarily focusing on his mortgage, alimony, and payments to the Internal Revenue Service (IRS). He collected unemployment compensation during this time. In his initial response to the FORM, Applicant noted he was paying the IRS \$500 monthly and alimony of \$2,000 a month. He also stated that he attempted to negotiate a payment plan with the credit card company for the debt at SOR 1.c. He claimed the credit card company refused to negotiate and requested a large payment. Applicant could not afford the payment. (Item 11) Applicant provided no documents to verify his claim of payments to the IRS and for his alimony. He did not present any documentation to indicate payments or resolution of any of his debts. Applicant did not present any information or documents in response to either the SOR or the FORM to indicate that he contacted creditors or paid any debts. He has not presented any evidence that he received financial counseling or education, or that he participated in any debt consolidation programs

In response to the personal conduct allegation, Applicant in his SOR response noted that he had no valid answer why he did not include his debts on the e-QIP in response to financial questions. He may have been in denial of the extent of his financial situation. In his 30 years of having access to classified information, he could always answer the financial question on his security clearance applications with a no.

The military unit responsible for the area where Applicant worked, prepared an incident report relating that when Applicant first started working in the facility he was caught bringing a cell phone into a secure area and received a verbal warning. In May 2017, Applicant was again observed with a cell phone in a secure area. The phone was confiscated and he was no longer permitted to work in the area. (Items 7 and 8)

In response to the handling protected information SOR allegation, Applicant noted that when he arrived to work in the facility in April 2016, cell phones were widely used in the facility. Applicant possessed a cell phone in a secure area, and he received a verbal warning. When a new unit took over the operation in March 2017, they tightened the rules and published a warning that personal cell phones were not permitted in security facilities controlled by the unit. In the response to the SOR. Applicant did not provide an explanation for his first violation. For the second incident, he acknowledged knowing cell phones could no longer be taken into the facility. He initially placed the phone in a locked area outside the facility. When he returned from

lunch, he inadvertently forgot to take the phone from his pocket. The phone was confiscated and he was no longer permitted to work in the facility.

Applicant noted that he served honorably in the Air Force. He has never had a security or legal problems. He would not knowingly divulge classified information.

### **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 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 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." 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 for 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 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 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 and sensitive information)

## **Analysis**

### **Financial Considerations**

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. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect 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 or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet his or her financial obligations. 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 required to manage his or her finances in such a way as to meet financial obligations.

The Government presented sufficient information in the form of credit reports to establish all of the SOR delinquent debts. The information is sufficient to raise issues about Applicant’s willingness and ability to meet his financial obligations, and raises security concerns under the following Financial Considerations Disqualifying Conditions at AG ¶ 19:

- (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.

Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue. Based on the information provided by Applicant, I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

- (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 problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

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

The mitigating conditions do not apply. Applicant's debts are numerous and are not resolved so they are recent. Applicant did not provide information concerning financial counseling or participation in debt consolidation programs. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant is not required to be debt-free nor must his plan require paying off all debts immediately or simultaneously. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of debt payment. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner.

Applicant did not provide information to establish that he resolved the debts alleged in the SOR, or that he had a plan of how he will pay or resolve the debts. Applicant was unemployed for a year, a condition beyond his control, but he received unemployment compensation while unemployed. Applicant did not establish that he acted reasonably under the circumstances of his unemployment. Applicant presented no evidence of debt payments or resolution of any debts. He did not develop or present plans to pay his delinquent debts. He did not provide documentation to show proof of payments, correspondence to or from the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, or other evidence of progress or resolution. There is no clear evidence that his debt problems have been resolved, so his finances are not under control. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his debts.

The available evidence shows that Applicant has been employed, except for one year, since November 2007. He had a period of unemployment in 2013/2014, but he has been gainfully employed since March 2014. His ability to resolve his financial problems are within his means and control. He did not present a plan to resolve his financial problems or any efforts to pay or resolve his delinquent debts. Accordingly, he has not established a good-faith effort to pay his debts. His lack of reasonable and

responsible actions towards his finances is a strong indication that he will not protect and safeguard classified or sensitive information. Applicant did not present sufficient information to mitigate financial security concerns.

## **Personal Conduct**

Personal conduct is a security concern because 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 and sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. (AG ¶ 15). Personal conduct is always a security concern because it indicates whether the person's past conduct justifies confidence that the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if done knowingly and willfully with intent to deceive.

The SOR alleges that Applicant did not provide full, complete, and accurate information concerning the status of his finances. Applicant's failure to list his delinquent debts on his e-QIP raises a security concern under Personal Conduct Disqualifying Condition 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 eligibility or trustworthiness, or award fiduciary responsibilities).

Applicant denied that he intentionally withheld full, complete, and accurate information on his security clearance application. He did not list any delinquent debts on his e-QIP. Applicant had to know that he had credit card debt when he completed his e-QIP. He was concentrating on paying his IRS and alimony payments, indicating that he knew he had other debts to resolve. The debts are large and not easy to forget and ignore. He completed security clearance applications in the past so he knew what to include on the application. He may not have known all of the details of his financial situation, but he knew he had delinquent debt. Applicant's failure to list any delinquent debt on the e-QIP was deliberate with an intent not to present a true picture of his financial situation. His failure to provide the correct information obscured the full extent of his financial situation from adjudicators. I find Applicant deliberately failed to provide correct and accurate information concerning his debts on his SCA.

## Handling Protected Information:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information , and is a serious security concern.

Applicant twice violated workplace rules by bringing his personal cell phone into a secure facility in violation of the operating rules. This information raises the following handling protected information disqualifying condition:

- (g) any failure to comply with rules for the protection of classified or sensitive information;
- (h) negligence or lapse security practices that persist despite counseling by management; and
- (i) failure to comply with rules and regulations that result in damage to the national security, regardless of whether it was deliberate or negligence.

I have consider the following mitigating conditions under (AG ¶ 35):

- (a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude towards the discharge of security responsibilities;
- (c) the security violations were due to improper or inadequate training or unclear instructions; and
- (d) the violation was inadvertent, it was properly reported, there is no evidence of compromise, and it does not suggest a pattern.

The mitigating conditions do not apply. Applicant violated the same security rules twice by bringing a cell phone into a secure facility. The first time was April 2016 and the second in May 2017. The violations were recent, frequent, not under unique circumstances, and likely to happen again. He did not respond favorably to counseling since the violations happened only a year apart. Applicant was warned, counseled, and given clear instructions. The violation suggest a pattern of conduct.

## Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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 Air Force service and his civilian service in a combat zone. Applicant failed to pay delinquent debts, did not report his debts on his security clearance application, and violated security rules. This conduct raises questions about his judgment, reliability, trustworthiness, and ability to comply with rules and regulations. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to supplement the record with relevant and material facts regarding his financial circumstances, and his judgment and reliability. He did not adequately articulate his positions and other reasons for his security violations, and to provide facts to mitigate the financial and personal conduct security concerns.

In short, the file lacks sufficient evidence to establish that he paid, arranged to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record lacks corroborating or substantiating documents and details to explain his finances. The record does not provide information to mitigate the security violations and his failure to list his debts on the security application. Applicant's failure to appropriately manage his finances and resolve financial issues, his security violations, and failure to list his debts indicates that he may not adequately safeguard classified information. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial situation and 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.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline K:	AGAINST APPLICANT
Subparagraph 3.a:	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 interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge