



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



In the matter of: )  
)  
) ISCR Case No. 15-01070  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2015

**Decision**

WHITE, David M., Administrative Judge:

Applicant falsified his 2012 security clearance application concerning his delinquent debt, a substantial portion of which remains unresolved. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on July 14, 2012.<sup>1</sup> On August 1, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal

---

<sup>1</sup>Item 3.

Conduct).<sup>2</sup> The action was taken under Executive Order 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on September 2, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on September 22, 2015. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on September 30, 2015. He submitted additional material in response to the FORM during the time allotted, to which Department Counsel did not object. That evidence was admitted into the record as Applicant's Exhibit (AE) A. Applicant made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on November 9, 2015.

### **Findings of Fact**

Applicant is 47 years old, and has worked for his present employer since he honorably retired from the Marine Corps as a captain in 2012. He has been married for 22 years, and has a 15-year-old daughter. He has held a security clearance since 2001.<sup>5</sup> In his response to the SOR, Applicant denied all of the allegations concerning his delinquent debts set forth in SOR ¶ 1, and denied the allegation concerning his personal conduct in SOR ¶ 2.<sup>6</sup>

Applicant had eleven delinquent consumer debts and one delinquent mortgage debt, as alleged in the SOR, that were documented in the record credit reports. These delinquent debts ranged from \$931 to \$25,425, and totaled \$59,841. These accounts were opened at various times between August 1998 and September 2007, and became delinquent between December 2008 and October 2012.<sup>7</sup>

---

<sup>2</sup>Item 1.

<sup>3</sup>Item 2.

<sup>4</sup>Department Counsel submitted five Items in support of the SOR allegations.

<sup>5</sup>Item 3; AE A.

<sup>6</sup>Item 2.

<sup>7</sup>Item 4; Item 5; AE A.

Applicant has refinanced his first mortgage loan several times on the home he has owned since April 2001. The record credit reports indicate that he refinanced the mortgage loan with bank "A" in May 2008 for \$110,888. He remained current on his payments toward this debt until November 2009. He brought the loan payments current from June 2010 through April 2011, except for two months of missed payments in December 2010 and January 2011. The loan again became delinquent in May 2011, and by January 2014 his past-due balance on the loan was \$24,973. The credit report he provided in AE A shows that in July 2012, the month he certified that he had no delinquent debts on his SF-86, he had been more than 120 days delinquent on this loan since December 2011.<sup>8</sup>

In 2014, a specialty mortgage debt management company acquired Applicant's mortgage loan from bank "A" with a total balance due of \$104,561 and a past-due balance of \$25,425; as alleged in SOR ¶ 1.a. Applicant submitted a recent credit report showing that he had negotiated a loan modification with this company incorporating his delinquent balance back into the mortgage principal, raising it to \$126,178. He made an initial payment toward this debt of \$7,557 in April 2015, and subsequent monthly payments through September 2015 of about \$1,100. This loan is no longer delinquent.<sup>9</sup>

Applicant asserts that the other 11 delinquent consumer debts alleged in the SOR; totaling \$34,416; were fraudulently opened as a result of identity theft. He claimed, without documentary substantiation, that he contacted the companies involved after being questioned about these debts by an investigator from the Office of Personnel Management during his interview in September 2012. He did nothing further to resolve these debts until he hired an attorney on August 18, 2015, (after receiving his SOR) to contest the validity of those debts and signed an Identity Theft Victim's Complaint and Affidavit form on August 26, 2015. In the affidavit, Applicant stated that he had not filed any law enforcement reports concerning these alleged frauds. One credit reporting agency deleted some delinquency entries from his credit reports without further explanation. Another agency deleted some entries and validated others. The creditor that reported the \$931 credit card delinquency alleged in SOR ¶ 1.c provided a letter to Applicant stating that their investigation discovered that account had been used fraudulently and absolved him of responsibility for the debt. Other than his affidavit, which explains neither his delay in reporting nor supporting details to establish the purported identity theft, Applicant provided no other supporting documentation to substantiate any basis to challenge the validity of the debts alleged in the SOR.<sup>10</sup>

Applicant denied that he deliberately falsified his financial information by answering, "No," in response to the questions about delinquencies involving routine accounts in Section 26 on his July 14, 2014 security clearance application. He ascribed this falsification to not knowing that he had any delinquent debts at the time. He claimed

---

<sup>8</sup>Item 3; Item 4; Item 5; AE A.

<sup>9</sup>Item 2; Item 5; AE A.

<sup>10</sup>Item 2; AE A.

that his mortgage delinquency resulted from the frequent transfer of his loan between lenders, which prevented the automatic payments, that he had arranged to be made from his bank account, from going through. At the time Applicant certified the truth of his SF-86 answers denying delinquent debt, his mortgage loan with bank "A" had been held by that lender for more than four years, his payments had been delinquent for 15 months, and his balance was more than \$10,000 past due. It would strain credulity to conclude that Applicant neither received notice from the lender nor realized that more than \$10,000 in extra funds remained in his bank account due to missed payments.<sup>11</sup>

Applicant's explanation for claiming ignorance and denying the existence of the eleven other delinquent debts that appear on his credit reports is also unpersuasive. These accounts were opened on different dates between August 1998 and September 2007, and became delinquent between December 2008 and October 2012. All of the accounts reflect lengthy periods during which the purported identity thief made timely payments toward the balances due, before failing to pay as required. Without more information, the assertion that one or more identity thieves opened and maintained these credit accounts for substantial periods before defaulting on them is neither credible nor consistent with a pattern of purported fraudulent activity.<sup>12</sup>

The record does not address whether Applicant obtained financial counseling. He offered no evidence showing a workable budget, from which his ability to resolve his delinquencies or avoid additional debt problems could be predicted with any confidence. The record lacks 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. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 (DCs) and mitigating conditions (MCs), 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, 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. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable

---

<sup>11</sup>Item 2; Item 3; AE A.

<sup>12</sup>Item 2; Item 3; Item 4; Item 5; AE A.

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 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[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.”

A person applying for access to classified information 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 access to classified information. 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 information.

## **Analysis**

### **Guideline F, Financial Considerations**

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

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant accumulated almost \$60,000 in delinquent debts over the past seven years. His ongoing pattern and history of inability or unwillingness to pay lawful debts raise security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 debts over the past seven years, which largely continue to date despite his continuous employment throughout that period. He offered insufficient evidence from which to establish successful resolution of his numerous consumer debts, although he did apparently negotiate a mortgage loan modification on which he is now making current payments. He also failed to demonstrate that conditions beyond his control contributed to his financial problems or that he acted responsibly under such circumstances. MC 20(e) requires documented proof to substantiate the basis of a dispute concerning an alleged debt, and Applicant's assertion that the alleged consumer debt delinquencies resulted from identity theft

neither meet that requirement nor appear to be credible. Accordingly, the record does not establish mitigation of his financial irresponsibility under any of the foregoing provisions.

### **Guideline E, 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 sets forth one condition that describes security concerns that are disqualifying with relation to the allegations 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's attempt to justify his false denial, on his security clearance application, of the numerous delinquent debts that he incurred during the preceding seven years is not credible. He is an individual with extensive experience renewing his security clearance, and offered no believable rationale for ignorance of substantial delinquent mortgage and consumer debts at the time he certified his SF-86. The documented facts surrounding his eleven delinquent consumer debts make his claim of identity theft unpersuasive. His deliberate falsification concerning his financial situation demonstrated questionable judgment, untrustworthiness, and lack of candor.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. Five have potential applicability under the facts 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; and

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

Applicant never attempted to correct the falsification on his security clearance application, offered no credible explanation for it, and persists in claiming ignorance of his substantial debts, so mitigation under MC 17(a) was not shown. Applicant provided insufficient evidence from which to conclude that this falsification of his financial situation does not adversely reflect on his current reliability, trustworthiness, and judgment. Nor did he demonstrate steps to reduce vulnerability to manipulation or duress. Thus, Applicant failed to mitigate security concerns by establishing any of these conditions.

### **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 the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult. He is responsible for the voluntary choices and conduct that underlie the security concerns expressed in the SOR. He still has substantial delinquent

debts, which arose over the past seven years and remain largely unresolved despite his full employment throughout the time involved. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. He deliberately falsified material information concerning his financial problems on his security clearance application. The potential for pressure, coercion, and duress remain undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations and personal conduct.

### **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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For 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
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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge