



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



In the matter of: )  
)  
) ISCR Case No. 14-06305  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: Lawrence Miller, Esq.

November 10, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on 15 debts, in the total amount of \$37,338. He resolved one of them. The rest of his debts remain unresolved. The additional security concern raised by Applicant’s failure to disclose his debts on his electronic Security Clearance Application (e-QIP) was not mitigated. Applicant failed to mitigate both the financial concerns and the personal conduct concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 27, 2014, Applicant submitted an e-QIP. On January 19, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective September 1, 2006.

Applicant answered the SOR on February 19, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 31, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 12, 2015, scheduling the hearing for September 9, 2015. The hearing was convened as scheduled, but was continued on that date to September 11, 2015, at the request of Applicant's attorney. The hearing was reconvened on September 11, 2015. The Government offered Exhibits (GE) 1 through 6. GE 2 through GE 4 were admitted over Applicant's objections. GE 1, GE 5, and GE 6 were admitted without objection. Applicant testified on his own behalf and offered three exhibits marked Applicant Exhibit (AE) A through C. AE A was admitted into evidence despite objection by Department Counsel. AE B and AE C were admitted without objection from Department Counsel. The record was left open for receipt of additional documentation. On September 18, 2015, Applicant presented nine additional pages of documentation, marked collectively as AE D. Department Counsel had no objections to AE D, and it was admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on September 21, 2015.

### **Procedural Ruling**

At the hearing, I amended the SOR pursuant to Directive ¶ E3.1.17, in order to conform to the evidence, by rewording SOR allegation 2.a,. Neither Department Counsel nor Applicant had objections to the amendment. (Tr.61-63.) The allegation is amended from:

2.a You falsified material facts on an Electric Questionnaires for Investigations Processing (e-QIP), executed by you on January 24, 2014, in response to "**Section 26 - Financial Record Delinquency Involving Routine Accounts** Other than previously listed, have any of the following happened? In the past seven (7) years, . . .you had bills or debts turned over to a collection agency? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor) . . . you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor) . . .you have been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you are a cosigner or guarantor) . . . You are currently over 120 days delinquent on any debt? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor)," you answered "Yes" and listed only a resolved mortgage foreclosure; whereas in truth and as you sought to conceal, you had at least those financial delinquencies as set forth in paragraph 1, above.

To:

2.a You falsified material facts on an Electric Questionnaires for Investigations Processing (e-QIP), executed by you on January 24, 2014, in response to “**Section 26 - Financial Record Delinquency Involving Routine Accounts** Other than previously listed, have any of the following happened? In the past seven (7) years, . . .you had bills or debts turned over to a collection agency? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor) . . . you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor) . . .you have been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you are a cosigner or guarantor) . . . You are currently over 120 days delinquent on any debt? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor),” you answered “No;” whereas in truth and as you sought to conceal, you had at least those financial delinquencies as set forth in paragraph 1, above.

### **Findings of Fact**

Applicant is 54 years old. He is a high school graduate and has attended some college. He has worked as an employee of a government contractor for the past 25 years and has held a security clearance for the duration of his employment. He is married. He has a son and a stepson. (GE 1; Tr. 50-53, 64-68.)

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant is alleged to be delinquent on 15 debts, in the total amount of \$37,338. Applicant admitted the debts alleged in SOR subparagraphs 1.a, and 1.c through 1.i. He denied the debts listed in 1.b, 1.m, 1.n, and 1.o, because he believed he paid them in full. He denied falsifying his e-QIP as alleged in SOR subparagraph 2.a. The alleged debts were listed on credit reports dated November 10, 2014; July 20, 2015, and September 8, 2015. (GE 3; GE 4; GE 5.)

Applicant attributes his debts to his wife’s medical conditions and her inability to work due to those conditions. From 2009 to present, his wife has suffered from numerous ailments. In 2009 she required surgery and underwent a lengthy recovery. After her recovery, she was unable to find work and spent a significant amount of time caring for her elderly parents. In 2013 Applicant’s wife was diagnosed with another debilitating medical condition that left her unable to drive. She presently attends physical therapy three times per week to treat her conditions. While Applicant’s wife

used to be the main contributor to their household income, she is now unable to work due to her medical conditions. (AE A; Tr. 23-26.)

Applicant's \$37,338 in SOR-alleged delinquent debt consists of: two delinquent student loans for which Applicant co-signed totaling \$14,825 that have been delinquent since 2013 (SOR subparagraphs 1.a and 1.c); six unsecured consumer debts totaling \$20,189 (SOR subparagraphs 1.b, and 1.d through 1.h); and seven medical debts totaling \$1,467 (SOR subparagraphs 1.i through 1.o). His medical debts date as far back as 2009 and remain unresolved. (GE 3; GE 4; GE 5; GE 6; Tr. 45.)

Of his 15 alleged debts, Applicant has resolved only one. He presented documentation that shows he resolved the \$8,758 debt alleged in SOR subparagraph 1.b in full on August 6, 2015. (AE C; GE 6.) He also presented a letter from a medical creditor that noted he paid a debt in full on February 16, 2015. However, he failed to provide an account number or any other documentation that showed the debt resolved matched up to any debt alleged in the SOR. (AE B.)

Applicant testified that he was attempting to resolve his debts, as his resources would allow, one by one. He claimed to have resolved from \$25,000 to \$30,000 in debt in the past three years, but did not provide documentation to substantiate this claim. He also testified that he only intended to resolve the debts in which the creditor was currently interacting with him. He drew a distinction between debts that had zero balances because they had been charged off and the debts that were still in active collections. He indicated that he had to choose whether to pay his current living expenses or resolve his debts. (TR. 29-41.)

Applicant is current on his mortgage. He has not participated in financial counseling. He works overtime to earn extra money to cover his living expenses. (Tr. 36, 66.)

In Applicant's June 27, 2012 e-QIP, Section 26 asked "Other than previously listed, have any of the following happened? In the past seven (7) years, . . .you had bills or debts turned over to a collection agency? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor) . . . you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor) . . .you have been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you are a cosigner or guarantor) . . . You are currently over 120 days delinquent on any debt? (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor)." He claims he answered "No," because he had previously provided a list of his delinquent debts to his security officer. He thought that those debts were previously disclosed to his security officer and did not need to be identified on the e-QIP because they were excluded by the question. He presented a letter to his security officer and a copy of the derogatory financial information he filed with his security officer, but those documents were dated September 17, 2015. (GE 1; AE D; Tr. 27-28, 49-53.)

Applicant testified he received an employment-based performance award eight to ten years ago. (Tr. 65-66.) The record lacks other evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability.

### **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 are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2(a) 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 access to classified information 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. 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 as to 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 for Financial Considerations is set out in AG ¶ 18:

Failure or 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant was delinquent on fifteen debts, in the total amount of \$37,338. He resolved one debt, totaling \$8,758. His medical debts date back to 2009 and he has demonstrated little effort to resolve them since then. He demonstrated both a history of not addressing debts and an inability or unwillingness to do so over a substantial period. The evidence is sufficient to raise the above disqualifying conditions.

The following Financial Considerations mitigating conditions (MC) 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), and the individual acted responsibly under the circumstances;

(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;

(d) the individual initiated 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 incurred substantial delinquent debt over the past six years, which continues to date, despite his full employment and significant overtime hours. He offered no evidence from which to establish a track record of debt resolution. He claimed that he resolved \$25,000 to \$30,000 in debt over the past three years, but he failed to present documentation to support his claim. While his wife's medical problems and unemployment were conditions beyond his control and contributed to his financial problems, he failed to show that he acted responsibly under such circumstances in addressing the SOR-listed debts. He only documented that he resolved one SOR listed debt, and one other debt that may or may not be on the SOR. He has not received financial counseling and his financial problems are not under control. He does not have the resources to pay both his living expenses and his delinquent debts, despite working significant overtime hours. There has been no good-faith effort to address his debts and Applicant's financial problems are likely to continue in the future. Applicant did not dispute any of the delinquencies listed on the SOR. Accordingly, the record is insufficient to establish mitigation under any of the foregoing provisions concerning his financial irresponsibility.

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

The security concern for the Personal Conduct guideline 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 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. The following disqualifying condition is 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 failed to list his SOR-listed debts on his e-QIP, instead denying their existence with his “No” response to the questions in Section 26. Despite his self-serving assertions that he previously disclosed the debts to his security officer, the only documentation that he submitted shows that the debts were reported in September 2015, after his hearing. On balance, the evidence indicates that he willfully chose not to disclose his delinquent debts on the e-QIP. This behavior demonstrates questionable judgment and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct his falsification and concealment. He provided no information that indicates he was ill-advised in completing his e-QIP. Falsifying material information raises serious concerns and Applicant has done nothing to show that similar dishonesty is unlikely to recur. Further, he failed to take responsibility for his actions. He has not provided sufficient evidence to meet his burden of proof for his personal conduct.

## 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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

Applicant has the burden to demonstrate sufficient mitigating information in this case and he has failed to meet that burden. Overall, he has not demonstrated that he has acted responsibly with respect to his finances or by reporting them on his e-QIP. Applicant's inability to resolve his financial obligations and his dishonesty on his e-QIP raise concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has not mitigated the Financial Considerations or the Personal Conduct security concerns.

## 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge