



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



In the matter of: )  
)  
) ISCR Case No. 14-06953  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2016

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines F (financial considerations) and E (personal conduct). Clearance is denied.

**Statement of the Case**

On June 13, 2012, Applicant submitted a Questionnaire for National Security Positions (SF-86). On June 1, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F and E. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and referred his case to an

administrative judge for a determination whether his clearance should be granted or denied.

Applicant answered the SOR on June 29, 2015, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated September 10, 2015, was provided to him by letter dated October 13, 2015. Applicant received the FORM on October 21, 2015. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the 30-day period. On February 17, 2016, the case was assigned to me.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted SOR ¶¶ 1.a – 1.d, 1.f, 1.k, 1.o, and 1.q; and denied SOR ¶¶ 1.e, 1.g – 1.j, 1.m, 1.n, 1.r – 1.t. He did not admit or deny SOR ¶¶ 1.l and 1.p, or 2.a, which I view as constructive denials.

### **Background Information<sup>1</sup>**

Applicant is a 45-year-old training and development specialist employed by a defense contractor since September 2011. He seeks a security clearance in conjunction with his current employment. Applicant held a secret security clearance while he was on active duty in the Army, discussed below.<sup>2</sup> (Items 3, 4)

Applicant graduated from high school in May 1988. He served in the Army National Guard as an inactive reservist from August 1988 to November 1990, and then served on active duty in the U.S. Army from November 1990 to May 2010, retiring as a staff sergeant (pay grade E-6). (Items 3, 4) He married in March 2006 and separated in June 2009. During his July 2, 2012 Office of Personnel Management Personal Subject Interview (OPM PSI), he stated that he filed for divorce in September 2009; however, his wife wanted the divorce filed in a different location.<sup>3</sup> Applicant has been living with a cohabitant since August 2010. He has a 20-year-old daughter and a 4-year-old son. (Items 3, 4)

### **Financial Considerations**

Applicant's SOR alleges 20 debts to include 2 judgments, 4 charged-off accounts, and 14 collection accounts totaling approximately \$46,975. (SOR ¶¶ 1.a – 1.t) The amount of his 8 admitted debts approximates \$40,000. Applicant has not provided proof or payment for any of the debts alleged, nor has he provided any documentation

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<sup>1</sup> The limited background information regarding Applicant was derived from the FORM and is the most current information available.

<sup>2</sup> The FORM does not indicate when Applicant was granted a security clearance or the duration of that clearance while he was in the Army.

<sup>3</sup> The FORM does not contain information whether Applicant completed divorce proceedings.

of attempts to contact his creditors or otherwise resolve these debts. In his June 2015 SOR answer and during his July 2012 OPM PSI, he claimed to have no knowledge about the majority of his debts or what they were for. Applicant's debts can be found on his June 20, 2012, and November 13, 2014 credit reports. (Items 2, 5, 6)

During Applicant's July 2012 OPM PSI, the investigator and Applicant discussed his debts at length. Applicant stated that he was not intentionally ignoring any of his accounts. He claimed the accounts became delinquent because his former spouse was spending more money than they had. He also was unemployed from May 2010 to March 2011 after he retired from the Army. (Items 3, 4)

Applicant stated in his June 2015 SOR answer that "[s]everal items above (referring to SOR debts) will be taken care of within the next 60-90 days. These items should not reflect any disparity in my commitment to the US Government." (Item 2) As noted, Applicant did not submit any documentation mitigating his debts with his SOR answer or in response to his FORM. There is no record evidence of financial counseling.

## **Personal Conduct**

The SOR alleged that Applicant falsified his June 2012 SF-86 by omitting adverse financial information. When asked whether in the past seven years he had had any possessions or property voluntarily or involuntarily repossessed or foreclosed, defaulted on any type of loan, had bills turned over to a collection agency, had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed, had been over 120 days delinquent on any debt not previously entered, or was currently over 120 days delinquent on any debt, Applicant answered, "No."

During Applicant's July 2012 OPM PSI, he provided several reasons why he failed to list financial delinquencies on his SF-86. His explanations for failing to list his delinquencies varied to include that he thought accounts were over seven years old, were paid off, were not over 120 days past due, or were current. (Item 4) None of his explanations have merit based on the information contained in his credit reports. Several of Applicant's delinquent accounts date back to 2007 and have been ongoing. (Items 5, 6) Applicant, who had security clearance experience in the Army, presumably knew the importance of providing accurate and complete information. (Item 3)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is

clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented not only in his credit reports, but also in part by Applicant's SOR answer. (Items 2, 4, 5)

The evidence establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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), 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.

Considering the record evidence as a whole,<sup>4</sup> I conclude none of the five financial considerations mitigating conditions above are applicable or partially applicable to explain, extenuate, or mitigate the security concern. The available information shows that Applicant has taken no documented affirmative action to resolve his delinquent debts.

With that said, a security clearance case is not aimed at collecting debts or enforcing tax laws.<sup>5</sup> Rather, the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.<sup>6</sup>

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He

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<sup>4</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

<sup>5</sup> ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

<sup>6</sup> ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on a brief explanation, financial considerations security concerns remain.

## **Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified 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 one condition that could raise a security concern and may be disqualifying in this case:

(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 disclose any of the SOR debts alleged. The evidence established the disqualifying condition in AG ¶ 16(a) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions fully apply. Applicant did not provide an explanation for his omission in his SOR answer. Furthermore, it is difficult to accept Applicant's July 2012 OPM PSI explanations for failing to list any of his debts given the number of his delinquent debts and the aggregate amount of his debts. This, accompanied by Applicant's previous security clearance experience, education, age and experience, causes me to question his explanation.

Applicant's concealment of relevant and material information demonstrates a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient.

Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Having failed to provide an adequate explanation for his failure to list adverse financial information on his SF-86, his conduct suggests he is willing to put his personal needs ahead of legitimate Government interests.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security 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." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this decision should be considered to suggest that I have based this decision, in whole or in part, on any express or implied decision as to an Applicant's loyalty or patriotism.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,<sup>7</sup> I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guidelines F and E security concern. Accordingly, Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F: Subparagraphs 1.a - 1.t:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	Against Applicant Against Applicant

### **Conclusion**

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

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ROBERT J. TUIDER  
Administrative Judge

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<sup>7</sup> AG ¶ 2(a) (1)-(9).