



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-03727

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

06/30/2016

**Decision**

HOWE, Philip S., Administrative Judge:

On June 14, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On November 9, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on December 9, 2015. Applicant admitted the financial allegations and made no answer to the personal conduct allegation. Later, on December 18, 2015, in an email Applicant admitted the falsification allegation but denied it was deliberate. Applicant requested his case be decided on the written record in lieu of a hearing.

On January 14, 2016, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 5, was provided to the Applicant on January 15, 2016. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 22, 2016.

Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on March 23, 2016. It was filed February 26, 2016.

Department Counsel submitted five Items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management in August 2012. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on April 22, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted the allegations in Paragraphs 1 and 2, and claimed in his Answer that he was negotiating settlements on his first three debts; had paid his two state tax liens from December 2012 and 2013; and falsified his answer to Section 26 of the e-QIP, but not deliberately. (Items 1, 2, 4, 5)

Applicant is 57 years old and is married. He does not have any children. He works for a defense contractor. He has a current security clearance. He does not have a college degree. He owes \$36,066 on three delinquent financial accounts. He owed another \$2,441 on two state tax liens. (Items 2, 4, 5)

Applicant owes a bank \$20,500 on an account (Subparagraph 1.a) since 2009. It became delinquent in September 2011. It is shown on his March 30, 2015 credit report as a home equity loan. It also appears on his June 23, 2012 credit report. It is unpaid. Applicant stated in his Answer that he was negotiating a settlement but did not submit any documents to show any settlement was offered or consummated. This debt remains unpaid. (Items 2, 4, 5)

Applicant owes \$9,296 to a bank on an unspecified type of account since 2002 (Subparagraph 1.b). It became delinquent in August 2009. This debt remains unpaid. Applicant's Answer stated he is waiting for paperwork to verify it was repaid. The credit reports state it was charged off, which is not the same as being repaid. He did not submit any evidence of a repayment plan for this debt. This debt is unresolved. (Items 2, 4, 5)

Applicant owes another bank \$6,270 on a charge card account that was opened in 1995 (Subparagraph 1.c). It became delinquent in October 2010. Applicant's Answer states he is working toward a settlement. The credit report in Item 4 shows a credit card debt in the amount of \$6,270. Applicant states he is working on a repayment plan. Applicant also stated that plan in his December 2015 Answer. He did not submit any documents to show a settlement was reached or was in negotiation. This debt is unresolved. (Items 2, 4, 5)

Applicant owes two years of state taxes totaling \$2,441 for tax liens entered in December 2012 for \$2,144 and in December 2013 for \$297. His Answer states he paid \$2,582.07 on December 27, 2013, to resolve these liens. His Response contains three documents showing three payments were made on December 27, 2013, with a credit card Applicant does not identify. These payments for were state income taxes and totaled \$2,182.07, which is less than the taxes owed and less than he claimed he paid. He, in effect, transferred the debt from his state tax account to one of his credit cards. The status of payment on those amounts is not disclosed. The debts to the state are partially paid. (Items 2, 4, 5)

As part of his Response, Applicant's wife submitted a statement that she "feels extremely sick" for causing her husband trouble with his security clearance. She claims she made the financial mistakes and hid everything from him. She lost her job of 10 years and that caused her "terrific strain." Applicant also states that his wife's father and a friend of hers died and her mother had a stroke, leaving her disabled. He further states his wife lost her job and spent several thousand dollars on a lawsuit against her former employer, only to lose the case. Applicant claimed in this document that his wife became disabled and cannot work full-time anymore. Applicant did not submit any documents to demonstrate objectively the veracity of any of these statements. He did not relate them in a chronological order to his failure to pay his debts. (Response)

Applicant's Response also claims he paid off the loan on a car owed to a bank that is listed in Item 4 on page 2 as debt number 6. The amount shown is \$10,837. That car debt is not alleged in the SOR. The credit report that is Item 4 shows that debt as paid. Applicant also states a mortgage is transferred but it is not alleged in the SOR. He does not further identify the debt, and its relevance to the SOR debts. In his Response he again blames his wife for his financial delinquencies. (Items 2, 4, 5, Response)

Applicant answered Section 26 of the e-QIP pertaining to delinquent debts in the past seven years in the negative. He denied having debts turned over to a collection agency, and denied having any account suspended, cancelled, or charged off. He also denied being over 120 days delinquent on any debt. Therefore, he did not disclose the first three debts listed in the SOR. He claims in his Response he was not aware of the financial delinquencies alleged in SOR Paragraph 1. In his Answer he blames his wife's spending habits. At the end of the e-QIP he signed the document attesting to the contents as "true, complete, and correct to the best of [his] knowledge and belief and are made in good faith." (Items 1 and 2)

Applicant's Response also lists the disqualifying and mitigating conditions under Guidelines F and E while interspersing them with his denials and arguments that he did nothing wrong to merit the denial of his security clearance. He also states in each mitigating condition explanation why a favorable view of his actions should be taken. He asserts he is a good employee who safeguards information. Applicant's statements are of a general and non-specific content unsupported by objective documents pertaining to any repayments. His explanations as to why he denied any financial delinquencies in Section 26 of the e-QIP are short and unpersuasive. (Response)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his/ job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, 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 and mitigating conditions, which are useful 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, the administrative judge applies the guidelines 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(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 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person 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 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. 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2009 to the present, Applicant accumulated five delinquent debts, totaling \$38,507 that remained unpaid or unresolved when the SOR was issued. These debts were delinquent before Applicant completed his 2012 e-QIP. AG ¶ 19 (a) and (c) are established. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 20 provides six conditions that could mitigate security concerns:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial delinquencies continue to this day. He paid money on his state tax liens, but his calculations do not match the amounts listed on the credit reports. He submitted documents that he paid a substantial portion of his state tax liens, but never explained why he did not pay them when they were due. His financial delinquencies are not infrequent, but part of a pattern since 2009. He did not demonstrate any mechanism to show the same problem will not recur in the future. AG ¶ 20 (a) is not established.

AG ¶ 20 (b) would apply if the loss of his wife's employment were shown by Applicant to have a substantial effect on his ability to repay his debts. He did not submit any documents pertaining to her lost income and why his income was insufficient to pay his debts. Applicant did not demonstrate that he acted responsibly in the situation because he allowed the delinquencies to continue without checking that his debts were being paid based on the changed circumstances of his wife's lost income. He failed to meet his burden of proof on that issue.

Applicant did not submit any information that he was undergoing financial counseling. He also made statements about settlement agreements and other aspects of his financial delinquencies, but none of them were supported by any objective documents to prove his self-serving statements. Applicant's financial problems are not under control. AG ¶ 20 (c) is not established.

Applicant claims he is investigating the SOR-listed debts or paying them as part of a settlement. Yet he does not provide any evidence of such action. He has not resolved any debts except his two tax liens that are alleged in Subparagraphs 1.d and 1.e in the SOR. AG ¶ 20 (d) is partially applicable to those two allegations, as he has made a limited effort to resolve them.

Applicant has not shown he has any legal basis to dispute these debts or provided documented proof to substantiate any basis of any dispute of them. He has not provided any evidence beyond the tax lien payments to show he resolved the delinquent debts. AG ¶ 20 (e) is only partially established as it pertains to his state tax liens.

Finally, there is no discussion or evidence of any affluence from a legal source of income. Applicant does not disclose his annual income and whether it is sufficient to resolve his delinquent debts. AG ¶ 20 (f) is not established.

### **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 describes seven conditions that could raise a security concern and may be disqualifying. Two conditions may apply:

(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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

Applicant did not disclose his financial delinquencies in Section 26 of the 2012 e-QIP as alleged in SOR Paragraph 2. He disclaims any intentional action in doing so. However, Applicant is responsible for knowing his financial status before he completes the e-QIP and signs it stating the answers to all sections are true and correct to the best of his knowledge. The first three delinquent debts listed in the SOR became so before 2012. Applicant also claims his wife lost her job, had to take care of her disabled mother, became disabled herself, and had to suffer the stress of her father's death and that of a friend in 2007. She submitted a statement that not paying the debts was all her fault. However, Applicant is the responsible party seeking a security clearance. There is no evidence to verify any of his claims against his wife.

Furthermore, if his debts and their magnitude were known, it would create a vulnerability to exploitation, manipulation, or duress. Applicant sought to not disclose his debts when asked about any financial problems in Section 26 of the e-QIP. So the fact he deliberately hid his debts from the U.S. Government after incurring them, and then blames his wife for the delinquencies, makes him vulnerable as he may try to keep the truth from anyone now or in the future.

Applicant's actions demonstrate questionable judgment, lack of candor, dishonesty, and an unwillingness to follow rules and regulations that create doubt about his ability, reliability, and trustworthiness to protect classified information. AG ¶ 16 (a) and (e) are established.

AG ¶ 17 provides seven mitigating conditions. None of them apply to Applicant. While Applicant's Response contains his reasoning why some or all of the mitigating conditions should apply to him, just as he argues none of the disqualifying conditions apply to him, I conclude that none of the mitigating conditions apply to Applicant. He did not make prompt efforts to correct his answers in Section 26 of the e-QIP, as required in AG ¶ 17 (a). There is no evidence of improper or inadequate advice from authorized personnel or an attorney, which is required in AG ¶ 17 (b). The falsification is not minor or unique, it does not have any other qualities set forth in AG ¶ 17 (c); there is no evidence of counseling of any type or acknowledgement of his falsifying behavior, nor any evidence of steps to reduce his vulnerability, so AG ¶ 17 (d) and (e) do not apply. The information is substantiated, so AG ¶ 17 (f) does not apply. There are no criminals involved so AG ¶ 17 (g) does not apply. Therefore, none of the mitigating conditions apply to Applicant's deliberate falsification of his financial history on his e-QIP.

### **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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken sufficient verifiable action to resolve his three major delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts.

Applicant did not pay his delinquent debts, and falsified his answer on the e-QIP about them. While he blamed his wife for his financial problems, he cannot blame her for his falsification. His argument, claiming complete ignorance of his debts, is not a credible position for any adult who has these debts and other debts listed on his credit reports, especially for a person holding a security clearance.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. He did not mitigate the security concerns under the guideline for 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
Subparagraphs 1.a to 1.c:	Against Applicant
Subparagraphs 1.d and 1.e:	For 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.

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PHILIP S. HOWE  
Administrative Judge