



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



In the matter of: )  
)  
) ISCR Case No. 14-05492  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

03/15/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to show that he has a track record of financial responsibility, and that his omissions in his 2014 security clearance application were not deliberate. He failed to mitigate the Guideline F and Guideline E security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 24, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant’s eligibility for a clearance. On February 5, 2015, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).<sup>1</sup> Applicant answered the SOR on July 7, 2015, and elected to have his case decided on the written record, in lieu of a hearing.

<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

A copy of the Government's file of relevant material (FORM), dated November 10, 2015, was provided to him by transmittal letter dated November 13, 2015. Applicant received the FORM on November 18, 2015. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant did not respond to the FORM or submit any information. The case was assigned to me on March 3, 2016.

### **Findings of Fact**

Applicant admitted all the factual allegations in SOR ¶¶ 1.a through 1.g. He also admitted that he omitted his two felony charges and one alcohol-related offense from his 2014 SCA, but claimed that his omissions were due to honest mistakes. I considered the allegations on SOR ¶¶ 2.a through 2.c denied. His admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 39-year-old electronic technician employed by a federal contractor. He attended college from July 1999 to January 2001, and received an associate's degree. He married his wife in March 2014. This is his first security clearance application. (2014 SCA)

Applicant's employment history shows that he worked as a communications-telecommunications installer and technician for residential and private companies from 2001 to 2008. He started working for federal contractors in 2008. He has been working with his current employer, a federal contractor, since January 2014.

Section 22 (Police Record) of Applicant's 2014 SCA asked him to disclose whether he had ever been charged with any felony offense or an offense involving alcohol or drugs. He answered "no," to both questions.

Section 26 (Financial Record) asked Applicant to disclose whether in the last seven years he had failed to file or pay Federal, state, or other taxes when required by law. Applicant answered "no."

Section 26 (Financial Record) also asked Applicant to disclose whether in the last seven years he had any financial problems, including delinquent or in collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; and whether he was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts during the last seven years. Applicant answered "no" to all these questions.

The subsequent security clearance background investigation revealed the five delinquent accounts alleged in the SOR, that Applicant had failed to timely file his 2012

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*for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.*

and 2013 federal and state income tax returns, and that he was charged with two felonies and an alcohol-related misdemeanor in 1996. All the SOR allegations are established by Applicant's admissions, the credit reports attached to the FORM (Items 7 and 8), the FBI's Identification Record (FORM, Item 5), and the state's criminal record (FORM, Item 6). Although Applicant was charged with the two felony offenses, he was found guilty of a misdemeanor larceny and two misdemeanor counts of worthless checks. (FORM, Item 6)

In his answer to the SOR, Applicant claimed that he failed to disclose that he was charged with grand larceny, two counts of forging and uttering (felony offenses), and possession and purchase of alcohol (misdemeanor), because the incidents happened so long ago that he forgot about them. Applicant was charged with these offenses in 1996, when he was 20 years old. Apparently, Applicant appeared in criminal court where he was represented by an attorney. The felony offenses were reduced to misdemeanor offenses, Applicant pled guilty, and paid fines and restitution. He stated that a government investigator refreshed his memory about the felony charges during a security clearance background interview conducted subsequent to his submission of the 2014 SCA.

Applicant also failed to disclose that he failed to timely file his federal and state income tax returns for tax years 2012 and 2013, and that he had the delinquent accounts alleged in SOR ¶¶ 1.a through 1.e. Applicant provided little explanation for his failure to disclose his delinquent financial accounts and income tax returns. Attached to his answer to the SOR, Applicant submitted documentary evidence showing that he paid the five delinquent accounts alleged in the SOR, and that he filed his 2012 and 2013 income tax returns, shortly after he received the SOR.

Applicant provided no information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget. Although Applicant paid the SOR debts, he failed to explain why the debts became delinquent, what efforts he made to contact creditors and to pay the debts before the SOR was issued, or what efforts he made to otherwise resolve his financial problems.

### **Policies**

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

Under Guideline F, the security concern is that 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 ¶ 18)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's delinquent debts and his failure to timely file his income tax returns raise the applicability of the following financial considerations disqualifying conditions: AG ¶ 19(a) "inability or unwillingness to satisfy debts," AG ¶ 19(c) "a history of not meeting financial obligations," and AG ¶ 19(g) "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

AG ¶ 20 lists five conditions that could mitigate the financial considerations 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; 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.

None of the financial considerations mitigating conditions fully apply. Applicant's delinquent debts were recent, frequent, and not incurred under circumstances making them unlikely to recur.

Applicant's presented insufficient evidence of facts that could establish circumstances beyond his control that may have contributed or aggravated his financial problems. Nor did Applicant submit evidence to show he acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). Further, Applicant presented no evidence to show he obtained financial counseling and has gained a better grasp of his financial situation.

Applicant receives some credit for resolving the SOR allegations. Notwithstanding, it appears that these payments were made and his tax returns filed after receipt of the SOR. As such, the evidence is insufficient to show that he initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts.

Furthermore, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to show that he participated in financial counseling or that he follows a budget. Applicant failed to establish that he has a track record of financial responsibility.

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

AG ¶ 15 articulates the security concern for 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.

Applicant omitted relevant and material information from his 2014 SCA when he failed to disclose his delinquent accounts, that he failed to file his 2012 and 2013 income tax returns, and that he was charged with felony offenses and an alcohol-related offense in 1996. Considering the number of debts, the dates the accounts became delinquent, and the period during which the debts have been delinquent, Applicant knew of his delinquent accounts.

Applicant claimed that he forgot about his felony charges and alcohol-related charge because it has been 18 years since it happened. Applicant's explanation is not credible. Applicant was arrested, charged, appeared in court, and was represented by an attorney in a criminal proceeding where he was convicted, albeit of misdemeanor offenses. His statement that he forgot about such a traumatic process is not credible.

I note that Applicant was 38 years old and had completed an associate's degree when he submitted his 2014 SCA. He had been working for federal contractors since 2008. In light of his age, education, and work experience, he knew or should have known that he was required to be truthful, honest, and forthcoming when completing his SCA. Applicant failed to submit sufficient credible evidence to mitigate or explain his omissions. In light of the available evidence, I find his omissions were deliberate and with the intent to conceal the information or to mislead the Government.

Applicant's falsification of his 2014 SCA triggers the applicability the following disqualifying condition under AG ¶ 16:

(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;

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

(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; and

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

The above mitigating conditions are not sufficiently raised by the facts and circumstances of this case and are not applicable. Applicant's falsifications are recent and serious. Personal conduct concerns are not mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Applicant receives credit for his years working for federal contractors, the payment of his delinquent accounts, and his filing of his past-due income tax returns.

Notwithstanding, he failed to submit sufficient evidence to show that he has a track record of financial responsibility, and that his omissions were not made with the intent to falsify his SCA or mislead the Government. He failed to mitigate the Guidelines F and E 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.c:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge