



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-06431

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

09/24/2018

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate security concerns raised by his debts and personal conduct. Eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on February 28, 2012. On February 19, 2016, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. Applicant answered the SOR on March 18, 2016, and requested a decision based upon the written record. He subsequently separated from his sponsoring employer. He obtained a new sponsor in 2017. The government sent him an Amendment to the SOR on January 10, 2018, alleging security concerns under Guideline E, personal conduct. He responded on January 24, 2018, and requested a hearing before an administrative judge.

I was assigned to the case on May 14, 2018. On May 15, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 13, 2018, and I issued an order to both parties to produce their documentary evidence by June 1, 2018. Department Counsel submitted her documentation as requested, and Applicant did not submit documentation. I convened the hearing as

scheduled. Government's Exhibits (GE) 1 through 8 were admitted, without objection, and Applicant testified. I received the completed transcript (Tr.) on June 21, 2018.

On June 8, 2017, the DOD implemented new AG (2017 AG).<sup>1</sup> Accordingly, I have applied the 2017 AG.<sup>2</sup> However, I have also considered the 2006 AG, because they were in effect on the date the SOR was issued. I conclude that my decision would have been the same under either version.

### **Findings of Fact**

Applicant is 57 years old. Since February 2017, he has worked as a software engineer for a defense contractor, Company A, and requires a clearance for his employment. He has worked for defense contractors and held a security clearance on and off since approximately 1991. He has been married to his second wife since 1995, and they have one child, who is 22. He has two children from his first marriage, who are 31 and 27. He graduated from college in 1986.

Applicant was employed at Company B from 2008 until May 2011, when he was fired for improperly charging approximately 530 hours of work to government contracts. This cost the government approximately \$112,000. Applicant's behavior occurred between February 2009 and May 2011. Applicant received training regarding time card accounting while he was employed at Company B; however, he claims he did not know he was violating company policy or incorrectly charging hours to the government. (Tr. 39-40; GE 2 at 2) According to him, he kept personal time records and failed to account for only 60 hours. (Tr. 41-42; GE 2 at 3; GE 7)

As a result of his improper conduct, the U.S. Navy, in May 2012, debarred Applicant from working on any Executive Branch contracts through March 22, 2015. (Tr. 42-43; GE 7; GE 8) Applicant's conduct was considered to be of "so serious or compelling a nature that it affect[ed] [his] present responsibility to be a government contractor or subcontractor." (GE 7) Prior to the debarment, Applicant was given the opportunity to present information and arguments in opposition, but he did not provide matters in opposition. (GE 7)

In February 2012, Applicant completed a SCA to work at Company C. In this application, Applicant did not disclose that he was terminated from Company B. He

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<sup>1</sup> On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 guidelines became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

<sup>2</sup> ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

indicated he left this employment due to downsizing.<sup>3</sup> (GE 1 at 11-12) He testified that Company C hired an agency that helped him complete his SCA, and this agency failed to disclose negative information in his SCA. (Tr. 54-55) However, he acknowledged that he knew when he signed and certified his SCA that the information in the SCA was not truthful, and he avoided telling Company C that he was terminated. (Tr. 43-48)

Applicant also failed to disclose any financial issues in his SCA.<sup>4</sup> (GE 1 at 32-34, 53-56) At the hearing, Applicant acknowledged that his savings were depleted prior to his employment at Company C. This was not his first application for a security clearance, and at the time he completed his SCA, he had at least two debts that were over 120 days past due and a recent vehicle repossession. (GE 3) Applicant currently has fourteen delinquent debts totaling over \$42,000. Many of these debts first became delinquent between September 2011 and February 2012. (GE 4; GE 5; GE 6)

Applicant admitted to all of the debts except for SOR ¶¶ 1.i. and 1.n., which he did not recognize, and SOR ¶ 1.k., which he believes is a duplicate of SOR ¶ 1.c.<sup>5</sup> Applicant claims that between 2014 and 2015, he paid approximately \$1,000 toward some of the alleged debts. However, he does not recall which of the allegations he paid, nor did he provide documentary proof of these payments. (Tr. 33-35) His most recent credit bureau report, dated January 2018, indicates he has two new delinquent accounts totaling \$859.<sup>6</sup> (GE 6) Applicant currently earns \$127,000 per year, and his wife earns approximately \$100,000 per year. (Tr. 30-31)

Applicant blames his financial struggles on his unexpected unemployment in 2011. Following his termination from Company B in May 2011, Applicant was unemployed until March 2012, when he was employed by another defense contractor, Company C. He was unemployed again from March 2013 to sometime in 2014, and from July 2016 until February 2017, when he started working for Company A. (Tr. 36, 48, 58-59) His finances were also strained because he and his wife have maintained two separate households since 2014, and he has paid for his children's college educations. (Tr. 33-35)

In 2014, Applicant purchased a 2014 Audi A4 for \$37,000, and his monthly payments are \$914. In 2016, Applicant leased a 2016 Audi A4 for his daughter and pays \$669 per month. Applicant testified that he is able to justify paying almost \$1,600 in car payments because these were the only cars he was able to finance. (Tr. 48-53)

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<sup>3</sup> Because it was not alleged in the SOR, I will only consider this information as a factor in evaluating credibility, mitigation, and whole-person factors.

<sup>4</sup> Because it was not alleged in the SOR, I will only consider this information as a factor in evaluating credibility, mitigation, and whole-person factors.

<sup>5</sup> SOR ¶¶ 1.c. and 1.k. are accounts with the same company, but the account numbers are different.

<sup>6</sup> Because it was not alleged in the SOR, I will only consider this information as a factor in evaluating credibility, mitigation, and whole-person factors.

Applicant testified he had good credit prior to his 2011 termination. (Tr. 36) However, he filed for Chapter 7 bankruptcy in 1994, when he and his first wife divorced. The bankruptcy primarily included \$10,000 to \$15,000 in credit card debt and the balance owed from a repossessed vehicle.<sup>7</sup> Additionally, over the years he has had other financial delinquencies, tax liens, and issues with child support payments. (Tr. 53, 57)

In 2004, Applicant's employer, Company A, generated a JPAS entry indicating Applicant misused his company credit card and made \$4,547 in personal purchases (including clothing).<sup>8</sup> (Tr. 24-30; GE 8) Applicant testified that he only charged \$200, and was unaware that he was not supposed to charge personal expenses to a company credit card. He paid the money back, and he did not think that Company A considered his behavior to be a serious problem. (Tr. 24-30)

Applicant currently owes the Internal Revenue Service (IRS) approximately \$50,000 for tax years 2011 through 2016. Since 2017, he has been making monthly payments to the IRS in the amount of \$690. At the time of the June 2018 hearing, he had not yet filed his state and federal income tax returns for 2017 and does not have an extension.<sup>9</sup> (Tr. 59-62) Applicant does not have a savings account. He has a 401k account worth approximately \$7,000, and he has an outstanding loan of \$1,500 against this account. (Tr. 63) Applicant has not sought credit or financial counseling (Tr. 64)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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.

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<sup>7</sup> Because it was not alleged in the SOR, I will only consider this information as a factor in evaluating credibility, mitigation, and whole-person factors.

<sup>8</sup> Because it was not alleged in the SOR, I will only consider this information as a factor in evaluating credibility, mitigation and whole-person factors. Applicant worked for Company A between 2000 and 2006 and from February 2017 to present.

<sup>9</sup> Applicant's failure to timely file 2017 state and federal tax returns and outstanding federal tax balance are not alleged in the SOR. I will only consider this information as a factor in evaluating credibility, mitigation, and whole-person factors.

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 AG ¶ 2, describing 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."

According to 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 clearance 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 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 under Guideline F 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 . . . .

The record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(e) (“consistent spending beyond one’s means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant cash flow, a history of late payments or of non-payment, or other negative financial indicators”).

AG ¶ 20 describes conditions that could mitigate the security concerns. The following are potentially applicable in this case:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has over \$42,000 in SOR-alleged delinquent debt. These 14 accounts were charged off or placed for collection by his creditors between September 2011 and February 2012, continuing a lengthy history of financial irresponsibility. He made claims that he has paid some money toward his debts and is making monthly payments to the IRS, but provided no documentary proof of payments or resolution. His periods of unemployment were not shown to be circumstances beyond his control. Additionally, his choice to purchase and lease two luxury vehicles with large monthly payments limits his ability to make payments toward his other pre-existing debts. His failure to satisfy his debts and meet financial obligations indicate poor self-control, lack of judgment, and an unwillingness to abide by rules and regulations, all of which can raise questions about his reliability and trustworthiness. Mitigation was not established under AG ¶ 20(a), 20(b), 20(d), or 20(g).

## **Guideline E: Personal Conduct**

The security concern under Guideline E is set out 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.

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. One is potentially applicable under the established facts in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules of regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

AG ¶ 17 describes conditions that could mitigate the security concerns. One is potentially applicable in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstance that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

In this case, Applicant admitted to the Guideline E allegations. At the hearing, he disputed the number of hours he improperly charged to the Government, but provided no documentary proof to support his claims; nor did he contest the debarment in 2012. Additionally, in his 2012 SCA he provided false information to his employer and to the government regarding his employment history and finances, demonstrating that this dishonest and untrustworthy behavior is not infrequent, nor did it happen under unique circumstances. He has intermittently held a security clearance since 1991, and this was not the first time he completed an application for a clearance. At the hearing, Applicant minimized his behavior and failed to fully accept responsibility for his actions, demonstrating persistent questionable judgment, untrustworthiness, unreliability, lack of

candor, and unwillingness to comply with rules or regulations. Mitigation under AG ¶ 17(c) was not established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his personal conduct and his failure to pay his delinquent debts. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national security interest of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant



### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. National security eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge