



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



In the matter of: )  
)  
) ISCR Case No. 14-03921  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: Charles Hultstrand, Esq.

08/28/2015

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 17, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 25, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2,

2015, scheduling the hearing for July 23, 2015. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on July 31, 2015.

## **Procedural and Evidentiary Rulings**

### **Evidence**

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, M through P, and R through X, which were admitted without objection.

### **Motion to Amend SOR**

Department Counsel moved to amend SOR ¶ 2.a by changing the date in the allegation from "March 21, 2014," to "February 13, 2013." The motion was granted without objection.

## **Findings of Fact**

Applicant is a 35-year-old engineer employed by a defense contractor. He has worked for his current employer since February 2013. He has held a security clearance in the past, but it lapsed while he held a job that did not require a clearance. He has a bachelor's degree, and he attended graduate school without earning a post-graduate degree. He is married with two minor children.<sup>1</sup>

Applicant worked for a company from about June 2010 to June 2011. His job required extensive travel, which he described as "100% of the time." The travel was affecting his marriage, and he quit the job in June 2011. He was unemployed from June 2011 through September 2011, and again from about November 2011 through October 2012. He relied on his savings and his wife's income while he was unemployed, but a number of debts became delinquent.<sup>2</sup>

The SOR alleges 18 delinquent debts, but several of the debts are duplicate accounts. The debts alleged in SOR ¶¶ 1.c and 1.m are duplicate accounts, and the debts alleged in SOR ¶¶ 1.n, 1.p, and 1.q are also duplicate accounts. When the duplicate accounts are omitted, the SOR alleges 15 delinquent debts with balances totaling about \$38,000. Each debt is listed on at least one credit report. Applicant denied all the allegations on the basis that the debts were paid, current, in a payment plan, or otherwise resolved.

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<sup>1</sup> Tr. at 22, 37-38; GE 1.

<sup>2</sup> Tr. at 27-29, 38-40; GE 1, 2.

Applicant established that the debts alleged in SOR ¶¶ 1.a (\$549), 1.b (\$52), 1.c (\$3,442), 1.n (\$2,704), 1.o (\$1,997), and 1.r (\$535) have been paid, settled, or otherwise resolved.<sup>3</sup>

The ten debts alleged in SOR ¶¶ 1.d through 1.l are defaulted student loans totaling about \$29,000. As of April 2015, Applicant was in a payment plan wherein he paid \$4.52 per month on all the loans. The loans were later put in forbearance, which was scheduled to end on August 25, 2015.<sup>4</sup>

Applicant's finances are currently stable. He is able to pay his debts while also saving for unexpected expenses and contributing to retirement accounts.<sup>5</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in February 2013. He answered "No" to all the financial questions under Section 26, including the following:

Other than previously listed, have any of the following happened?

**In the past seven (7) years**, you defaulted on any type of loan? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

**In the past seven (7) years**, you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

**In the past seven (7) years**, you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).

**In the past seven (7) years**, 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 were a cosignor or guarantor).

You are currently over 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosignor or guarantor).<sup>6</sup>

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<sup>3</sup> Tr. at 30-33; Applicant's response to SOR; GE 3-5; AE A-C, M-P, R.

<sup>4</sup> Tr. at 31, 43; Applicant's response to SOR; GE 3-5; AE D.

<sup>5</sup> Tr. at 34-35, 43; AE S-X.

<sup>6</sup> GE 1.

Applicant was interviewed for his background investigation in March 2013. The interviewer asked him about a series of delinquent debts as listed on his credit report. Applicant discussed his finances and debts with the investigator. Applicant stated that he had not listed the debts because he did not recall them, and some of the accounts had been resolved through a credit counseling service.<sup>7</sup>

Applicant admits that he should have answered "Yes" to the financial questions on the SF 86, but he denied intentionally falsifying the questionnaire.<sup>8</sup> He testified:

I previously held a top secret clearance with [defense contractor]. And I had the completed, I can't remember the document, I completed a top secret application.

And at the time I was copying from the completed top secret to the current secret application. And so at the time I was also under a lot of personal stress and marriage issues that were brought up.

And so in getting this job, I was trying to focus on the roles of my job, finally being able to provide for my family and filling out this application all at the same time. And when it came to, I believe it was Section 26, the financial, I did mistakenly select no.<sup>9</sup>

Applicant further testified that he had a copy of his SF 86 that was completed in 2010, and he "was literally verbatim copying from one to the other. And when it came to that section, [he] mistakenly checked no." He stated that it took a day or two to complete the SF 86, and a number of answers were updated. He stated that he was going through the questions and answering "No," but he did not "think clearly about the [financial] question at the time to change the answer from no to yes." He stated that he did not have a motive to falsify the SF 86 because a security clearance is not a requirement of his job.<sup>10</sup>

I did not find Applicant's explanations credible. Applicant is well educated, and the questions are straightforward. He updated a number of answers to questions that were innocuous, but he failed to update the one question that could have caused him the most consternation. I find that he intentionally provided false answers on his SF 86 when he failed to divulge derogatory information about his finances.

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<sup>7</sup> GE 2.

<sup>8</sup> Tr. at 23-25; Applicant's response to SOR.

<sup>9</sup> Tr. at 23.

<sup>10</sup> Tr. at 24-25, 40-43, 45-47.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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."

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 security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. The following are potentially applicable in this case:

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

Applicant had delinquent debts that he was unable to pay. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 quit his job because the excessive travel was affecting his marriage. He was unemployed for an extended period, which caused financial problems. He obtained his current job in February 2013, and all his debts have been paid, settled, brought current, or otherwise resolved. AG ¶¶ 20(a), 20(c), and 20(d) are applicable.

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

The security concern for personal conduct 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 intentionally provided false information about his finances on his 2013 SF 86. AG ¶ 16(a) is applicable.

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;

(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 discussed his delinquent debts during his background interview in March 2013. However, having found that Applicant intentionally provided false information on his 2013 SF 86, I have also determined that he provided false information when he denied the omission was intentional. It would be inconsistent to find the conduct mitigated.<sup>11</sup>

### **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.

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<sup>11</sup> See ISCR Case No. 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant the applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and F in my whole-person analysis.

Applicant resolved his financial problems. However, he intentionally provided false information about his finances on his 2013 SF 86. There are concerns about his judgment, honesty, and willingness to comply with rules and regulations.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns, but he did not mitigate the personal conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.r:	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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Edward W. Loughran  
Administrative Judge