



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



In the matter of:

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) ISCR Case No. 18-00357  
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Applicant for Security Clearance

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2018  
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**Decision**  
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LYNCH, Noreen A., Administrative Judge:

On February 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in June 2017.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on August 8, 2018. Department Counsel submitted a File of Relevant material (FORM), dated April 16, 2018.<sup>1</sup> Applicant received the FORM on April 26, 2018. Applicant timely responded to the FORM. Based on a review of the case file, eligibility for access to classified information is denied.

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<sup>1</sup>The Government submitted six items for the record.

## **Findings of Fact**

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F (1.a through 1.e), but provided no explanations. Applicant admitted the falsification allegation under Guideline E. (Item 2)

Applicant is 59 years old. He is married and has two children. He graduated from high school in 1978. Applicant completed his security clearance application (SCA) in 2017 and has been employed as a federal contractor since 1984. He has never held a security clearance. (Item 2).

The SOR alleges five delinquent debts, including a collection account in the amount of \$5,645 (creditor 1.a), and a charged-off account in the amount of \$5,455 (creditor 1.b). (GX 4-6) Applicant also has a collection account in the amount of \$14,617; a medical account in collection for \$109; and a medical account in collection for \$105. The approximate total for the delinquent debts is about \$26,000. Applicant did not disclose any financial issues on his SCA. When he was interviewed in 2017, he told the investigator that he was not aware of the accounts, when they were opened or when they were last paid. He cited to the fact that his wife used credit cards but he was not aware of the charges. He continued to state that he could not afford to pay those bills, but he would look into the accounts and try to settle them. Applicant did reveal that SOR 1.c is possibly due to a quick sale of a home, but he had no other information.

Applicant stated that he had no other financial information to discuss. He lives pay check to pay check, but pays his current bills. He has not had financial counseling or tried debt consolidation. In the future, he stated that he will pay off debt and bills on time. (Item 3) He stated that he had no documentation to provide. There is no information in the record about his income.

Applicant's credit reports in the record reflect many accounts that are "pays as agreed", but each report contains the delinquent accounts that are alleged in the SOR 1.a through 1.e. The latest credit report is from 2018. (GX 4-6)

As alleged under SOR 2.a, Personal Conduct, Applicant admitted, with no explanation, that he deliberately falsified his 2017 SCA when he responded, "No" to the questions in Section 26- Financial - Delinquency Involving Routine Accounts, or in the past seven (7) years defaulted on any type of loan; or had bills turned over to a collection agency; or any account suspended; or any delinquent debt over 120 days due. (Item 1) Based on his admission, corroborated by the record evidence, a falsification is warranted.

## **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible

rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>2</sup> The burden of proof is something less than a preponderance of evidence. <sup>3</sup> The ultimate burden of persuasion is on the applicant. <sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect 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 as to the loyalty of the applicant concerned." <sup>5</sup> "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." <sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. <sup>7</sup> The decision to deny an individual a

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

security clearance does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

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

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

In this case, AG ¶ 16 (a) applies. Applicant answered "No" to all questions in Section 26 - Financial, on his 2017 SCA. Applicant admitted to this allegation and provided no explanation. During his 2017 interview, he stated that he was not aware of any delinquent accounts, but when confronted by the investigator in his 2017 interview, he suggested that the accounts were credit accounts that he could not afford to pay. He also referred to a past-due mortgage account that involved a short sale. He knew that there were financial issues when he completed the SCA. He deliberately omitted the financial information. This disqualifying condition is established.

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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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. It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Government produced credible evidence that Applicant had five delinquent accounts on his credit report. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant provided no documentation to show that he has resolved any of his delinquent debts. He, in fact, during his interview at first stated that he was not aware of any of the accounts and then proceeded to say that they might be his credit cards used by his wife. They have been on his credit reports for many years. He has a history of financial problems. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) is not applicable.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) does not apply. Applicant provided no explanations with his admissions to the SOR or during his interview.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. He provided no documentation that he has resolved his debts or has the means to do so. There is no information that he has received financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved, or is under control), does not apply.

## **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 59 years old. He has worked for his current employer for many years. This is his first application for a security clearance. There is nothing in the record concerning any efforts to address the financial issues. He stated that he would look into the accounts and try to settle, but he also stated that he lives paycheck to paycheck. He has not mitigated the security concerns under the financial considerations guideline.

I find that Applicant intentionally falsified his security clearance application. Applicant admitted to this allegation without any explanation. He deliberately omitted information about his finances in his responses to Section 26.

Applicant has not mitigated the financial considerations security concern or the personal conduct concern.

### **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: Subparagraphs 1.a.-e:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	AGAINST APPLICANT 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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge

