



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



In the matter of: )  
)  
) ISCR Case No. 17-03909  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

10/12/2018  
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**Decision**  
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BENSON, Pamela C., Administrative Judge:

Applicant's delinquent debts have been ongoing for many years. There are not clear indications that his financial issues are under control. He failed to demonstrate a workable plan to resolve his financial issues or progress toward implementing one. He falsified an answer on his security clearance application (SCA), and he did not provide an honest response during his background interview. Resulting security concerns were not mitigated. Based upon a review of the testimony, pleadings and exhibits, national security eligibility is denied.

**History of the Case**

On August 25, 2016, Applicant completed and signed his SCA. On January 12, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR), detailing security concerns under Guideline F (Financial Considerations), and 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing on February 26, 2018, and requested a hearing before an administrative judge. He admitted all of the Guideline F SOR allegations, and he denied both of the Guideline E SOR allegations. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on May 10, 2018. DOHA issued a Notice of Hearing on May 29, 2018, setting the hearing for June 14, 2018. On that date, Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence, which were admitted without objection. Applicant testified, and offered Applicant Exhibit (AE) A-E, which were admitted into evidence without objection. I granted Applicant's request to leave the record open until July 14, 2018, to permit submission of additional evidence. DOHA received the hearing transcript (Tr.) on June 25, 2018. Applicant submitted e-mails on June 25, 2018, July 16, 2018, August 10, 2018, and August 24, 2018. Three documentary exhibits, joint tax records for tax years 2015, 2016, and 2017, were submitted. I labeled his e-mails and documents as AE F-L, which were admitted into the record without objection.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions to all of the Guideline F SOR allegations, (§§ 1.a through 1.h), I make the following findings of fact:

Applicant is 44 years old. He earned a bachelor of science degree in biology. He was active duty in the U.S. Air Force between 1993 and 1997. He received an honorable discharge and has additional periods of both inactive and active reserve between 2007 and 2012. He married in 2001 and has one daughter, age 16. He is currently employed by a DOD contractor since October 1998. His job title is security police. He has consistently held a DOD security clearance since 1994. (Tr. 5, 8, 15; GE 1)

Applicant attributed his financial problems to his wife's beauty salon business losing income starting in about 2005, after approximately 14 of her booth rental employees walked out, leaving behind only one paying employee. In addition, a nearby federally funded program ended in about 2007, which in turn, caused many program employees to lose employment. This also adversely affected his wife's business since these employees made up the majority of her clientele. Applicant's wife had difficulty paying quarterly taxes from 2004-2007, and paying the mortgage on her salon building. Applicant started a side concrete business from 2004-2014 to help cover his wife's loss of income. He assisted her in paying her business mortgage, but he was unable to also maintain their residence's mortgage payments. They accumulated other delinquent accounts. The house went into foreclosure in about May 2013. (Tr. 15-16, 24-25, 30, 32-33, 46-47; GE 5, GE 7)

The SOR alleges six delinquent debts totaling \$59,469, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges that Applicant and his wife filed for Chapter 13 bankruptcy in October 2013. The bankruptcy schedules included approximately \$51,000 of unsecured creditor claims, about \$209,000 of secured creditor claims (without deducting the value of collateral), and about \$7,000 owed to the Internal Revenue Service (IRS) for his wife's unpaid business 941 taxes for years 2004-2007. Applicant recalled providing all of his debt information to his attorney for the bankruptcy petition. The bankruptcy case was dismissed in January 2014 due to the debtors' failure to make monthly plan payments. Applicant admitted this allegation. He testified that he met with his attorney who advised him that filing bankruptcy would halt the foreclosure proceedings on his residence. (SOR ¶ 1.c.) The attorney would negotiate with the mortgage creditors and he believed they would ultimately be able to keep their house. The first mortgage holder did not agree to reinstate the mortgage, but agreed not to pursue any legal action against Applicant if Applicant relinquished the house to them. Applicant admitted that he did not make any Chapter 13 bankruptcy payments. Applicant was going to provide an agreement from the first mortgage holder and a copy of an IRS Form 1099-C, if any, had been issued post-hearing. Applicant was unable to provide an agreement, as his attorney advised him the agreement with the creditor was an oral agreement only, and he also stated that an IRS Form 1099-C had never been issued. (Tr. 24-26, 30, 32-33; GE 5, 7; AE I)

SOR ¶ 1.b alleges that Applicant owes the second mortgage creditor approximately \$52,000 after the foreclosure of his home. Applicant admitted this allegation, but testified that his attorney advised him that based on a state's statute of limitations, the financial obligation is currently unenforceable. Applicant was asked if he ever tried to resolve the second mortgage debt, or settle his outstanding obligation. Applicant never tried to resolve this debt based on the advice of his attorney. Applicant sent a post-hearing e-mail stating that he has been in contact with his second mortgage creditor and is currently working to set-up a payment plan. (Tr. 35-36; GE 2, 3; AE E, I)

Applicant admitted he owed two outstanding medical accounts that were referred to the same collection agency in the total amount of \$710. (SOR ¶¶ 1.d, and 1.e.) Applicant testified that he paid these accounts in full, two days before his hearing by personal check. He did not have any documents to submit to verify his payments, but Applicant stated he would provide this evidence later. This evidence was never received post-hearing. (Tr. 37-39)

SOR ¶¶ 1.f, and 1.g allege two unpaid medical accounts in the total amount of \$331. Applicant admitted these debts, and testified that he believed these accounts were paid by his wife. He was not certain, but stated he would be able to provide documentation later. This evidence was never received post-hearing. (Tr. 38-39)

The final debt in the SOR alleges a judgment was entered against Applicant in 2010 in the approximate amount of \$6,439. (SOR ¶ 1.h.) Applicant admitted this debt in his response to the SOR. At the hearing, Applicant stated he had no idea he had a judgment entered against him or that he knew any details about the alleged debt. Applicant verified that his address on GE 6 for legal service of the court's final summary

judgment was correct, but he could not recall if he had received that information. He also confirmed that the debt was included in his Chapter 13 bankruptcy petition, but he still denied knowing anything about the judgment. Applicant stated that the only time he ever saw this debt was in his bankruptcy filing and at the hearing while looking at GE 6. During his May 2017 background interview, Applicant had been asked about this debt, and he stated at that time he had no idea about the judgment or the debt. Applicant submitted an e-mail post-hearing stating that he is still investigating to find the creditor of this unsatisfied judgment. (Tr. 26-28; GE 3, 5, 6; AE I)

Applicant completed a security clearance application (SCA) in August 2016. In response to inquiries under section 26, which asked if in the past seven years Applicant had filed a petition under any chapter of the bankruptcy code, he responded “no.” (SOR ¶ 2.a.) In May 2017, Applicant was interviewed by a government investigator as part of his background interview. When asked by the investigator if he had filed bankruptcy, he admitted he had contemplated filing for bankruptcy, but then he decided against it. The investigator confronted Applicant with the bankruptcy filing and dismissal information. Applicant told the investigator he did not disclose the bankruptcy on the SCA because he did not believe it was actually filed. (SOR ¶ 2.b.) (GE 1, 3)

At the hearing, Applicant explained he did not realize that the bankruptcy was a true bankruptcy case because it had not been finalized. There was also miscommunication between him and his attorney. Applicant acknowledged that he provided information about his creditors to his attorney, and he and his wife had completed the financial courses required by bankruptcy filers. Applicant admitted he knew he had filed for Chapter 13 bankruptcy, not made any payments to the bankruptcy trustee, and that his bankruptcy case was dismissed. He claimed that he never tried to hide the true circumstances of his bankruptcy during the course of his investigation. I asked Applicant why he did not disclose on his SCA that he had been 120 days or more delinquent on any debt within the last seven years, as he had answered that question with a negative response. Applicant admitted he should have answered that question “yes.” Although not alleged in the SOR, Applicant did not provide any details on the 2016 SCA about his home foreclosure, or the judgment that had been entered against him in 2010 that was also included in his bankruptcy petition.<sup>1</sup> (Tr. 24, 28-30, 45-46, 55, 58-59)

Applicant provided three character reference letters reporting that Applicant is a valuable employee. He is considered trustworthy and reliable. His attorney provided a letter that stated Applicant did file for bankruptcy in 2013, but there was not a discharge of his bankruptcy since the case was dismissed. His attorney stated he understands how this information may have been confusing to Applicant when he completed his SCA. Applicant’s final exhibit presented at the hearing was a May 2017 letter from his

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<sup>1</sup> See ISCR Case No. 08-09232 at 3-4. (App. Bd. Sep. 9, 2010)(“[A] Judge may nevertheless consider unalleged conduct for certain limited purposes. These include assessing an applicant’s credibility, evaluating his evidence in mitigation, and considering the extent to which an applicant has demonstrated rehabilitation.”).

attorney that disclosed Applicant's second mortgage is currently unenforceable under the state's statute of limitations. (AE A-E)

Applicant provided copies post-hearing of his 2015, 2016, and 2017 Federal income tax returns. (AE G, H, and K) Applicant and his spouse received a refund of \$10,650 for 2015, a refund of \$9,924 for 2016, and a refund of \$13,115 for tax year 2017. In his August 10, 2018 e-mail, Applicant stated it was his intention to use the 2017 tax refund to pay off debts. No other supporting documentation, such as receipts or cancelled checks, were provided by Applicant. (AE J)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Exec. Or. 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant filed for Chapter 13 bankruptcy in October 2013, which was dismissed in January 2014 for failure to make payments. The SOR alleges his residence went into

foreclosure and his unresolved delinquent debts total approximately \$59,469. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, 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 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; and

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

Applicant filed Chapter 13 bankruptcy, which was subsequently dismissed. He did not provide additional evidence after the hearing to show his debts were satisfied, in the process of being resolved, or legitimately disputed. His financial problems are recent and ongoing. There is insufficient evidence to conclude they are unlikely to recur. His failure to adequately address his financial issues over time cast doubt on his reliability and good judgment. I find AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his wife's loss of income from her business, which is a condition beyond his control. For the full application of AG ¶ 20(b), Applicant must show that he acted responsibly. Applicant filed a Chapter 13 bankruptcy to prevent foreclosure of his home. When he was unable to have his mortgage reinstated, the bankruptcy case was dismissed without Applicant making any payments to the trustee. He has been on notice that his financial issues were a security concern to the government, and he claimed to have paid two medical debts two days before his hearing, but no documentation was provided by him. He failed to demonstrate a workable plan to resolve his financial issues or progress toward implementing one. Applicant has not acted responsibly under the circumstances. AG 20(b) does not apply.

Applicant participated in financial counseling, which is required when a debtor files bankruptcy. He never made any payments into his Chapter 13 payment plan, which

shows he was not seriously working to resolve his debts. Applicant's debt has been ongoing for many years, and he has not demonstrated a plan, or personal exertion to resolve his financial issues. There are not clear indications that his financial issues are under control. I find AG ¶ 20(c) has minimal application.

There is no evidence that Applicant made attempts to resolve his two largest debts alleged in the SOR. Applicant has shown very little effort on his part to contact the creditor from his 2010 judgment in the amount of over \$6,400. In addition, Applicant has chosen to follow his attorney's advice and has not paid, or resolved his second mortgage in the amount of about \$52,000. Although he admits to benefiting from the second mortgage at the hearing, Applicant chose not to pay it since it was barred under the state's statute of limitations. Overall, Applicant's actions do not constitute a good-faith effort to resolve his debts. AG ¶ 20(d) does not apply.

The DOHA Appeal Board explained why state statutes of limitations do not mitigate financial considerations concerns as follows:

In this case, the Judge noted that Applicant explained that he did not owe any of the alleged debts because they had either been deleted from his credit report or soon would be deleted, and he also relied on a state statute of limitations to absolve himself of debts. The Appeal Board has long recognized that debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations or cannot be legally listed on a credit report due to the passage of time. See e.g., ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 03-20327 at 6 (App. Bd. Oct 26, 2006). We also have held that reliance on a state's statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value. ADP Case No. 06-18900 at 5 (App. Bd. Jun. 6, 2008) (citing ISCR Case No. 03-04779 at 4 (App. Bd. Jul. 20, 2005) and ISCR Case No. 01-09691 at 2-3 (App. Bd. Mar. 27, 2003)).

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

AG ¶ 15 expresses the security concern for 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. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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.

I find that Applicant was aware he had filed a bankruptcy petition when he completed his SCA. He deliberately failed to disclose this information on his SCA. Applicant was not honest with the investigator during his background investigation when he denied filing for bankruptcy. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

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

There is no evidence that Applicant made a good-faith effort to correct the omission before he was confronted with the facts. I find AG ¶ 17(a) does not apply. Applicant did not disclose on his SCA that he had filed for Chapter 13 bankruptcy. He told the government investigator during his background interview that he had considered filing for bankruptcy, but later decided against it. At his hearing, Applicant provided conflicting testimony by admitting he filed for bankruptcy, but in his mind, the bankruptcy did not need to be disclosed because it had never been finalized. Applicant is an intelligent individual with a bachelor of science degree. The question is simple – in the last seven years, did he file a petition for bankruptcy. Applicant knew he had filed for bankruptcy, and he intentionally omitted his bankruptcy information when he filled out his SCA, and he provided provided false information during his background interview with the government investigator.

I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment. There is insufficient evidence to apply AG ¶ 17(c).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant experienced financial problems over twelve years ago due to his wife's loss of business income. His bankruptcy was dismissed in 2014, his house went into foreclosure, and he accumulated significant debt. At the hearing, Applicant was unable or unwilling to show much effort made by him to resolve these debts. However, the greater concern is that he deliberately failed to disclose his bankruptcy on his SCA and misrepresented the facts about the bankruptcy to the background investigator, and although not cited in the SOR, he also failed to disclose his history of financial problems when he completed his SCA. The financial questions are clear and concise. I do not find that Appellant credibly believed that he did not have to disclose the bankruptcy. In addition, the other financial questions in the SCA asked specifically about foreclosure, judgments, and debts that have been 120 days or more delinquent in the last seven years. Applicant's finances and personal conduct raise security concerns about his reliability, trustworthiness, and good judgment. I have questions and doubts about Applicant's eligibility and suitability for access to classified material or assignment to sensitive duties. For all these reasons, I conclude Applicant failed to mitigate the security concerns under the financial considerations and personal conduct guidelines.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

## **Conclusion**

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

Pamela C. Benson  
Administrative Judge