



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-03929  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

12/03/2018

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 30, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline 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 on February 5, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's file of relevant material (FORM), and Applicant received it on March 29, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not submit a response to the FORM or object to the Government's documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on June 29, 2018.

### **Findings of Fact**

Applicant denied the SOR allegations in ¶¶ 1.a and 2.a. In the FORM, the Government put Applicant on notice that it amended the SOR and added allegations ¶¶ 1.b and 2.b. They are as follows:

1.b: You are indebted to Bank of America for an account that has been charged off in the approximate amount of \$9,841. This account remains delinquent.

2.b: You falsified material facts on a Questionnaire for National Security Positions, executed by you on June 22, 2016, in response to "Section 26-Financial Record. In the past seven (7) years, have you had a judgment entered against you?; have you had a lien placed against your property for failing to pay taxes or other debts?; Have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?; have you had bills or debts turned over to a collection agency?; have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?; have you been over 120 days delinquent on any debt(s)?" You deliberately failed to disclose that which is set forth in subparagraph 1.b, above.

Applicant did not respond to the amended allegations. His failure to respond is construed as denials to these allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. He earned an associate's degree in 2005 and a bachelor's degree in 2011. He married in 1995 and divorced in 1999. He remarried in 2001. He has a 15-year-old child from that marriage. He has worked for the same federal contractor since 2003.<sup>1</sup>

Applicant completed a security clearance application (SCA) in June 2016. Section 26 of the SCA asked if in the past seven years he had a judgment entered against him?; had a lien placed against his property for failing to pay taxes or other debts?; had any possession or property voluntarily or involuntarily repossessed or foreclosed; had 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?; had he been over 120 days delinquent on any debt(s); or was he currently over 120 days delinquent on any debt(s)? Applicant responded "no."

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<sup>1</sup> Item 4.

Applicant was interviewed by a government investigator in July 2017. He told the investigator that his financial situation was good. He was maximizing his 401K contributions and utilizing a health spending account. He was paying his bills on time. He was asked to confirm his response of “no” on his SCA under Section 26, which he did. He was then confronted with the debt alleged in SOR ¶ 1.a that is a \$22,982 charged-off account in collection.<sup>2</sup>

Applicant explained he did not disclose this debt because he did not believe there was any negative entry on his credit report within the last seven years. He further stated that in 2008, his wife was self-employed in a business and they established a line-of-credit for the business. In 2010, the business was closed. The monthly payments on the line-of-credit account were high. His spouse contacted the creditor to work out a different payment plan, but the creditor declined. His spouse stopped making payments and the account was charged off and sent to collection. Applicant told the investigator that he had no intention of paying the account because the creditor was not willing to negotiate with his spouse. He further stated that he would research his options and resolve the debt if he deemed it was the best option. The debt is listed as a joint account.<sup>3</sup>

In Applicant’s response to the SOR he stated when he responded to the inquiry on the SCA that he did not intentionally falsify his answer. He said:

When answered with the best of my knowledge at the time I felt without a doubt the debt was not on my credit report. This answer was close[,] so close that only a mere 8 months separate the timeline.<sup>4</sup>

He further stated:

When I signed the information, I signed it to the best of my knowledge. And to the best of my knowledge at the time I actually believe[d] the debt was already removed from my credit report based on the last credit report I remember getting (2013) and the time in which I applied and answered the question presented to me. I have provided supporting documentation to help assist in this matter.<sup>5</sup>

Applicant provided an additional clarification statement. He said:

During this time, I filled out the questionnaire online I do remember the question and at the time and to the best of my knowledge I believed the debt was already off my credit report otherwise I would have most certainly

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<sup>2</sup> Item 5.

<sup>3</sup> Items 3, 5.

<sup>4</sup> Item 3.

<sup>5</sup> Item 3.

halted the application process at that time. I have provide[d] a credit report from 2013 which describes or estimates when this charge off would be removed from my credit report (March 2017). The time frame of the estimate of removal on the 2013 credit report and actual date March 2017 is roughly 8 months. I do not see the debt on these reports in October 2017 which tells me in fact that the debt was removed and de-obligated.<sup>6</sup>

Applicant provided a copy of his April 2013 credit report that shows under the section “adverse accounts” the debt in SOR ¶ 1.a is a joint account that was closed in April 2010, with the last payment made in March 2010, and the original charged off amount was \$21,782. Under the remarks sections it states: “Purchased by another lender-unpaid balance charged off. Estimated month and year that this item will be removed 03/2017.”<sup>7</sup>

The April 2013 credit report also lists under “adverse accounts” the debt in SOR ¶ 1.b. It reports under “responsibility-authorized account.” It does not list Applicant as a joint owner or individual owner. Although the account was delinquent, charged off, and expected to be removed from his credit report in November 2016, Applicant is not responsible for the account alleged in SOR ¶ 1.b. Therefore, he also was not required to disclose it on his SCA as alleged in SOR ¶ 2.b.<sup>8</sup>

Applicant’s September 2016 credit report indicates the debt in SOR ¶ 1.a is held by a collection company.<sup>9</sup> In Applicant’s answer to the SOR, he denied the debt, stating: “Credit reports attached from 2017 do not show this debt and to the best of my knowledge this debt has been de-obligated and charged off by the institution.” Applicant offered no evidence that he paid the debt, received an IRS form for cancelation of the debt, or made any effort to resolve the debt with the collection company.

## **Policies**

When evaluating an applicant’s suitability for national security eligibility, 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 are used 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

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<sup>6</sup> Item 3.

<sup>7</sup> Item 3 at pages 13-16. Specific pages of the credit report that reflect this debt are handwritten at the bottom of the page.

<sup>8</sup> Item 3 at 13-16.

<sup>9</sup> Item 6.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 or sensitive information).

## **Analysis**

### **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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant completed his SCA in June 2016. He stated that he believed at the time he completed the SCA that the debt in SOR ¶ 1.a had fallen off his 2013 credit report. The SCA asked if in the past seven years if he had a debt that was charged off?, had 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?; had he been over 120 days delinquent on any debt(s)? It did not ask about the status of a debt on his credit report. Applicant was confronted with the debt by the investigator. He admitted the debt was charged off and was in collection. He admitted he and his wife owed the debt, and he did not intend to pay it. He stated they stopped paying the debt in 2010, within the seven year period of the disclosure requirement. Even if Applicant's explanation is believed, the fact is the delinquent debt was on his 2013 credit report that he reviewed when he completed the SCA. It was also within the seven-year disclosure period. He did not promptly advise the investigator of this information.

Applicant's explanation for not disclosing the debt was that "the time frame of the estimate of removal on the 2013 credit report and the actual date March 2017 is roughly 8 months." Presumably, he is referring to the date he completed his SCA in June 2016 and the date the debt was to be removed from the credit report was eight months later. That statement confirmed that he was aware of the debt and calculating the date it would be removed from his credit report because he did not intend to pay it. His explanation was not credible. It appears Applicant was calculating dates and looking for a way not to report the debt. Applicant intentionally omitted and falsified information on his SCA. AG ¶ 16(a) applies to SOR ¶ 2.a. Applicant was not required to report the debt in SOR ¶ 2.b because he was an authorized user and not responsible for the debt, so he was not required to report it. SOR ¶ 2.b is found in his favor.

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.

The evidence does not support the application of AG ¶ 17(a). There is insufficient evidence to conclude that Applicant made a prompt, good-faith effort to correct his omissions. He was given an opportunity to report this information to the government investigator and did not. When confronted with the delinquent debt, he admitted he and his wife owed the debt and did not intend to repay it. He did not believe it was negatively reflected on his credit report.

Applicant was aware of the delinquent debt alleged in SOR ¶ 1.a and intentionally chose not to disclose it, as he was required to do. The government relies on people to be forthcoming and honest on their SCA, even when it is derogatory information. AG ¶ 17(c) does not apply because deliberately failing to disclose requested information and swearing to its accuracy are not a minor offenses. I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment.

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

The security concern relating to the guideline for financial considerations 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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.<sup>10</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

(a) unwillingness to satisfy debts regardless of the ability to do so.

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<sup>10</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant acknowledged he and his wife obtained a line-of-credit for her business. They suspended the business in 2010. The creditor would not negotiate a new payment agreement, so Applicant and his wife made a decision not to pay the debt. He was aware the debt was in collection status and told the investigator he did not intend to pay the debt. However, he stated he would research his options and resolve the debt if deemed to be the best option. He provided no evidence that he made any effort to repay this debt. The fact it is no longer reported on his credit report does not mean he does not owe the debt. There is sufficient evidence to support the application of the above disqualifying condition for SOR ¶ 1.a. Applicant was an authorized user for the debt in SOR ¶ 1.b and not responsible for it. I have found in his favor on this allegation.

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, 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;
- (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 told the investigator that he is in a good financial position and invests for his retirement. He told the investigator he did not intend to pay the debt that he admitted he owed. He did not provide evidence that he researched payment options, as he told the investigator. Nor has he paid the debt or initiated a plan to pay it. There is no evidence that this matter is under control. Applicant's failure to pay his financial obligation casts doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions 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 the 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 43 years old. He is the joint owner of a debt incurred when his wife started a business. They obtained a line-of-credit and stopped paying it in 2010. The debt was charged off and sent to collection. Applicant was aware of the debt's status, but intentionally failed to disclose it on his SCA. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline E, personal conduct, and Guideline F, financial considerations.

## 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge